LOK SABHA

SIXTEENTH LOK SABHA

VERBATIM RECORD OF EVIDENCE TENDERED BEFORE THE JOINT COMMITTEE ON THE INSOLVENCY AND BANKRUPTCY CODE, 2015

67

Dji

LOK SABHA SECRETARIAT
NEW DELHI

April, 2016/*Vaisakha*, 1938 (*Saka*)

E 17

LOK SABHA

SIXTEENTH LOK SABHA

VERBATIM RECORD OF EVIDENCE TENDERED BEFORE THE JOINT COMMITTEE ON THE INSOLVENCY AND BANKRUPTCY CODE, 2015

सत्यमेव जयते

LOK SABHA SECRETARIAT
NEW DELHI

April, 2016/*Vaisakha*, 1938 (*Saka*)

LOK SABHA

SIXTEENTH LOK SABHA

VERBATIM RECORD OF EVIDENCE TENDERED BEFORE THE JOINT COMMITTEE ON THE INSOLVENCY AND BANKRUPTCY CODE, 2015

Laid in Lok Sabha on 28 *April*, 2016

Laid in Rajya Sabha on 28 *April*, 2016

सत्यमेव जयते

LOK SABHA SECRETARIAT
NEW DELHI

April, 2016/*Vaisakha*, 1938 (*Saka*)

C.B.I.I No. 552

Price : ₹ 355.00

© 2016 By Lok Sabha Secretariat

Published under Rule 382 of the Rules of Procedure and Conduct of Business in Lok Sabha (Fifteenth Edition) and printed by Jainco Art India, New Delhi-110 005.

CONTENTS

PAGE

1. Proceedings of the first sitting of the Joint Committee on the Bankruptcy and Insolvency Code, 2015 held on 19th January, 2016 ..... 1—9

2. Proceedings of the second sitting of the Joint Committee on the Bankruptcy and Insolvency Code, 2015 held on 20th January, 2016 ..... 10—45

3. Proceedings of the third sitting of the Joint Committee on the Bankruptcy and Insolvency Code, 2015 held on 08th February, 2016 ..... 46—103

4. Proceedings of the fourth sitting of the Joint Committee on the Bankruptcy and Insolvency Code, 2015 held on 09th February, 2016 ..... 104—166

5. Proceedings of the fifth sitting of the Joint Committee on the Bankruptcy and Insolvency Code, 2015 held on 15th February, 2016 ..... 167—231

6. Proceedings of the sixth sitting of the Joint Committee on the Bankruptcy and Insolvency Code, 2015 held on 16th February, 2016 ..... 232—278

PROCEEDINGS OF THE FIRST SITTING OF THE JOINT COMMITTEE ON THE BANKRUPTCY AND INSOLVENCY CODE, 2015 HELD ON TUESDAY, THE 19TH JANUARY, 2016

The Committee sat from 1500 hrs. to 1720 hrs. in Committee Room C, Ground Floor, PHA, 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 Nishikant Dubey
6. Shri Shivkumar C. Udasi
7. Shri Anil Shirole
8. Dr. Sanjay Jaiswal
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 Kalyan Banerjee
16. Shri Bhartruhari Mahtab
17. Shri B. Vinod Kumar
18. Shri Jitendra Chaudhury

Rajya Sabha

19. Shri Ajay Sancheti
20. Shri Naresh Gujral
21. Shri Anand Sharma

22. Dr. Balachandra Mungekar
23. Shri Ravi Prakash Verma

SECRETARIAT

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

JOINT COMMITTEE ON INSOLVENCY AND BANKRUPTCY CODE

Verbatim Proceedings

Date : 19th January, 2016

Time : 1500 hours

Venue : Committee Room 'C'
Parliament House Annexe
New Delhi

PRESENT

1. Shri Bhupender Yadav — Chairperson
2. Shri Anand Sharma — Member

WITNESSES EXAMINED

1. Shri Shaktikanta Das
   Secretary (Economic Affairs)
2. Shri G. Narayana Raju
   Secretary (Law and Justice)

HON. CHAIRPERSON: Shri Shaktikanta Das, Secretary, Department of Economic Affairs and Shri G. Narayana Raju, Secretary, Legislative Department, I welcome the representatives of the Department of Economic Affairs and the Legislative Department to the first sitting of the Joint Committee constituted to examine and report to the Parliament on the Insolvency and Bankruptcy Code, 2015.

Now I request the Secretary to the nodal Department, that is, DoEA to make a presentation on the various aspects related to the legislation. The representatives of the Departments may respond to the queries of Members during the course of deliberations.

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

(INTRODUCTION OF WITNESSES)

SHRI SHAKTIKANTA DAS: Hon. Chairman, hon. Members, at the outset, I must thank the Committee for giving us this opportunity to make the presentation on the Insolvency and Bankruptcy Code. I have about 21 slides. If you permit, I will finish the presentation in about 35 minutes or so, so that we have time for discussion. The presentation is broadly in six parts. First, I would be talking about the background of this whole legislation. In the second part, I will be talking about the existing laws which govern bankrupcty and insolvency. In the third part, I would be highlighting the need for a new law. In the fourth part, I will be talking about the Bankruptcy Law Reforms Committee (BLRC).

(SLIDE PRESENTATION)

श्री निशिकांत दुबे: मि. दास यह बताइये कि सीडीआर, एसडीआर और जेएलआर ये कानून कोई भी पार्लियामेन्ट में पास नहीं हुए। आरबीआई या सरकार ने एक एक्जीक्यूटिव ऑर्डर से ये सारी चीजें कर लीं तो फिर क्या आवश्यकता पड़ रही है कि इसे आप कानून के माध्यम से बैंक्रप्सी कोड में लाना चाह रहे हैं? आरबीआई को जो पावर है, आरबीआई को एज रेगुलेटर जो आपने पावर दी है, जिसके आधार पर सीडीआर, एसडीआर और जेएलआर 2015 में आपने यह किया, आप अपने मन से कोई डिसीजन ले लेते हैं या रेगुलेटर अपने मन से डिसीजन ले लेता है, आप मतलब इनक्लूडिंग आरबीआई सरकार को रिप्रजेन्ट कर रहे हैं, ऐसा क्या कारण है कि जो आप इस बैंक्रप्सी एक्ट में उसे मैकेनाइज करना चाहते हैं, इसके पीछे क्या रीजन है। क्योंकि पार्लियामेन्ट इसके लिए दोषी नहीं है, कोई ऐसा कानून इस देश में नहीं है, जिसे आपको संशोधन करने की आवश्यकता है। यह एक्जीक्यूटिव ऑर्डर है, सरकार का ऑर्डर है। फिर ऐसा क्या कारण है?

श्री शक्ति कान्त दास: सर, यदि आपकी परमीशन हो तो मैं क्लेरिफाई करना चाहूंगा।

माननीय सभापति: आप इसे नोट कर लीजिए, एक बार अपनी प्रजेन्टेशन को पूरा कर दीजिए और कल हमने साढ़े ग्यारह बजे वापस मैम्बर्स की क्वेरीज और कॉशन के लिए मीटिंग रखी है। अभी आप एक बार पूरा प्रजेन्टेशन दे दीजिए। मेरी मैम्बर्स से भी रिक्वैस्ट है कि एक बार पूरा प्रजेन्टेशन होने दीजिए, ओवरऑल इस बिल का मैकेनिज्म क्या है, हम उसे एक बार देख लें, उसके बाद फिर हम उसे कल डिटेल में डिस्कस करेंगे।

(SLIDE PRESENTATION)

SHRI KALYAN BANERJEE: These are always quasi-judicial bodies. How can you say it is a judicial body? It is not a court with the meaning of a court under the Code of Civil Procedure.

SHRI SHAKTIKANTA DAS: I will make a note of it and reply to it tomorrow.

SHRI KALYAN BANERJEE: In the NCLT would all members be from the judiciary? They would certainly not be from the judiciary.

SHRI SHAKTIKANTA DAS: I will reply to it tomorrow.

(SLIDE PRESENTATION)

SHRI SHIVKUMAR CHANABASAPPA UDASI: If the NCLT rejects it in 14 days, where will they go?

SHRI SHAKTIKANTA DAS: They will go before the appellate tribunal, the NCLAT.

(SLIDE PRESENTATION)

SHRI KALYAN BANERJEE: Can we not amend at that point of time? You are saying only accepting or rejecting it. I would like to know if some proposal comes whether there is jurisdiction at that point of time to amend something.

SHRI SHAKTIKANTA DAS: Sir, we take note of it.

DR. BALACHANDRA MUNGEKAR: For example after passing by 75 per cent of the creditors, that is three-fourth of the creditors, if it is rejected then what is the sacrosanct of majority decision of 75 per cent of the creditors? It becomes null and void. The whole process becomes irrelevant. If 75 per cent of the creditors take a decision of either liquidation or the revival and that decision is voted out, that step becomes totally irrelevant.

SHRI KALYAN BANERJEE: In fact that is the reason I asked that whether power is there to alter to a certain extent.

SHRI SHAKTIKANTA DAS: We have noted down the points.

KUMARI SUSHMITA DEV: It is supposed to be a business decision. Will the NCLT overrule the creditors?

(SLIDE PRESENTATION)

DR. BALACHANDRA MUNGEKAR: What make you to have 12 months? What is the criterion used for making it 12 months?

SHRI SHAKTIKANTA DAS: For 12 months his wages will be settled.

DR. BALACHANDRA MUNGEKAR: What is the criterion for deciding 12 months? We do not expect reply right now. If we see during the last 10 years the statistics of the closures and the lock outs, overwhelmingly, 95 per cent of the man days lost are due to lock out for one reason or the other. We have to seriously reconsider this 12 months.

SHRI SHAKTIKANTA DAS: We have made a note of it and we will reply it tomorrow.

SHRI KALYAN BANERJEE: By saying 12 months you are shielding to get their wages back to 12 months. It is open till now. In view of the Supreme Court judgement first preference has to be given to the workmen. It is as per today's judgement and you are trying to nullify that judgement.

HON. CHAIRPERSON: Please note down this. You may also tell us the existing procedure in the Industrial Disputes Act when closure is there.

(SLIDE PRESENTATION)

SHRI SHIVKUMAR UDASI: When it comes to the dues to the Central Government in respect to income tax and also sales tax and excise what will happen? Priority has gone down. According to 178 of IT what will happen to that? There will be a duality in this. How do you view that?

SHRI SHAKTIKANTA DAS: I have made a note of it and I will reply to it tomorrow.

DR. BALACHANDRA MUNGEKAR: There is a contradiction; the Government dues, Centre and the States, for two years and the workers

wages 12 months. This is the apparent contradiction safeguarding the interest. We shall discuss it tomorrow.

SHRI KALYAN BANERJEE: By this process you are taking away the power of the industrial adjudicator.

श्री निशिकांत दुबे: इसमें जो शेयरहोल्डर हैं, प्राय: जितनी भी बड़ी कंपनियां हैं, उनमें डैट और ईक्विटी का जो चक्कर है, उसमें मैक्सिमम जो लिस्टेड कंपनियां हैं, उसमें प्रमोटर्स के शेयर्स तो बहुत कम हैं, पांच, सात या आठ परसेंट हैं। जो बेचारे मार्केट में गए हैं, जो कामन आदमी हैं, गरीब आदमी हैं, उनका शेयर है। आपका जो अंतिम चैप्टर है, इसका मतलब यह है कि आप जो कह रहे हैं कि फाइनेंशियल इंस्टीट्यूशन या बड़े लोग ही शेयर मार्केट में जाएं और भारत के लोगों को जो ज्यादा से ज्यादा शेयर मार्केट में जोड़ने की बात हो रही है कि मिडिल क्लास या लोअर मिडिल क्लास या अपर मिडिल क्लास इससे कट रहा है, इसका मतलब यह है कि इस कोड के बाद उनको कंप्लीट काट देना है। जो एफ.आई.आई. के माध्यम से शेयर मार्केट में इनवैस्टमेंट हो रहा है, वही होगा और उसके बाद किसी आदमी के जाने का सवाल ही नहीं है। क्योंकि यदि यह भी लागू हो जाएगा तो उनको कुछ नहीं मिलना है। इसके बारे में बताइए।

SHRI NARESH GUJRAL: Sir, I have one question. This Note which is circulated to us by the Secretariat, it says Clause 12 (3): "Debts owed to employees other than workmen for a period of 12 months." There is a contradiction. Here it says: "Employees dues 12 months." The contradiction is where it says this liability of only 12 months does not apply to workmen.

SHRI BHARTRUHARI MAHTAB: There is a distinction between the employees and the workmen.

SHRI SHAKTIKANTA DAS: Workmen mean workmen defined under the Industrial Disputes Act.

SHRI NARESH GUJRAL: But your Presentation is not showing that.

DR. BALACHANDRA MUNGEKAR: Mr. Das, please make clear tomorrow the distinction between the workers and the workmen.

SHRI KALYAN BANERJEE: There is a distinction between the workers and the workmen.

HON. CHAIRPERSON: There is a specific definition in the Industrial Disputes Act.

SHRI BHARTRUHARI MAHTAB: An employee is a person who takes decisions and a workman is a workman who works as per the decision.

SHRI NARESH GUJRAL: In the Industrial Disputes Act that is not the way it is.

SHRI KALYAN BANERJEE: If it is not an industrial establishment, then how would be definition of workman apply?

HON. CHAIRPERSON: Tomorrow our Secretariat will bring the Industrial Disputes Act also. It is a matter of definition and not a discussion.

(SLIDE PRESENTATION)

HON. CHAIRPERSON: Thank you Mr. Das for your presentation.

I want to make one thing clear here that in the Act itself Section 3 sub-section 36 says that the workman shall have the same meaning as assigned in section 2 of the Industrial Disputes Act. That is mentioned in the Act also.

Today some queries have been raised by the hon. Members.

SHRI KALYAN BANERJEE: The whole act you are bringing because of authority which is existing there. But Mr. Secretary, with our experience as lawyers, I can tell you that the Adjudicating Authorities never sit in time and they never hear the matter. Can ensure that they would work from 10.30 till evening? They just come at 1 p.m. and go back at 3 p.m. which delays things. It is because of the negligence on the part of Adjudicating Authority, the delay is there. You must ensure that all the Adjudicating Authorities work from 10.30 a.m. to 4 p.m.

SHRI ANAND SHARMA: I think Mr. Kalyan has a point and we will discuss it tomorrow. There should be some provision that if they do not do their job, when you have time lines, there should be provision to penalise them.

HON. CHAIRPERSON: I would like to ask the Members whether क्वश्चंस अभी सब को पूछने हैं या कल पूछेंगे?

श्री कल्याण बनर्जी: क्वश्चन पूछने में तो टाइम लगेगा।

माननीय सभापति: मेरा एक और कहना है कि हमारे सभी मैम्बर्स के मन में एक विषय है कि आप 11 एक्ट्स में संशोधन ला रहे हैं, मतलब इससे पहले 11 एक्ट्स में इन्सोल्वेंसी को लेकर अलग-अलग प्रोवीजंस थे। आप एक कॉम्प्रीहेंसिव चार्ट बनाइये कि एग्जिस्टिंग लॉ में क्या प्रोवीजन है, इसके आने के बाद क्या है। एक चार्ट होने से हमको ध्यान में आ जायेगा

कि कहीं ओवरलैपिंग तो नहीं है, एक दूसरे के साथ, जैसा कि शिवकुमार जी ने भी सही क्वेश्चन किया कि आपके हिसाब से टैक्स ड्यू सबसे बाद में है। इन्कम टैक्स के हिसाब से सबसे पहले है तो जहां इस प्रकार के कंट्राडिक्शंस हैं, पी.एफ. अथॉरिटी के लिए हमारे कोई अमेंडमेंट नहीं हैं तो एक कॉम्प्रीहेंसिव चार्ट अगर आप दे देंगे तो हमें एक बार ध्यान में आएगा कि जो एग्जिस्टिंग लॉ है और जो यह लॉ बनने जा रहा है, इसमें क्या प्रोविजन है, कहां पर पावर्स हम लोग कंसोलिडेट कर रहे हैं।

श्री निशिकान्त दुबे: मेरी केवल एक क्वैरी है कि कम्पनी एक्ट, 2013 का आप संशोधन करना चाहते हैं। जो विश्वनाथन कमेटी की भी रिपोर्ट आई है, उसने यह कहा है कि आपने उस एक्ट को नोटीफाई ही नहीं किया है। अभी भी आपने 1956 के रूल्स को नोटीफाई ही नहीं किया है, उसके बिना नोटिफिकेशन के, बिना उसके रिपरकशंस जाने हुए हम यदि एक अमेंडमेंट लेकर आ जाते हैं तो क्या यह उचित है? सबसे बड़ा सवाल यह है कि 2008 का कम्पनी एक्ट हम अमेंड करना चाहते हैं, उसके लिए रूल्स को आपने अभी तक नोटीफाई नहीं किया है, वह 1956 का ही एक्ट चलता रहा है, इवन जो आपका मकेनिज्म है, सैटलमेंट का आउट ऑफ कोर्ट मकेनिज्म है, जिसके बारे में मैंने आपको कहा। सी.डी.आर., एस.एल.आर. या एस.डी.आर., जे.एल.आर., आप आउट ऑफ कोर्ट मकेनिज्म आप अपने हिसाब से एग्जीक्यूटिव ऑर्डर से चला रहे हैं तो जब वह एक्ट नोटीफाई ही नहीं हुआ तो उस एक्ट में संशोधन करने की क्या आवश्यकता पड़ गई, इस एक्ट में?

माननीय सभापति: मुझे लगता है कि लीगल डिपार्टमेंट का यह क्वेश्चन है, इसको जरा तैयार करके आइयेगा।

SHRIMATI SUSHMITA DEV: From the time a liquidator is appointed going from a practioner's point of view, till the liquidation is completed and assets are distributed to creditor in order of priority, is there a time limit on that? It is because that is the most time consuming. Your presentation does not say that.

SHRI SHAKTIKANTA DAS: Sir, I just want to add to the same thing. We have seen that most of the banks are suffering from NPAs because they cannot recover. They go to DRTs and lawyers are able to buy time there and inordinate delay is there. Now you are putting individuals and unlimited liability partnership into DRTs. You are creating another body called NCLT. What makes you so certain that here the process will be faster? It is because the past experience has been that lawyers are able to delay the process. How do we come to solve this problem? This is the crux.

DR. BALACHANDRA MUNGEKAR: In the entire presentation and in the Act, there is no mechanism for wilful defaulters.

SHRI NISHIKANT DUBEY: It is there. I would like to know whether these ponzi schemes and chit funds are also provided as individuals, corporates in these schemes or not. This is one of my concerns. You also discussed about the ARC mechanism. We will discuss when we progress in that because ARCs are being misused. First disproportionate loans are given to the assets, the CDR is done and again loans are funded and by taking hair cut line ARCs have bought those loans and there the funding companies are also having stake in the ARCs. It is because the NPAs what we are facing is a complete mechanism which is into a question mark. That is to be seen.

Secondly, IPs and IPAs are to be defined as to who is going to qualify for that because ultimately the financial professionals are to be there. अगर लोन दिलाने वाला और लोन रिकवरी करने वाला इसमें एक ही हो जाए, तो बहुत मुश्किल हो जाएगी।

SHRI B. VINOD KUMAR: With regard to individuals, the insolvency petitions, application will be made to DRT. What does it mean? As on today they file in the sub courts, the lower judiciary.

SHRI P.P. CHAUDHURY: Sir, I would like to raise a point for tomorrow. In the Schedule, from Schedule I to XI we have incorporated all the Acts where the amendment is to be carried out. I would like to have a clarification on this issue whether in this court by putting all these eleven Acts whether in the respective Acts without bringing those by way of Bills before the Parliament whether it will be deemed that amendments will be carried out automatically on the basis of this. I want a clarification on this.

SHRI SHAKTIKANTA DAS: Sir, we will discuss this and we will clarify.

SHRI P.P. CHAUDHURY: I do not think that by putting all these Acts in this, the Companies Law, Partnership etc. the respective law will be automatically amended.

माननीय सभापति: बाकी के क्लैरिफिकेशन हम लोग कल करेंगे। आज जो क्लैरिफिकेशंस आए हैं, इन्हें करके एक टेबल चार्ट के साथ हम लोग कल मिलते हैं।

SHRI SHAKTIKANTA DAS: Sir, if you permit me, preparing the chart may take a little more time and I would need to do it carefully. I may not be able to give it tomorrow.

माननीय सभापति: कल पहले क्लैरिफिकेशन हो जाए। उसके बाद आप उसे कर लीजिएगा।

आज की इस मीटिंग के लिए मैं अपने सभी सदस्यों को बहुत-बहुत धन्यवाद देता हूं। वित्त विभाग के जो अधिकारी हैं, उनको धन्यवाद देता हूं। हमारे सेक्रेटेरिएट के स्टाफ, जिन्होंने इसमें सहयोग किया, आप सबको मैं धन्यवाद देता हूं।

आप सभी चाय के लिए सादर आमंत्रित हैं।

(तत्पश्चात् समिति की बैठक स्थगित हुई)

PROCEEDINGS OF THE SECOND SITTING OF THE JOINT COMMITTEE ON THE BANKRUPTCY AND INSOLVENCY CODE, 2015 HELD ON WEDNESDAY, THE 20TH JANUARY, 2016

The Committee sat from 1100 hrs. to 1340 hrs. in Committee Room E, Basement, PHA, New Delhi.

PRESENT

Shri Bhupender Yadav — *Chairperson*

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. Dr. Sanjay Jaiswal
8. Shri Jagdambika Pal
9. Shri Jayadev Galla
10. Shri Chirag Paswan
11. Ms. Sushmita Dev
12. Dr. P. Venugopal
13. Shri Bhartruhari Mahtab
14. Shri Jitendra Chaudhury

Rajya Sabha

15. Shri Ajay Sancheti
16. Shri Naresh Gujral
17. Shri Anand Sharma
18. Dr. Balachandra Mungekar
19. Shri K.C. Tyagi

SECRETARIAT

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

JOINT PARLIAMENTARY COMMITTEE ON INSOLVENCY AND BANKRUPTCY CODE

Verbatim Proceedings

Date : 20th January, 2016

Time : 1100 hours

Venue : Committee Room 'E'
Parliament House Annexe
New Delhi

PRESENT

1. Shri Bhupinder Yadav — Chairperson
2. Shri Nishikant Dubey — Member

WITNESSES EXAMINED

1. Shri T.K. Viswanathan
Former Law Secretary and Former Secretary-General,
Lok Sabha

HON. CHAIRPERSON: I welcome Shri T.K. Vishwanathan, former Law Secretary and former Secretary-General, Lok Sabha. As you are aware, the Joint Committee is examining the Bill titled the Insolvency and Bankruptcy Code, 2015. Being the Chairman of Bankruptcy Law Reforms Committee, you had the privilege of over-seeing the design and drafting of new legal framework for resolving matters of insolvency and bankruptcy. Keeping in view your expertise on the matter, the Committee have decided to hear your views. It is needless to mention having held the office of the Secretary-General, Lok Sabha that whatever deliberation are held in the sitting of the Committee would form the part of proceeding of the Committee and treated them as confidential and not circulated to anyone or made public in any other media till the report of the subject is presented to the Parliament.

Now, I request you to present your considered view. You may highlight how far the proposed legislation would address the constraints and difficulties faced in the insolvency resolution of companies and individuals under the existing framework. The Committee would also like to hear from you the best of the international practices in this regard.

SHRI T.K. VISHWANATHAN: Thank you Chairman Sir, at the outset, let me thank the Committee for inviting me to share some of the views on this Insolvency code which I happen to be associated with. The Finance Ministry has constituted this Committee. Let me first congratulate all the Members here and wish you a happy new year. I have been interacting with them in various capacities. This Insolvency and Bankruptcy Code will be a landmark legislation in this century because in our country, we are excessively dependent upon the banks for availability of credit for raising finance. But in other countries, people are able to raise money from the markets. So, it is very difficult for a common man to raise money.

Secondly, as you have seen that the Companies Act which deals with corporate insolvency, the winding process and everything is very time consuming. It takes a long time to wind up the assets and to recover the value. This is one of the inhibiting factors for credit to flow into the market. People who want to invest money into the market, if they are not assured of getting it back, then they are very reluctant, It takes ten years or twenty-years. The Official Liquidators office is not able to realize the value for the money. Now, we have examined the whole thing and corporate insolvency is handled by the Companies Act. For the individual insolvency, we had the Provincial Towns Insolvency Act and the Presidency Towns insolvency Act. They are very old. They are hundred year old Act which has never been made use because it

has not been found very useful for addressing the problems of the market. Now, we have not addressed that. There has been a long delay and for realization of the assets, it took a lot of time. Then, the BIFR was brought in 1985. The SICA industrial provisions were used by the debtors to abuse the process. It was friendly towards debtors. As a reaction, the Securitization Act came in. The Securitization Act went to the other extreme with a net result that there is a swing in both sides without a balance. Then, we thought the best way to address the whole problem is to see how we can have a comprehensive code which will address both individual insolvency as well as the corporate insolvency. We undertook this exercise. This was a very difficult exercise because we know that our statute books are full of Acts which have different impacts in different areas and we have to identify all the Acts and we have to make suitable amendments. We took a long time and then ultimately, we went ahead. We attempted to produce a comprehensive code and the whole rationale of this code is to be based on a default based test to find out the sickness at the earlier stages instead of net worth erosion test which is followed in the SICA and other things. So, when the default based tests provides us a very early detection of sickness, it gives us an opportunity at the earliest level to address the problem and to revive the company and keep it going. So, at the earliest stage, if you discover that there is something wrong with the company's finances, then you will see how to revive it and bring it back to health. But if you discover at the point when everything is gone, there is no worth left, net worth erosion is 51 per cent which is the current land mark, it is very difficult to do anything. If you invest money, the entire money will go as bad money. So, this is of no use. So, we thought at the earliest possible opportunity that the sickness should be discovered and then we see how to address this problem. We found that wherever there is a judicial intervention, there is enormous delay and that is something which we have to live with. In markets, people do not wait for long time. For realization of assets, if you have to wait for twenty years, we will not be able to get credit into the market. We also wanted to see how the bond market can flourish under the present circumstances. Unless you give some priority for the unsecured creditors also, credit will not flow in. So with all these things in mind, we came up. The nerve centre of the whole code are the new breed of professionals who are called Insolvency Resolution Professionals who will be turn around specialists, who will be able to bring in money, revive a sick company and nurse it back to health. So, this Bill will prevent a company going to sickness which will avoid employees going out of job and all those things will be prevented and the company will be a going concern and the management may change. Now, if the Insolvency Resolution Professionals are appointed, he takes

over the management. Right now, the management is in a deterrent position where the management is in control of the company which is gone sick with a net result that takes some adventurous decisions and ultimately, the costs is borne by the creditor because they are not concerned. So, the deterrent position is proved to be detrimental for our code. So, immediately when the Insolvency Resolution Professionals are appointed, he takes over the management and the Creditors Committee takes over the decisions of the Company and this Insolvency Resolution Professional will bring in new credit, he will bring in some finances to revive the company and he will be responsible and he will be answerable to the Creditors Committee with a result, everything will be managed very efficiently from the day one.

Now, there are three types of people who can file for corporate insolvency – that is financial creditors, operational creditors and people who supply credit and supply goods and services. Then, ultimately, the corporate debtors himself can file if he finds that he is not able to manage the finances because if he is able to come out, then he can have a fresh start. We have provided for a chapter on fresh start where people who were not able to manage can apply and get cleared by the Tribunal and start afresh. So, the market failure is an accepted thing. He may succeed in the market. He may fail in the market. So, he should not be held like an entrepreneur. If you want really to encourage people to come and have start-ups, there will be failures and there will be successes. So, we want to say that failure of an enterprise should not be held against the person. He should be encouraged to come up again and come up with new ideas. This is number one.

Coming back to the idea, we ideally would like to have a separate tribunal which will deal with this insolvency related professionals because in western countries, the courts are handing them the bankruptcy codes but we thought if you try to go into the code system, we get into a lot of things where we find delay which we are not able to address. So, everything now is time bound. So, the Insolvency Resolution Professional should be over within 180 days. At the most, it can have another extension for 90 days. If you cannot do within that 270 days, you wind up, you liquidate, take the value of the assets and go on. So, this is a decision which has been taken in a time-bound manner.

There is no question of any adjournment or anything because all the decisions will be market-driven. It will be arrived at by the Creditors Committee. The insolvency resolution professional is bound by a code of conduct. He will be a tightly regulated professional by a Board which is Insolvency Resolution Board which will control his behaviour because

there is a lot of scope for abuse since he will be in-charge of the management. He will be having unlimited powers to run the enterprise. So, the Insolvency Resolution Board will control his misconduct. Criminal liabilities are attached. So he will be the main person.

We have involved the courts because unless there is judicial stamp, there is bound to be endless litigation. Unless the court gives the stamp and approves, everything will become final. So, this is how we proceeded.

We thought if you create a separate Tribunal, it will take a long time. Under the Indian legal system, the National Company Law Tribunal itself has taken a long time, 10 years, to fructify. Now it is almost on the verge of being brought into existence. So, we thought we will make use of the existing structure. So, we thought we will give this power to the National Company Law Tribunal and to the Appellate Tribunal.

When it comes to individual insolvency, the problem is, the district courts are not in a position to handle such a matter because the Provincial Insolvency Act and the Presidency-Towns Insolvency Act are handled by the district courts. But we find the district courts are having so many other works. They do not have a dedicated time or space for dealing only with insolvency related matters.

When you have this kind of a legal framework, you will find lot of money flowing into the market and people should also be very careful because they will not be able to take refuge in the legal subterfuges for delaying payments. If they have taken some money, they will be liable. Otherwise, they will lose because everything is time bound. The district courts are not clearly suited to deal with this type of thing and we have thought that the Debt Recovery Tribunals have to be re-engineered. The present Debt Recovery Tribunal may not be able to handle this. This requires enormous expansion of the Debt Recovery Tribunals which will have even circuit sittings in the district courts because the access to this court should be available at the district level also. So, we have tried to give the individual insolvency matters to the Debt Recovery Tribunal and the corporate insolvency to the National Company Law Tribunal.

This is the structure we have gone again. One of the important features of this code is that we have a provision for fast track corporate insolvency and also a fresh start for individual insolvency. These are some of the important things we have done. The thrust of the code is to see that we should move away from bank-centric finance and people should raise money in the market and they should be able to succeed in their business.

This is the ambitious thing we have attempted but as Members of Parliament, we will go with the wisdom of all of you because you are the best person to know what is best for our country. We would like to be guided by your wisdom. Thank you very much.

श्री निशिकांत दुबे: अभी एसडीआर पॉलिसी लागू है, एसडीआर वही काम करता है जो आप सभी कह रहे हैं, मैनेजमेंट चेंज हो जाएगा, चीजें चेंज हो जाएंगी, क्रेडिटर को पैसा मिल जाएगा। लेकिन बैंक हेयर कट के माध्यम से पैसा डूबा ही रहे हैं और उसमें मैनेजमेंट चेंज नहीं हो पा रहा है। आपको कैसे लगता है कि इसमें इन चीजों को जोड़ लेने से फायदा हो जाएगा। आपने अपनी रिपोर्ट में कहा है कि 2013 के एक्ट में नोटिफाइड नहीं हुआ है, वह 1956 एक्ट के आधार पर ही चीजें चल रही हैं। कोई कंपनी रजिस्टर्ड होती है, आरओसी उसे रजिस्टर्ड करता है और इसकी जिम्मेदारी मिनिस्ट्री ऑफ कॉर्पोरेट अफेयर्स की है। आपने कॉर्पोरेट एक्ट में कुछ चीजों को डिलिट करने के लिए कहा है, इसका मतलब है कि मिनिस्ट्री ऑफ कॉर्पोरेट अफेयर्स को बंद करके मिनिस्ट्री ऑफ फाइनेंस में मर्ज कर देना चाहिए। आपने बताया कि 256 से 268 के क्लाऊज को डिलीट होना चाहिए, डिफिनेशन ऑफ सिकनेस, जब आरओसी किसी चीज को रजिस्ट्रेशन देगा, जब उसे पता नहीं होगा तो एक तरह से यह टूथलेस आर्गेनाइजेशन हो जाएगा, आपने किन चीजों को डिलीट करने के लिए कहा है:

> "Determination of sickness, application for revival and rehabilitation, exclusion of certain times in commuting period of limitation, appointment of interim administrator, committee of creditors, order of tribunal, appointment of administrator, powers and duties of company administrator, scheme of revival and rehabilitation, sanction of scheme, scheme to be binding, implementation of scheme, winding up of company on report of company administrator, power of tribunal to assess damage against delinquent directors, punishment for certain offences, bar of jurisdiction, rehabilitation and insolvency fund."

जब कुछ कर पाने की स्थिति में ही नहीं होगी, मान लीजिए किसी डॉयरेक्टर ने कोई समस्या पैदा कर दी, वह कम से कम उस चीज को देख पाने की स्थिति में था कि कंपनी को हम दुबारा रजिस्ट्रेशन कर पाएंगे कि नहीं, लेकिन सब चीज डिलीट हो जाएगी, जब 2013 का एक्ट लागू ही नहीं हुआ, इसका क्या कारण था? 1964 का लॉ कमीशन का रिपोर्ट कहता है कि 1909 का एक्ट और 1920 का एक्ट को मार्ज कर दिया जाए तो प्रोबल्म सॉल्व हो जाएगी। उसे बिना इम्लीमेंट किए हुए हम कैसे कह सकते हैं कि वह इन चीजों को फुलफिल नहीं कर पा रहा है। अभी आपने कोर्ट के बारे में कहा, सेबी को भी इसी तरह के अधिकार दिए हुए हैं, जब भी सेबी के चेयरमैन हमारी कमेटी के सामने आते हैं तो कहते हैं लोकल कोर्ट से इनको स्टे मिल जाती है। इन्डिवीजुअल डॉयरेक्टर एंटिसिपेटरी बेल ले लेते हैं, कोर्ट को आप नहीं रोक सकते हैं, उन चीजों को निगेट करने के लिए राइडर नहीं डाला है जिस कारण से ये समस्याएं

हो रही हैं। लॉ कमीशन कह रहा था 1909 एक्ट और 1920 एक्ट दोनों को मिलाकर ऑब्जेक्ट्स और रीजन और नए एक्ट को पढ़ने में कोई फर्क नहीं है। इन चीजों के बारे में आपको क्या कहना है?

DR. T.K. VISWANATHAN: Let me answer your question regarding amendments to the Companies Act. We do not propose to take away the powers of the Ministry of Corporate Affairs. We only made amendments which will be continued to be handled.

It is deleted because amendments are made in them, which have been brought into this code. So, the Ministry of Corporate Affairs will be handling that part of the code. There is no change. We are not taking away the powers of the Corporate Ministry. So, the Ministry which will handle this will continue to be the Ministry of Corporate Affairs. So, that will not make any difference.

Secondly, regarding your point that 1909 and 1919 Acts have to be merged and the Law Commission Report, that was the report of 1964. It is out of tune with the market realities. Now we have to move forward. We have seen that if you have the courts intervening into market decisions, there is a lot of delay. Everywhere this point is litigated. There is no end. Then, we cannot realize these 180 days. So, regarding the point that people are going to the courts, we cannot take away criminal jurisdiction. We are not taking away the criminal jurisdiction. It will be continued to be exercised by the local courts. We are not touching that. These are specialized courts. These tribunals derive the power from the Act, the Code itself. So, we only want to see how best we can bring in more credit. It will be easier to bring in credit. We want to move away from banks and credit finance. Anybody who wants to raise money should be in a position to raise money because it is easily available. There is money in the market. That was the thrust of the whole idea.

Have I made it very clear? I am not sure.

SHRI SHIVKUMAR UDASI: Without an effective benami law, how can you implement this? It is because if a promoter floats the money and have it invested in benami, what is the use of this? This is the basic fundamental thing that I am asking.

SHRI T.K. VISWANATHAN: This law provides a lot of clauses to deal with such kind of misdemeanor. There is a very detailed provision for it. This is very difficult to cheat. It is not possible under the present thing. We also provide for a new brand of information utilities. Everything

will be Available on the computer. Everything will be in the public domain immediately. So, it is very difficult to cheat now. All those things have become things of past.

SHRI SHIVKUMAR UDASI: It will also evolve with the time. Even the cheaters are going to evolve as the law will evolve. It is a different debatable question. But my basic question is in regard to all other Acts, which have been subsumed into this. You have mentioned in your report itself 'interface with the court'. How would you subsume them in it?

SHRI T.K. VISWANATHAN: We have tried to identify all those Acts which will have some impact. We have tried to amend them.

SHRI SHIVKUMAR UDASI: Take, for example, the Income Tax Act. Section 178 (6) says: 'The provisions of this section shall have effect notwithstanding anything to the contrary contained in any-other law for the time being in force.' How do you justify this Act overriding that Act?

SHRI T.K. VISWANATHAN: This is an endemic problem in the Indian statute book. Later in point of time, we will see it. I tell you that I had been a draftsman for more than three decades. It is a kind of a draftsman insurance, he is not sure of what law he has to override. This question has also been raised in the Supreme Court on many occasions.

SHRI SHIVKUMAR UDASI: Even at that point of time when that law was being made, that would have also overridden some other Act. Tell us, how that would not be done now.

SHRI T.K. VISWANATHAN: There are various principals that a special law will prevail over the general law and all sorts of things. Much will depend upon the case and the Supreme Court how it will interpret it.

श्री निशिकांत दुबे: आपको यह नहीं लगता कि यदि डीटीसी इम्प्लीमेंट हो जाता, तो इनकम टैक्स एक्ट में संशोधन करने की आवश्यकता नहीं पड़ती। डीटीसी ने इन सारी चीजों को डेलीब्रेट किया था। क्या आपने उसका अध्ययन किया था?

SHRI T.K. VISWANATHAN: Maybe, then we will come up with some amendments at that point of time.

SHRI SHIVKUMAR UDASI: At page no. 15, you have also mentioned about domestic versus international perspective. The Committee has taken up and attempted to comprehensively solve the question of bankruptcy and insolvency. In so far as it is purely a domestic question. This is an important first milestone for India. The next frontier lies in

addressing cross border issues. This includes Indian financial firms having claims upon defaulting firms which are global or global financial persons having claims upon Indian defaulting firms. But, later on, you say that some important elements of internationals, foreign holders of corporate bonds issued in India, or borrowing abroad by an Indian firm are dealt with by the present report. However, there are many other elements of cross border insolvency which are not addressed by this report. The committee proposes to take up this work in the next stage of its deliberations.

SHRI T.K. VISWANATHAN: In the UNCITRAL meetings, which we used to attend, the cross border insolvency is gaining some importance. But we thought that it is a separate exercise. We have to see to what extent our national interests are involved in that because we should not submit without fully understanding it. So, we thought we will not make it a part of this. We will come back after having deliberations. That is why we kept it for a future date. That is a very important topic which we have to take up now. We would see in what extent our country will be benefited. We should not get our companies unnecessary exposed to international exposure.

SHRI SHIVKUMAR UDASI: At this juncture of economic era, which is an open market economy, how do you substantiate that?

SHRI T.K. VISWANATHAN: We will come up; we have the handle; we cannot shut our eyes to this cross border insolvency because Indian companies are also doing business abroad. So, we will address this issue shortly. But then we want this court to be in position so that that step can be taken up and then maybe we will come up before the Parliament for another amendment. That is also very important.

Cross border insolvency is where Indian companies are exposed to foreign credit. When the whole thing goes on, then the Indian assets are undue exposure. The Indian companies like Tatas, Birlas and others are all doing business outside. If something goes bankrupt, then they should not come after us. So, the UNCITRAL and other international conventions are debating that India should become a party to cross border insolvency. We have not so far formalized our views because first we want to put this Bill and the court into action and then explore how best we should handle that. So, we have not fully formalized our views on that.

SHRI ANAND SHARMA: One question which I have in mind is about the way the financing structure today for the business is. They borrow domestically and they borrow from a consortium of financial institutions

of the banks abroad. That borrowing is by the Indian corporate entities which are registered. This will cover the interests of companies, institutions and individuals who have lent money here. But when it comes to the interests of those, who have actually given a debt or invested and are located outside the jurisdiction of this country, how will that get addressed?

Then, another thing is the pledging. Many of the big corporates, but for few, overwhelming majority of the Indian corporates today have borrowed from international financial institutions. They have gone in for acquisitions and mergers borrowing abroad. That is an issue where the regulatory framework has not been able to reach or to control.

There is also other issue which, of course, is not connected with this directly. It is about the rising debt to equity, debt to GDP ratio of the country. The last one and a half year loan, the debt to GDP ratio, because of the ECBs, has risen by seven and a half per cent, from 48 per cent of 55.6. That is the latest. Should that be a concern when we are going in for such a major step? How do we address these issues?

Then, when we have the Securitization Act, what about the cases where the assets have been pledged, or some kind of guarantees have been given for the borrowings which are outside the jurisdiction of this country? Where will that get addressed?

SHRI T.K. VISWANATHAN: Sir, to my understanding, I think the foreign creditors are not barred from approaching through the court. They cannot go to the court. They will come through it. They are like any others. They are not discriminated. If they have lent money and they are financial creditors, they will come in.

SHRI ANAND SHARMA: In the case of bankruptcy or insolvency, is there any provision for it?

SHRI T.K. VISWANATHAN; There is a waterfall provision. It is Section 53. If they are security creditors, they will come there. In whatever category they are, they can come in. If they are equity holders, they can come in. The provision in this regard is very clear. I think it is Section 53. So, there is no discrimination.

But if the cross border insolvency arises in a different way, the Indian companies are doing business outside and they are exposed to some bankruptcy proceedings, the Indian assets are captured and get exposed, we are not sure how to handle that. So, we have postponed it just for the time being. We would like to have deliberations on it and then come back to you.

SHRI ANAND SHARMA: I have asked this question for a reason. Consider a situation where you have one of the big corporate entities of this country which has an outstanding loan of Rs. 1 lakh crore. There are many companies which have such loans. These are the NPAs. That entity is not in a position even after CDRM (Corporate Debt Restructuring Mechanism) to pay it back. The experience of this country has been that when the promoters set up a company, they start with a Maruti car and end up buying a Mercedes or a BMW while the company goes to the BIFR.

This is so in a large majority of cases. At the same time, these people, because we have not been able to have a regulatory oversight, those who have huge outstanding loans to PSBs here, have been allowed, over a period of time, to borrow abroad. As a result, the country's debt is rising because these are ECBs which are permitted by the RBI. How should that get looked into?

SHRI T.K. VISWANATHAN: To my knowledge, if this Code is operationalised, this kind of siphoning off and asset slipping will be a thing of past. It will be very difficult under the present Code to siphon off money because the management is taken over immediately once a sickness is detected. All those things will not happen under the present Code. Under the present regime it happens because the debtor is in position and then, the banks keep on giving more money into the bad money, all these things are happening. Under the present situation, if the Code is operationalised, these will be things of past. People will not be able to siphon off money or escape because everything will be transparent. With information utilities, everything will be captured and everything will be available.

DR. BALACHANDRA MUNGEKAR: I put on record my sense of appreciation of the work that you have done. I would like to ask two quick questions.

You have mentioned that in the entire insolvency resolution process, there are certain stakeholders, namely, creditors, debtors etc. The most important along with them are the labourers, that is, the workers, the workmen. When their dues are to be settled, you have given consideration only for the preceding twelve months' dues while for State and Central Government, you have given the consideration for the two years' dues. After 1991 or after 2000, when we are in the process of restructuring of Indian economy, we converted purely into a market economy. Devoid of welfare considerations, it happens that because of the capital-labour ratio, a large amount of companies are

becoming sick or are made sick for one reason or the other. Now, under these conditions, I think, it is unfair to consider only preceding twelve months' wages as dues so far as workers are concerned because that is the most helpless community in the country for several reasons because not more than 10 per cent of the workers are covered under the social security legislation.

You provide in your report for fast track 1RP, insolvency resolution process. On the one hand, you say 180 days and maximum 90 days more, which makes it 270 days and on page no. 88 also, you are making distinction between certain cases which can come under short track consideration which are relatively simple and there are certain cases which are relatively complex. What would be the criteria to demarcate the cases and classify them into two different categories—simple and complex? Is there any overriding consideration?

Secondly, when you are considering cases under the fast track court, whether the complete process of IRP will be followed in a transparent manner? You have mentioned that. We were discussing one important question yesterday among ourselves, namely, that even if the 75 per cent of the creditors take a particular decision, the relevant adjudicator can either reject or accept that. There is no scope even in the Bill that the Finance Ministry people were suggesting yesterday. There is no case for modification. These are the two extremes. If he accepts, it is well and good. There may also be rejection. But there should also be the provision for modification and for amendment. How do you react?

SHRI T.K. VISWANATHAN: Sir, let me take the last one first.

We never wanted to give any judicial discretion in these matters. Everything is decided by the Creditors Committee. If they want to reject it, then they have to come up with a modified plan. So, we do not want market decisions to be driven to the courts because courts are finding it very difficult to take a decision as they do not have the expertise of how the market operates. It is best that the creditors will decide. The court can always reject it and ask the creditors to come back with a revised formulation.

Secondly, regarding the workers' issue, it is very emotional. We are aware of that. Then, in the present scenario, we envisage at the most an outer limit of 270 days. More than 12 months' dues will be a thing of past when the present Code comes into operation. The long period of two years, three years and six years people not getting paid for, will become a thing of past because people are all keeping on dragging. With the present Code in position, nobody will be left without any

payment. The liquidation process and everything will be over within 270 days. So, this 12-month period is quite reasonable.

In fact, the committee only suggested three months in tune with other practices, but the Government has taken a decision to keep it for 12 months, having other considerations in mind. I think, 12 months is quite a justifiable period.

DR. BALACHANDRA MUNGEKAR: Even if wages were not paid to the workers for the last five years?

SHRI T.K. VISWANATHAN: That will not happen in the present system.

DR. BALACHANDRA MUNGEKAR: Forget about the present. Whatever is present, it is not necessarily the ideal.

You were using the word 'emotional'. I object to it. What happens in this country is that whatever the industrialist wants, that is considered pragmatic and whatever the relatively weaker section wants, that is called charity or emotional. This distinction should be abolished at the earliest.

SHRI T.K. VISWANATHAN: I am sorry. I did not use it in that connection. It is a very sensitive issue.

DR. BALACHANDRA MUNGEKAR: We should not be biased.

SHRI T.K. VISWANATHAN: Actually, we considered this. We figured 12-month period because it will not happen beyond that. When the present code is in position, no workman will be left unpaid. That is the rationale behind putting 12-month period. We were concerned about the plight of the workmen. It is the most important thing. I know that MPs are very concerned and all of us are also concerned because they have worked and their dues should be paid. It is very unfair to deny them their dues while the promoters are enjoying.

DR. BALACHANDRA MUNGEKAR: Why is it 'preceding two years' for Central and State dues? State is more powerful and resourceful than the workers. You have taken into consideration State dues for the past two years. Indian State or any State for that matter is absolutely much more powerful and resourceful for mitigating or compensating the losses which ought to have occurred to them rather than the poor workers.

SHRI T.K. VISWANATHAN: It will go by the Committee's recommendations.

KUMARI SUSHMITA DEV: I think the emphasis of what you said is weighing very heavily on making the entire system more expeditious and more efficient. So, it is a one-stop shop for anybody who is headed for insolvency. Is it fair to say that the vision of this Code cannot succeed unless it is backed by proper infrastructure involving sufficient amount of cost? In this nation, we have tried many fast track courts etc., but it generally falls flat because we are unable to back it up with sufficient human resource, systems and infrastructure. Do you agree that without that backing, this Code will not achieve its purpose?

SHRI T.K. VISWANATHAN: Madam, we considered that very much. That is why, we have kept the discretion of the tribunal to the minimum. Everything will be a decision taken by the creditors and the insolvency resolution professionals. We only want the tribunal to play the role of an umpire, to see that no great injustice is done.

Beyond that, we are not going to saddle the tribunal as they are now doing on restructuring, amalgamation and other things. They are not in a position to take those decisions because they do not have the expertise. So, we are very optimistic because you see how creditors flowed into hire-purchase of cars and other things. The same thing will happen here and more money will come for anybody. A venture capitalist will come if he is sure of getting back the capital it has invested. So, we are very optimistic about it.

KUMARI SUSHMITA DEV: You have noted somewhere that with this Code coming in, we are hoping to achieve one thing. There is an increasing trend to lend to asset rich companies in India. So, this Code will actually shift that trend towards labour-intensive businesses. Why do you say that?

SHRI T.K. VISWANATHAN: Then, people will be prepared to take risk and invest in new start-ups. People are coming up with new ideas. So, they will be prepared to invest because they would feel that they will be able to get back their money, if they fail. In case they succeed, they will reap huge benefits. It will really be a game-changer.

SHRI SHIVKUMAR UDASI: In this regard, Shri Nishikant Dubey had asked one question in the 15th Lok Sabha. You are talking of expertise in this country. We have only 2000 metallurgical engineers but we have 4000 licenses for steel plants. How do you justify this? Where is the expertise in this country? Where is the insolvency mechanism, which you are trying to say, which will give jobs?

HON. CHAIRPERSON: This is a comment by Shri Shivkumarji.

SHRI AJAY SANCHETI: Yesterday I had asked the same question to the Secretary. There are lots of frauds which have come up in recent years. I am not pinpointing to any one but I am saying this in general. A lot of ponzi schemes and chit fund companies. I would like to know whether their insolvency is also covered in this code.

SHRI T.K. VISWANATHAN: We have kept away the financial things in this code. They are separately handled.

SHRI AJAY SANCHETI: That is all right. But, there are lot of stakeholders and so many small people are there. Do you not think that this should also be incorporated? These insolvency experts and insolvency expert companies, that is, IPs and IPAs who are going to be there, that definition is to be formulated because today also sick companies are there and management experts are there. You hire them and all that. There is not going to be an extra education for this. You have to pick and choose people from the existing set up only. Is there going to be any proposed licensing or something like this?

SHRI T.K. VISWANATHAN: The Insolvency Resolution Board which will do that, will lay down the conditions and code of conduct and everything. Licensing will be done by the Board.

SHRI AJAY SANCHETI: I do appreciate and agree that the Board will do the job. But we are not going to import the people. As you propose that all the powers should be given to the National Company Board, then instead of going in for IPs and IPAs, why can the same job not be added to the chartered accountancy firms because they can have one of the wings which will be doing this business?

SHRI T.K. VISWANATHAN: They will be recognised under this. They will be from different types of professions.

SHRI AJAY SANCHETI: What I am trying to say is that this will be burdening one more identity.

SHRI T.K. VISWANATHAN: Actually, this is not a homogeneous identity. People from different walks of life will come in — accountants, industrialists, bankers and so on. Whoever can bring in financial revive, they will be there. We are not straight-jacketing it. We need to go by an expertise.

SHRI AJAY SANCHETI: My apprehension is only this. You have suggested independent persons, experts as well as the companies. Do you think that one person is in a position because this expertise is

needed by management, finance and so on? Unless and until a group of people is associated, I personally feel that making one person in-charge for all these things is going to be a difficult proposition. He can be an advisor and all that. As per my experience, it is going to be a Herculean task for one person. No single person is competent to look into it. Broadly some picture can be projected. We need to discuss it in detail. I personally feel that one person or one expert will not be able to do. it. If a CA or a company secretary has started the work, they are doing an expert work in their own field. But when revival of a company comes – I am purely talking about the corporates and not individuals – I do not think one person will be enough. While giving accreditation to them, this question has to be thoughtfully deliberated. You can enlighten me.

SHRI T.K. VISWANATHAN: I take your point. The point remains that this insolvency resolution professional will be wielding enormous power and ultimately he is criminally liable for misusing it, When you bring in an enterprise, it will become difficult to attach criminal liability and people escape. You have to have a single person who will be held responsible for the entire affairs of the company. He has enonnous duties – moral as well as legal. Firms can be appointed. What happened in the case of Sathyam? PWH was there. It became difficult to attach criminal liability on a single individual when an enterprise is doing it. They have ways and mearis of getting over. This is very important. We will consider that definitely. But you must have this in mind.

श्री सुभाष चन्द्र बहेड़िया: सभापति महोदय, प्रपोज्ड बिल में जो प्रॉविजन दिया गया है— कमेटी ऑफ क्रेडिटर्स, लेकिन उसमें केवल फाइनेंशियल क्रेडिटर्स लिए गए हैं, वे ही इस कमेटी के मेंबर्स हो सकते हैं। उसमें रिलेटेड फाइनेंशियल क्रेडिटर्स को बाहर कर दिया गया है। जनरली फाइनेंशियल क्रेडिटर्स रिलेटेड होते हैं या फिर वे बैंकर्स होते हैं। अभी कोई भी कॉर्पोरेट या इंडस्ट्री हाउस है, उसमें ज्यादा क्रेडिटर्स ऑपरेशनल क्रेडिटर्स होते हैं, फाइनेंशियल क्रेडिटर्स कम होते हैं। क्यों न ऑपरेशनल क्रेडिटर्स को भी इस कमेटी का मेंबर बनाया जाए? किसी ने उस इंडस्ट्री को पैसा दिया, किसी ने उसे माल दिया, क्रेडिटर तो दोनों हैं, लेकिन जिसने पैसा दिया, उसे इस बिल में प्रिफरेंस दिया जा रहा है। अनसिक्योर्ड फाइनेंशियल क्रेडिटर्स को फोर्थ नम्बर पर रखा है और अदर क्रेडिटर्स को सिक्स नम्बर पर रखा गया है। यह बात समझ में नहीं आती है कि दोनों में क्या डिफ्रेंस है? दोनों ही उसके क्रेडिटर्स हैं, किसी ने उसे पैसा दिया है और किसी ने माल दिया है। इसलिए कमेटी में दोनों ही होने चाहिएं और दोनों को ही यह डिसीजन पावर होनी चाहिए कि क्या किया जाए। इसके बारे में बताएं।

SHRJ T.K. VISWANATHAN: We discussed that and we thought that financial creditors as persons who will have ultimate interest in reviving the company and others will also benefit. The question of giving more

role for operational creditors is debated. We thought that then it may lead to lot of other difficulties. So, we did not provide that. We will go by what the Committee says.

DR. SANJAY JAISWAL: At present, roughly one-third of corporates are in financial balance-sheet distress. Do you think that after this law, there can be a huge problem in the companies and two, three financial institutions will get together? They will say that there is a balance-sheet distress, so this will go for bankruptcy and insolvency code. This can create a lot of problems in the corporate sector also.

SHRI T.K. VISWANATHAN: Every law creates some problems.

श्री जगदम्बिका पाल: विश्वनाथन जी, इस बिल का जो परपज है कि जो भी कंपनी लिक्विडेट हो जाती है, उसे किस तरीके से सिक्योर किया जाए। आखिर इससे पहले वर्ष 1985 में बीआईएफआर बना, उसमें आपने देखा कि बहुत थोड़ी कंपनीज ही उससे रिवाइव हो सकीं। उसके बाद फिर डेट्स रिकवरी ट्रिब्यूनल आया। उसके बाद फिर वर्ष 2001 में सरफेसाई एक्ट आया, इन चीजों को देखने के बावजूद भी इस तरह के जो एसेट्स थे, उनमें सुधार नहीं आया। इसलिए मैं यह जानना चाहता हूं कि आज यह जो बिल है, we are going now to create the Insolvency Resolution process. वह जो आईआरपी क्रिएट कर रहे हैं, उसमें how will you be able to secure deficit? यह मैं जानना चाहता हूं। दूसरी बात यह है कि India is placed at 136th position in terms of resolving insolvency in a World Bank list of 189 nations. Despite being the world's fastest growing major economy, the country takes 4.3 years to resolve insolvency issues while Nepal which is a small country, does this in less than half the time. Does the bankruptcy code expected to bring the time down to less than a year?

How is this Bill expected to act as a catalyst to improving the NPA woes of banks? The financial services sector has been really under the pressure of mounting bad assets including failed restructuring attempts and the situation seems far from over. The proposed Bill on bankruptcy consolidating the existing scattered laws relating to the insolvency of the companies is a noteworthy move by the Government for accelerating the winding up process for defaulting companies and providing a quicker exist scope for lenders. इनको आप इंसॉल्वेंसी एंड बैंकरप्सी बिल में किस तरीके से देखते हैं? And how does the new code streamlines and consolidates all these laws to make the process simpler? Industry anticipates that the change will provide an easy exit option for the insolvent and sick forms. The passage of this Bill will enable quick and prompt action to be taken in the early stages of debt default by a firm and maximise the recovery amount. The creditors will not be restricted by red tape and promoters will directly become accountable for any financial lapses.

SHRI T.K. VISWANATHAN: Regarding this point that the SICA was a failure, we addressed that problem mainly by changing the formula. Net with the net worth erosion was the formula under SICA. 51 per cent of the net worth erosion, a company goes into sickness and to the BIFR. When you deduct this sickness in 51 per cent, it is almost terminally ill. It is not possible to revive it. So, detection of financial distress at a very early stage, default based test, is something which will start at the earliest. Anybody can file a petition for insolvency. Even an operational creditor, a financial creditor can go to this tribunal and say he is filing this petition. So, the triggering of insolvency process is very easy. You do not have to wait till 51 per cent erosion of net worth. In early detection, we will put you on notice, insolvency resolution professional comes into play, he will take charge of the company and revive it.

Since again you raised the point regarding ease of doing business, this will definitely improve our ranking. First of all, ease of doing business is only one part of it. Even otherwise we have to put our economy in shape. This has been long pending. I do not personally approve the World Bank ranking because they go in with certain formulations. India is a very big country, we have other commitments to the social masses. Whatever it is, going back by the World Bank ranking we have now provided for voluntary liquidation under Chapter 5, voluntary exit of companies which do not want to continue the business, which is not possible right now under the Companies Act. It takes a long time for somebody who decided to close the business, to come out of it. So, we have put under Chapter 5 a voluntary provision where anybody who has started and he found that it is not good, he wants to wind up and go away. Otherwise also the whole insolvency process should be over within these 270 days. This will definitely enhance the ranking.

The other problem with our ease of doing business is on enforcement of contracts which is with the courts system. That is something which we have to handle. Now they have brought in the commercial courts which will handle that problem. Enforcement of contracts is the main thing which is reducing our ranking. This will address the problem of insolvency and voluntary exit of companies. As far as enforcement of contracts, we are a system governed by rule of law. Then when you go to the courts they take so many days. But that is now changed by these commercial courts. If you see the commercial courts, it is also very time bound. They have case management and everything is done on time. That will change our ranking on ease of doing business.

SHRI NARESH GUJRAL: I will repeat what a lot of Members have said before. You seem to be laying a lot of emphasis on these so-called turn around specialists. In the past also when somebody went in for insolvency there were these so-called professionals who went in. But what we have seen in the past is that whatever little was left in the company was siphoned off by these liquidators who came in. First I agree with Ajay ji that one person would be dangerous. This has been the case in the past also. All these liquidators were one persons and they would keep delaying it and keep siphoning off the money and it was an endless process. So, Going forward, can we devise some kind of a method that these turn around specialists will be incentivised in a way that if they turn around something they get better payment or they get some kind of share of the extra profits that they earn for the company? Secondly, there should be milestone payments for them. It is not that a fee is fixed and then they keep receiving that money irrespective of what they do. That is because while you have a Board which will be overseeing, right now also if you see the courts have to oversee as things are today, there would not be a major change. So, some kind of an innovative scheme has to be thought of so that these people are incentivised and at the same time they should be punished if there is malfeasance or they have siphoned off money as we are seeing right now happening so openly.

My next point is that NCLT and DRT are in existence even today. They have a huge backlog. Clever lawyers make sure that the process is delayed. How can again we ensure, since we are thinking of a new law, that this kind of things do not happen? We have seen for example in Ponzy schemes. I will give you the example of the Pearl Group where now the top management has been arrested. But for years they have been evading arrest and action by going to one court or another and taking stays. So, how can we safeguard against that?

Yesterday the presentation made to us stated the order of priority and who would be paid when. It said secured debtors, and in bracket it said 'up to one year'. I did not understand that. Are you saying that secured debtors who gave money more than one year ago would not be part of it or would not be considered secure and they would be part of unsecured debtors? I would like a clarification on that.

SHRI T.K. VISWANATHAN: Regarding a single person being an insolvency resolution professional, under the present system he will be reporting to the Creditors' Committee. He will not be having a free run as he likes under the present SICA. He will be guided by the Creditors Committee. As regards payment to fee, it is they who will decide. But

what you say is correct. Incentives should be given. These things can be left to the Creditors Committee. If you want, we can put it in the Act also.

Secondly, you have raised this point about a single person or a firm. On that we will go by what you say. But as you said, single person is easy to fasten responsibility and he will be reporting to the Creditors Committee anyway. He is not going to do as he pleases under the present system.

श्री निशिकांत दुबे: क्रेडिटर्स जो हैं, उनकी खुद की इंवेस्टमेंट बेकार पड़ी हुई है। उन्होंने देते समय देखा ही नहीं कि कम्पनी चल पाएगी या नहीं, वे एक्सपर्ट्स थोड़े ही हैं। वे तो खुद डूबे हुए हैं। किसी कम्पनी ने किसी को क्रेडिट दे दिया और उससे वह कम्पनी चल ही नहीं पा रही इसलिए क्रेडिटर भी तो फाल्ट है। आप पैसा निकालने की बात कर रहे हैं, उन्होंने लोन मंजूर किया, वे भी तो जिम्मेदार हैं कि किस आधार पर पैसा दिया। देश में यह भी एक बड़ा सवाल है।

SHRI NARESH GUJRAL: Yesterday, when the presentation was made to us, in the order or priority, it said secured debtors and then it said, upto one year.

SHRI T.K. VISWANATHAN: In law, there is no such thing. Let me check out. I am not sure. I don't think in law there is this one year thing for secured creditors.

SHRI BHARTRUHARI MAHTAB: There are six questions that I have listed to ask to Mr. Viswanathan. But after seeing this list of witnesses that are going to follow — there are four ministries — I don't know how long we can sit today.

I would start with a very simple question. Don't you think creation of a new approach a regulated self-regulation is fanciful? The undertaking is complex fraught with enough risk? Why would you like to experiment with regulatory models? Don't you think the shift in control over the insolvency resolution exercise from creditors towards insolvency professionals carries a risk of deterring rather than reassuring investors? Why do you use calm period when well-established standstill would equally suffice? Don't you think that incorporating the treatment of executory contracts and the leases from the U.S. code would improve the clarity?

These are three small issues which I thought I should bring up. In your report and today also you have mentioned that there are practical impediments. But with this code, if it comes into operation and I still

keep my fingers cross whether it will be successfully applied, how are you going to separate impaired and unimpaired creditors which is critical to the success of the insolvency resolution in line with their conflicting interests? Is there a code provision to separate secured and unsecured creditors into distinct voting classes?

A question may arise at a later date if mechanism requiring proposed resolution plans to accord priority to organizational creditors can be retained at the initial stage. If no such proposal surfaces or with approval, can a plan proposing an impairment of an organizational claim be also invited? This can then be put to a vote by each impaired class now including one representing organizational creditors.

Next question would be, don't you think that it is important to ensure that a painstakingly approved resolution plan is not easily laid to rest or laid to waste whether by dissenting creditors or interference from other laws or forums? In practice, any fear of this occurrence will revive fears of the past and may strongly deter participation. SARFAESI is not to be repealed but is it being subordinate to this code or related matters subordinate to the new insolvency resolution process and the jurisdiction of the National Company Law Tribunal? Have you provided an alternative that would create a form of adequate protection for dissenting secured creditors and similar cap exposure for any other related claims? Don't you think the statute should limit such exposure to a threshold agreed upon by the NCLT during resolution process? This would permit such claims to be determined separately yet without thwarting the negotiated resolution plan. Don't you think upon adjudication at other forums, such claims would be settled through the issuance of the new debt of the restructured data carved out as a contingency during the resolution process.

My last point would be, it seems your committee, including all creditors as proposed, will prove to be a committee for liquidation, whether by design or by default. I am just provoking you for an answer. Speedy deliberation and decision making is a necessity in a pressured insolvency restructuring, no doubt. The larger voting group is required to respect natural inter-creditor differences and it should not be confused with the effective driving force of restructuring and make choice subject to a vote of all eligible creditors? Why won't the creditors committee comprise of five or seven members representing the largest unsecured creditors who are willing to serve. The debtors should attend meetings only at the committee's invitation. What is your view on this?

SHRI T.K. VISWANATHAN: The secured creditors are free to stand outside, they are not obliged to participate. If they participate, they

forego their security interest and they will take along with other things. If they enforce their right and go through a normal process, it will be time-consuming. So, we want to incentivize them to also participate in this resolution plan. As far as, bringing in other people in the committee, it may not be efficient to bring in larger group because there may not be an agreement. Also to specify, how this creditors committee, voting rights and other things will lead to more complications. We don't want to bring the Tribunal into picture? We want everything to be driven and let the creditors decide. Let them come out with a resolution plan or they can't let them wind up. So, we don't want to go into this compositional creditors committee bringing in the operational creditors and other people. That is our thinking. We will go by what the Committee says. We have no problem, but then it may not be very efficient. That is what we felt.

Sir, you have raised many questions. I would like to answer them if you could give me the questions in writing. I will respond to them.

SHRI CHIRAG PASWAN: I have a couple of clarifications to seek. Only to begin with, I would give it to the lack of my knowledge in law terminologies. I just want to understand what is the difference or is there a difference between a Code and a Bill.

SHRI T.K. VISWANATHAN: A code is a law which is comprehensive. For example, the Code of Civil Procedure and the Code of Criminal Procedure are comprehensive laws.

SHRI CHIRAG PASWAN: Is this a Code or a Bill?

SHRI T.K. VISWANATHAN: It is a Code.

SHRI CHIRAG PASWAN: What was given to us yesterday mentioned Code but today it says it is a Bill.

SHRI T.K. VISWANATHAN: It is a Bill before Parliament. When it is enacted, it becomes a Code. Normally, a Bill is introduced and then it becomes an Act.

SHRI CHIRAG PASWAN: Are we calling it a Code right now?

SHRI T.K. VISWANATHAN: Right now, this is a Bill. When you pass it, it becomes a Code.

SHRI CHIRAG PASWAN: Fair enough; thank you.

The second clarification I wanted to seek is this. When we talk about IPs and IPAs, I want to understand when, how and who would constitute these IPs and IPAs. In the presentation, we saw that it was for a quick restructuring of the business in distress. I believe that-these IPs and IPAs would be helping them. Are they being specially trained or would we be using the existing people?

SHRI T.K. VISWANATHAN: As of now, the existing people. would be recognized. Thereafter, we need to have a new profession with expertise developing in various things.

SHRI CHIRAG PASWAN: If the existing people would be recognised, would they be trained later on?

SHRI T.K. VISWANATHAN: The Board would do advocacy programmes and other things. There is the Insolvency Regulation Board. There is a separate Board which is going to regulate this profession. They will conduct all these things and certify. So, a special expertise is expected to be developed.

SHRI CHIRAG PASWAN: Will they be certified?

SHRI T.K. VISWANATHAN: Yes.

SHRI CHIRAG PASWAN: Thank you.

SHRI JAYADEV GALLA: Many Members expressed that considering that it currently takes almost one and a half years, how is it going to be possible to do it within a time period of 180 days? The next questions is whether we have benchmarked this against other countries? I am sure, it has probably been done. Would you share how the proposed Code compares with some of the best practices in other countries which are very dynamic in their economy or which have recently conducted such an exercise?

SHRI T.K. VISWANATHAN: I do not have the facts but we went by the experience of UK and United States. The courts are very efficient there but unfortunately in our country we do not have that scenario. So, we have tried to reduce the judicial discretion and give it to the tribunals. Much of the discretion has been curtailed. Everything would be the decision of the Insolvency Resolution Plan which is approved by the Creditors' Committee. All the tribunal has to do is to approve it and courts will have to do it in a time bound manner. Otherwise, they will have to record reasons; in the Civil Procedure Code we have a law which says that there cannot be more than three adjournments but it

is still being flouted everywhere. So, it has to be ensured that timelines are recognised by the tribunals.

SHRI JAYADEV GALLA: Even now the prescribed timelines are not followed in many cases because of loopholes. Have you addressed those loopholes?

SHRI T.K. VISWANATHAN: Here the tribunal has to record reasons why they have not done it within the time frame.

SHRI JAYADEV GALLA: Do you not have any room for appeals?

SHRI T.K. VISWANATHAN: Appeals are there. It goes to the National Company Law Appellate Tribunal.

SHRI JAYADEV GALLA: Perhaps you can consider restricting the number of appeals.

SHRI T.K. VISWANATHAN: It is allowed only on question of law.

SHRI JAYADEV GALLA: Then, you have proposed a concept of two separate regulators: one for overseeing the insolvency professionals and the other for the implementing authority.

SHRI T.K. VISWANATHAN: Considering the existing infrastructure, we thought of making use of them. Otherwise, many agencies will come into place.

SHRI JAYADEV GALLA: You had also mentioned start-ups. They could be considered differently. If there is a start-up without any liability, can you not consider closing the thing in 60 days?

SHRI T.K. VISWANATHAN: Chapter V provides for that. They can wind up.

SHRI BHARTRUHARI MAHTAB: The BLRC submitted an interim report on February 10, 2015 and comments were invited till the 20th February, which means there was a gap of only ten days. I do not know whether the-Chairman or the Committee is aware how many comments were received and what were those comments. You can share it with us.

SHRI T.K. VISWANATHAN: I think, the Ministry can share that.

SHRI BHARTRUHARI MAHTAB: Similarly, BLRC presented its report in two volumes on November 4, 2015. The Ministry of course invited comments by November 19. I am mentioning these dates because the

first time it was only ten days and the second time it was 15 days. Three hundred and ninety five comments had come from 30 respondents. Those comments also should be shared with us. Now, do you not think it is necessary that more time should have been given or did you find that only identical comments were coming?

SHRI T.K. VISWANATHAN: They were more or less identical. So, we thought instead of wasting time and since in Parliament you would be calling all of them and ample opportunity would be given to them, it was better to start the process.

माननीय सभापतिः एक विषय यह है कि 1980 के बाद जितने भी लॉ हम लोगों ने ड्राफ्ट किये हैं, हम लोगों ने कंज्यूमर लॉ ड्राफ्ट किया, हम लोगों ने टेलिकाम लॉ ड्राफ्ट किया, हम लोगों ने नेशनल ग्रीन ट्रिब्युनल लॉ ड्राफ्ट किया, हम लोगों ने इलैक्ट्रिसिटी लॉ ड्राफ्ट किया, हम लोगों ने लैंड एक्युजिशन का लॉ ड्राफ्ट किया। जितने भी लॉज हम लोग ड्राफ्ट कर रहे हैं, उनमें एक सैक्शन, जैसे आपने सैक्शन 53 लिखा है, नो सिविल कोर्ट ज्युरिस्डिक्शन। यहां तक कि हम लोगों ने फैमिली लॉ भी ड्राफ्ट किया। देश में इतनी बड़ी संख्या में लॉयर्स हैं, कोई सरकार से तो वे लोग हैं नहीं, आखिर क्लाइंट्स के बेस पर हमने इतना बड़ा ज्यूडिशियल सिस्टम खड़ा कर रखा है। जब आप नो सिविल कोर्ट ज्यूरिस्डिक्शन कहते हैं और ट्रिब्युनल्स आप नीचे बनाते हैं तो लॉयर्स तो हो ही जाते हैं। जो बैटर सिविल कोर्ट का ज्युरिस्डिक्शन है, उसमें अच्छी ट्रेनिंग दी जा सकती है। लॉयर्स तो वही हैं, लॉयर्स आप बाहर से इम्पोर्ट नहीं कर रहे हैं। आप एक नया इंफ्रास्ट्रक्चर खड़ा कर रहे हैं और डीआरटी जिन कंडीशंस में दिल्ली में काम कर रही है, कस्टम और एक्साइज ट्रिब्युनल जैसे ट्रिब्युनल चाहे कोलकाता में काम कर रहे हों, चाहे डलहौजी में काम कर रहे हों, चाहे मुम्बई में शिपयार्ड के उधर काम कर रहे हों, उनकी कंडीशंस, उनकी वर्किंग कंडीशंस, उनका काम करने का तरीका, ये सब आप देखेंगे तो आप बार-बार हम यह जो ला रहे हैं कि नो सिविल कोर्ट ज्युरिस्डिक्शन और ट्रिब्युनल में भी कोई हल नहीं हो रहा है। अभी आपने कहा कि सीपीसी में तीन बार से ज्यादा एडजर्नमैन्ट नहीं ले सकते, कंज्यूमर फोरम में लिखा हुआ है कि आपको विदइन 60 दिनों में डिसीजन देना है, जबकि आज पेंडेसी वहां सात-आठ सालों की है। हम जो नया लॉ प्रपोज करते हैं, उसमें यह लिख देने से कि नो सिविल कोर्ट ज्युरिस्डिक्शन बाकी सारी लीगल हर्डल्स सोल्व हो जायेंगी, ऐसा मानकर कंटीन्युअस सभी एक्ट्स में है। आप चूंकि लॉ सैक्रेटरी भी रहे हैं और जिस तरह की नई समस्याएं आ रही हैं, टैक्निकेलिटीज आ रही हैं तो लॉयर्स का अपग्रेडेशन का प्रोग्राम और सिविल कोर्ट हमारा जो ज्युडिशियल सिस्टम है, उसे सुधारने का प्रोग्राम देकर इसमें हम कोई नया अमैन्डमैन्ट या सजेशन दे सकते हैं। यह एक क्वैश्चन है, आप इसे रिटन रिप्लाई के रूप में भेजेंगे, एक लॉ सैक्रेटरी के रूप में भी आपका अनुभव रहा है। इसका रिप्लाई आपको अभी नहीं देना है, आप इसे लिखित में भेज दीजिए।

SHRJ T.K. VISWANATHAN: I would be very happy because judicial reforms is something which is required; This is a problem we have been

handling for long and judiciary is one thing where the more the changes you make the more the same it appears. It has not been able to move forward. I would be happy to share my thoughts on this and I would send a written note. Thank you.

HON. CHAIRPERSON: Thank you.

(THE WITNESS THEN WITHDREW).....Comment (11): followed by me

माननीय सभापति: अभी हम सभी मंत्रालय के लोगों को बुला रहे हैं। हम उनसे कह देंगे कि वे संक्षिप्त में अपना प्रजेंटेशन दें और अगली बार उनसे प्रश्न पूछ लेंगे। एक विषय आया है, हालांकि कल हम सबका तय हुआ था कि पब्लिकेशन नहीं देना है। एक जनरल पब्लिकेशन हम दे देते हैं, सात तारीख को हमारी मीटिंग है। अगर इनडिविजुअल भी कोई कमेटी को देना चाहे तो रीप्रजेन्टेशन दे सकता है। वह लिखकर दे सकता है। अब ऑफिसर्स को बुला लीजिए।

WITNESSES EXAMINED

1. Shri Tapan Ray, Secretary, Ministry of Corporate Affairs
2. Shri Shaktikanta Das, Secretary, Economic Affairs
3. Ms. Anjuly Chibb Duggal, Secretary DFS, Ministry of Finance
4. Dr. G. Narayanan Raju, Secretary, Ministry of Law and Justice

HON. CHAIRPERSON: I welcome the representatives of the Ministry of Corporate Affairs; Department of Financial Services; Department of Economic Affairs 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 Insolvency and Bankruptcy Code, 2015' and make a report to the Parliament by the last day of the first week of the Budget Session 2016.

The Insolvency and Bankruptcy Code, 2015 seeks to consolidate and amend the laws relating to reorganisation and insolvency resolution of corporate persons, partnership firms and individuals in a time bound manner. The laws which are proposed to be amended include the Companies Act, 2013, the Limited Liability Partnership Act, 2008 and the Indian Partnership Act, 1932 for which the Ministry of Corporate Affairs is the administrative Ministry. Besides for the purposes of the recovery of debts due to Banks and Financial Institutions Act, 1993, the Securitization and Reconstruction of Financial Assets and Enforcement of Security Interest, 2002 and the Payment and Settlement Systems Act, 2007, the Department of Financial Services is the administrative Ministry. In this background, the Committee would like to understand the existing position with regard to the Insolvency, Bankruptcy and

Liquidation process as per the existing framework and the proposed which the Committee is examining, in the context of role and responsibilities of the respective Ministry/Department in this regard. You may also highlight the difficulties under the existing framework and how far the Code seeks to address these constraints. The representatives of the Department of Economic Affairs and Legislative Department may assist the Committee during the course of deliberations.

Now I request the Secretary, Ministry of Corporate Affairs to make a presentation on the various aspects related to the legislation followed by presentation by the representatives of the Department of Financial Services. 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 presentation, I request you kindly to introduce yourself and your colleagues to the Committee.

(INTRODUCTION OF WITNESSES)

HON. CHAIRPERSON: I would now request the Secretary, Ministry of Corporate Affairs to make the Presentation.

SHRI JAGDAMBIKA PAL: We can today restrict. ourselves only to Slide Presentation.

SHRI TAPAN RAY: With your permission, Sir, I will start the Presentation.

(SLIDE PRESENTATION).....Comment (KR12): cd

Comment [r13]: slide Presentation cd

माननीय सभापतिः अभी थोड़ी देर हो रही है तो जो भी प्रश्न हैं हम नोट डाउन कर लेते हैं, हम तसल्ली से फिर सबको सुनेंगे।

श्री निशिकांत दुबेः सभापति जी, इसे अभी पूरा वाइंडअप कर देना चाहिए क्योंकि इसके बाद इनका जो है कि वाइंडिंग ऑफ कंपनीज एंड चेन्जेज इन कंपनीज एक्ट, 2020, जब इन्होंने रूल को नोटिफाई ही नहीं किया है तो यह सुनकर हम क्या करेंगे? इनको तो यह बताना है कि 1966 के एक्ट को ये कंटीन्यू करते रहे। क्या ऐसा कारण रहा कि 2013 के एक्ट को इन्होंने नोटिफाई नहीं किया और बिना नोटिफाई किए, बिना प्रैक्टिकल एक्जाम्पल दिए हुए यह किस आधार पर इस कनक्लूजन पर पहुंचे कि इसको खत्म कर देना चाहिए?

माननीय सभापतिः जगदम्बिका पाल जी, आपका विषय ठीक है कि 2013 को कंप्लीट नोटिफाई नहीं किया लेकिन उसका एक विषय है। हम तो इन्साल्वैन्सी लॉ पर हमारी कमेटी

विचार कर रही है, फ्यूच्युरिस्टिक हिसाब से कर रही है। अगर 2013 के प्रिंसिपल्स हैं, कम से कम हम तो जान लें। उसके बाद हम फिर विचार कर लेंगे। बताने दीजिए, बताने में कोई आपत्ति नहीं है।

SHRI ANAND SHARMA: I have one suggestion in this regard. First, let this presentation be completed so that we have absolute clarity and then we ask the questions. That is my request to you.

(SLIDE PRESENTATION)

MS. ANJULY CHIB DUGGAL: Sir, the Department of Financial Services is one of the five Departments under the Ministry of Finance. The three Acts that this Department administers which are relevant to the current discussion are the Recovery of Debts Due to Banks and Financial Institutions Act of 1993 under which the Debt Recovery Tribunals and the Appellate Tribunals have been set up. The Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act of 2002 which is normally talked about as the SARFAESI Act and the Payment and Settlement Systems Act which basically empowers the RBI to regulate the working of Payment and Settlement systems....Comment [r14] cd by.

(01/1310/snb-cp).....Comment [RR15]: Anjuly Chibb contd.

As far we are concerned, the proposed Bill, Insolvency and Bankruptcy Bill, intends to place also before Debt Recovery Tribunals cases relating to individual insolvency and partnerships. We are in the process of collecting information about the number of cases which are pending in the district courts because that is going to determine the kind of spread of DRTs that is required. We have currently 33 DRTs all over the country; we have five Appellate Tribunals; we have six more DRTs which are coming up in various parts of the country. There is already a provision of circuit benches which is within the new Bill which should be able to help us to reach out completely. One of the points that is going to come up, and all these are points which are related more to Administration, setting up of new courts, recruiting more people etc., is that the processes under the Recovery of Debts Act and the proposed Insolvency Act are going to somewhat different and they are going to follow different time lines. Even so, within any Debt Recovery Tribunal it should be able to set up two different Registrars offices, one following one line of the law and the one following the other line. That is one of the things that we are examining right now.

SHRI ANAND SHARMA: What are you examining?

MS. ANJULY CHIB DUGGAL: We are examining whether it is the same Registrar who can actually handle both sets of time lines or we

should be putting another different structure in place. There are a lot of nuts and bolts issues about how much space is required etc. and what we are trying to do is to have our structures up as early as possible so that by the time the Act comes through we are in a position to really hit the ground running.

The Sick Industrial Companies Act was repealed in 2002 or 2003. The repeal was not notified.

SHRI JAGDAMBIKA PAL: Can you provide that in black and white to this Committee?

MS. ANJULY CHIBB DUGGAL: Sir, we can and that is one of the questions that I was actually going to place before this Committee that a lot of our inputs are coming in from the banks because basically they are our constituents and they are telling us what is working for them and what is not working for them.

SHRI JAGDAMBIKA PAL: How will this Committee come to know?

MS. ANJULY CHIBB DUGGAL: That is what I am asking. Would you like us to coordinate with the banks? We have here Shri Ashwini Kumar from the Indian Banking Association. So, then we will not get into the specifics of points which are being raised by the banks and we will then in that case confine ourselves to the structures that we are putting into place. However, I cannot resist, since I have this opportunity of speaking to this Committee, raising two particular points. Looking at the points that have been raised by the banks so far, which are available to us as well, we would be looking at the possibility of simultaneous proceedings as far as enforcement of security interest as well as provisions under this particular Bill are concerned. Simultaneous and second point whether there would be any clashes out there because the whole idea of bringing this new Bill into place is to ensure that the time period within which Resolution takes place in one direction or another is reduced. Whereas it is possible that a resolution process may be started under the new Act which is proposed and the resolution process fails. After that to enforce security interest, if you start after that, then you have a little bit of a problem because you are spending another sixty days in terms of notice etc. So one of the things that we would like to continue to look at is whether it is possible to run some of these processes simultaneously so that there is actually saving of time and at some particular point of time there is a decision taken by the appropriate adjudicating authority about one particular process which is going to prevail over the remaining processes.

HON. CHAIRPERSON: The hon. Members will raise their queries and you may note down all the queries and then you may reply and you can also give your reply in writing also.

DR. BALACHANDRA MUNGEKAR: I am sorry about the fact that I missed some of the important points that you raised. The last point that you mentioned about saving the time, say for example, 60 days, whether we should run the sub-processes to the main process simultaneously, this is somewhat unlikely to be accepted for the very simple reason that 180 days plus 90 days, that is 270 days is the upper limit and that itself is somewhat inadequate in order to deal with this most complicated process. But in order to save the time and run the sub-processes simultaneously this slightly an odd idea for the very simple reason because all the sub-processes would be running simultaneously to save time that means that one sub-process is not able to understand, get enlightened and learn what is happening in the sub-process. This process of insolvency resolution would be a continuous process and at every higher level it is to be learnt, acknowledged, understood and get enlightened about what happened at the earlier stage. That is why from the view of continuity, consistency and getting enlightened at every stage, from that point of view, the idea of getting the sub-processes simultaneously is not welcome. I want that continuous process.

The other important point is that today there is nothing, they are languishing for years together. Rather than that, whatever we are doing is much better and is the need of the hour. On that we should not superimpose the time constraint too much to dilute its efficiency.

श्री निशिकांत दुबे (गोड्डा): इस बिल का जो एक्सपीरियंस है, जो डेब्ट इक्विटी रेश्यो है, एनपीए हो रहा है, क्रेडिटर्स का जो रोल है, वह बहुत बड़ा है। जो डेब्ट और इक्विटी रेश्यो में ही घालमेल है या जिस तरह से वे फंडिंग कर रहे हैं, बैंक की एग्रेसिव फंडिंग की है, आप उसके ऊपर इतनी रिस्पांसिबिलिटी इस बिल में देंगे, उसके बारे में आपका क्या प्रैक्टिकल एक्सपीरियंस है? कंपनी बैंकरप्सी, कोर्ट में या इन्सॉल्वेंसी में तब जाएगी जब कंपनी डूब रही है। जिन लोगों ने लोन लिया, खासकर बैंक्स, जो कि आपका विषय है, उन्होंने तो इस चीज को नहीं किया न कि यह चलेगी या नहीं चलेगी।

दूसरा, जो सीडीआर, जेएलएफ और एसडीआर है और इसके बाद एसेट रीकंस्ट्रक्शन कंपनी और इसके बाद हेयर कट जो चल रहा है, इन सारे एक्सपीरियंस के बाद, क्योंकि एसडीआर की ही मैक्सिमम पॉलिसी यह जाएगी कि मैनेजमेंट चेंज हो जाएगा, चीजें हो जाएंगी, इन्साल्वेंसी, बैंकरप्सी कोर्ट में यह सबसे बड़ा सवाल है, तो आज ये जो चीजें चल रही हैं, एसडीआर पॉलिसी के बाद या हेयर कट के बाद इसके बाद, क्या सोचते हैं, इस कानून में उसको लागू किया जाएगा,

क्योंकि सर्फेसी एक्ट में जब हम चेंज कर रहे थे, तो उस समय यही कहा गया कि यह एक्ट टूथलेस है और जब हम इसमें यह अमेंडमेंट ला देंगे तो पूरा पैसा हम ले आएंगे। मुझे फाइनेंस मिनिस्टर का भाषण याद है। पार्लियामेंट में यही बात कही गई थी। यही बात हम इनसॉल्वेंसी और बैंकरप्सी एक्ट में कह रहे हैं। इसका क्या प्रैक्टिकल अनुभव है?

कुछ ऐसा कहा गया कि एनसीएलटी और एनसीएलएटी के गठन में जो सुप्रीम कोर्ट का मई, 2015 का जजमेंट है, वह यह कहता है कि जो 2013 का कंपनी एक्ट है, कॉर्पोरेट एक्ट है, वह राइट था और उसके आधार पर उसने आपको बेंच बनाने के लिए कह दिया या चीजें बनाने के लिए कह दिया। आपने एक्ट को नोटिफाई नहीं किया। बिना नोटिफिकेशन के आप उस एक्ट को कैसे कह रहे हैं कि वह गड़बड़ एक्ट है और उसके आधार पर आप चेंज कर लेंगे।

दूसरा, इकोनॉमिक अफेयर्स में यह कह रहे हैं कि इनके जो रीजंस थे, इन्होंने कुछ रीजन दिए कि एक्ट में यह-यह संशोधन होना चाहिए, तो क्या ऐसा कारण था कि मिनिस्ट्री ऑफ इकोनॉमिक अफेयर्स ने कॉर्पोरेट अफेयर्स के उस सजेशन को नहीं माना? आप रीजन के साथ इस कमेटी को जानकारी दीजिए। इन्होंने कहा कि हमने पांच-छह ऐसे सजेशंस दिए थे, जो हमने कहा था कि इसको कंटीन्यू करना है और मिनिस्ट्री ऑफ इकोनॉमिक अफेयर्स ने उस सजेशन को इसमें जोड़ा नहीं है। यह उन्होंने अपने प्रेजेंटेशन में कहा है। क्या ऐसा कारण था कि इकोनॉमिक अफेयर्स ने उस सजेशन को नहीं माना? आपको समिति को यह बताना चाहिए।

SHRI SHIVKUMAR UDASI: I am repeatedly asking the same question and I will repeat this question. In the new Bill, you say that income tax or customs or excise will be in the fifth position in the order of priority. But the Income Tax Act says that it is in priority No. 1. The Act says that any defaulter has to pay the taxes first. What is your opinion on that? In the Report given by Mr. Vishwanathan, the Committee has not addressed the cross border insolvency? What is your opinion about this point? How is that going to affect us? What is your view in this regard?

श्री गोपाल शेट्टी: सभापति महोदय, जो सारे मसले खड़े हुये हैं, उनका सॉल्युशन ढूंढने का प्रयास कर रहे हैं। हमारे देश में ऐसी कोई स्टडी की गयी है कि जो बैंकरप्सी हुये, जिसने कंपनी खड़ा करने का प्रयास किया, क्या केवल वह जिम्मेदार है या कंपनी खड़ा करने के बाद जो गवर्नमेंट सिस्टम है, बैंक से लेकर जितने भी ऑफिसर्स हैं, समय-समय पर उसको जो परमीशन देनी चाहिए थी, वह नहीं दी गयी, और अन्य आवश्यकतायें पूरी की जानी चाहिए थी, वे पूरी नहीं की गयी, बैंक में अप्लाई करने के बाद उसे लोन समय पर नहीं मिला। कंपनी खड़ा करने के बाद यूनियन ने अपना रोल प्ले किया, फैक्ट्री चल नहीं पायी, क्या कोई मैकेनिज्म है, या आने वाले दिनों में होगा? अभी हमारा जो सिस्टम है, बैंक वाले कहेंगे कि हमें इंटरेस्ट के साथ पैसा चाहिए, इनकम टैक्स वाले कहेंगे कि हम कहीं कम्प्रोमाइज नहीं करने वाले हैं, हमें टैक्स चाहिए। सारा सिस्टम हम कहां से खड़ा कर पायेंगे। हम सिस्टम खड़ा नहीं कर पाते हैं

इसलिए कोर्ट में जाने के बाद कोई जजमेंट नहीं आता है। क्या टोटेलिटी में हम कोई मैकेनिज्म खड़ा करेंगे जिससे आने वाले दिनों के लिए मैं कहता हूं, सारे पुराने मसलों को निपटाने के लिए हम कोई न कोई सोर्स खड़ा करेंगे। आने वाले दिनों के लिए हम कोई सिस्टम नहीं खड़ा कर पायेंगे तो फिर यह कैसे चलेगा? मैं इनका उत्तर एक्सपर्ट लोगों से जानना चाहूंगा।

DR. P. VENUGOPAL: How does the Bill address the issue of reducing high level of non-performing assets in the banking sector?

श्री जगदम्बिका पाल: निशिकांत जी ने पूछा है कि माननीय सुप्रीम कोर्ट का एक डिसिजन वर्ष 2015 में एनसीएलटी और एनसीएलटी इस्टैब्लिश करने के लिए आया है। इसके बारे में डिपार्टमेंट ऑफ इकोनॉमिक अफेयर्स या डिपार्टमेंट ऑफ फाइनैंशियल सर्विसेज ने जो कहा है। Services covers banks, financial institutions, pension system and financial services provided by various Government agencies and private corporations, It also covers pension reforms in the Ministry of Finance and Micro, Small and Medium Enterprises started by the Pradhan Mantri Jan Dhan Yojna in 2014. आप ये सब स्कीम्स कर रहे हैं और जिस तरह से एनपीए की बात हो रही है या क्रेडिटर्स की बात हैं, इसमें एनसीएलटी और एनसीएलएटी के बारे में अपने जवाब में बतायें। जो इश्यूज वर्ष 1956 के कंपनीज एक्ट में खड़े हैं, उसको वर्ष 2010 और 2013 में अमेंडमेंट किया, और जब इस बिल को वर्ष 2015 में ला रहे हैं तो इसको कैसे एड्रेस करेंगे, यह समस्या भविष्य में आयेगी। ट्रिब्यूनल बनाने की बात रही हो या रिकवरी की बात रही है, को कंपनी बीआईएफआर में गयी हो, वर्ष 1985 के बाद बहुत कम कंपनियां ने रिवाइव की हैं, डेब्ट रिकवरी ट्रिब्युनल की बात हो या वर्ष 2001 की सर्फेसाई एक्ट की बात हो, हम जो नये बिल पेश करने जा रहे हैं, या जो नया कोड बनेगा, उसमें हम कैसे इन प्रॉब्लम्स को एड्रेस कर सकते हैं? अगर हम नया बिल भी पास कर दें और ये सब बातें पहले की वहीं रह जायें, पहले लोगों को डेब्ट रिकवरी के लिए सिक्योर्ड किया गया था, लेकिन पास्ट के एक्सपिरिएंस से वह नहीं मिला। Still, India is placed at 136th in terms of resolving insolvency in banking sector in 189 nations. Even Nepal is ahead of us but we are still lagging behind. उन्होंने हम से कम समय में किया है। इसका क्या कारण है? Despite being the world's fastest growing major economy, the country is taking 43 years to resolve insolvency issues while Nepal does it in less than half the time. जो बैंकरप्सी या इंसॉल्वेंसी का जो कोड है, उसमें इन चीजों का रिपीटिशन नहीं होगा या should we have to again wait for years together? इसको कैसे रिजॉल्व करेंगे, इसके संबंध में बतायें।

SHRI NARESH GUJRAL: The high level of NPAs is threatening the very existing small banks and you can say how investors, are losing confidence everyday. Obviously, bankers are worried and I am sure that they must have given you some kind of wish list as to what they want to see in this new Bill. Will you kindly share their wish list with us?

SHRI BHARTRUHARI MAHTAB: We were told that SARFAESI is not to be repeat but is it being subordinate to this court or related matters subordinated to the new insolvency resolution, process and jurisdiction of the National Company Law Tribunal? निशिकांत जी ने जो पूछा मिनिस्ट्री ऑफ कॉर्पोरेट अफेयर्स कुछ सुझाव दिये थे, but before coming to that, I would like to elucidate answers from you. BLRC has submitted an interim report on 10th February, 2015 and comments were invited till 20th February. That means ten days time was given. We would like to understand as to what comments were received. One of them was ofcourse from the Ministry of Corporate Affairs that some were accepted and some were not accepted. I will come to that issue later. But after 4th November, when the BLRC presented its report in two volumes, comments were invited till 19th of November. That means, 15 days time was given. Within these 15 days time, 395 comments were received by the Department from 30 respondents. We would like you to share them with us as to what were those comments and how they have been incorporated in the court.

Secondly, the Joint Committee is seized of the matter and we may also invite opinions and comments from outside and other stakeholders. But we would also like to understand one thing. What was the hurry? Ten days time and 15 days time only was given. Is it that identical comments were coming and that is why you thought that it was not necessary to pursue it further? Because a number of Committees had earlier given their opinions on this insolvency and bankruptcy mechanism. So, it was not necessary. What was the thought behind it?

Regarding the suggestions that were not accepted, I would like to understand from you, from the Ministry concerned, inclusion of summary procedure for liquidation under the Companies Act, 2013, has not been accepted. As far as I remember, when we were deliberating on this Company Law at that time this was one of the major issues that to tide over the time that is being taken away, this summary procedure is necessary. So, by not accepting it, are you allowing the other courts to continue in that manner and not allowing the bankruptcy and insolvency code because there is already something is inbuilt in this code. Difficulty likely to arise in prescribing rules in respect of clause 37, transfer of certain pending procedures, please tell us about this in detail. One more issue was raised yesterday and even today. It is registration of charge should be retained in the Companies Act only. This has also been rejected. I would like to understand this also. I am just elucidating an answer and it is not an opinion. Normally in a Committee when a Member asks a question he is not his opinion that he is ventilating and he is only trying to understand the situation. Would it not have been

appropriate to retain it in the Company Act? It would have been easier because the nodal agency or the nodal Ministry is the Ministry of Corporate Affairs where this registration charge should have been maintained. There are other issues. Of course, our Secretariat will be sending them to the Department of Economic Affairs. I would not like to repeat the questions which I had raised earlier.

SHRI CHIRAG PASWAN: My query is concerning the liquidation. We have seen that the delay in the liquidation process has always been a concern. So, I just want to understand more as to how the ease in the process of liquidation is the part of this proposed Bill.

SHRI JAYADEV GALLA: Thank you. Several Members have already spoken about the NPAs. If you look at it, there are nearly 43,000 cases pending before 33 DRTs and the amount stuck is Rs. 1.4 trillion as of March, 2013. If we add up cases of the previous year, that would obviously go up. There is no provision in the Bill which indicates that the legislation would be implemented retrospectively or the pending cases are to be taken over by this code. So, what will happen with all this money and how do you propose to address this?

SHRI ANAND SHARMA: From what we understand now that after the Committee Report and what was accepted in the draft Bill, besides the repeal of the two there will be suitable amendments which will be required in 11 more Acts. That would mean, when it comes to notifying even if the Committee were to clear it and the Parliament enacts this Insolvency and Bankruptcy Code, still before notifying it, these 11 laws have to be amended. Is that correct? Then only this can be notified after these 11 laws are amended. We want clarity on this because all these are separate Acts. Can this Act amend these 11 Acts? Or you will have to have individual separate amendments for each Act because there are different provisions of these 11 Acts which are to be amended. So many questions have been raised yesterday and today. Will I be correct in my understanding that the Companies Act of 2013 could not be notified because of the matter being sub-judice and the case being filed by the NBA and finally after the adjudication by the Supreme Court in May, now the Ministry of Corporate Affairs is in a position to go ahead notifying the un-notified parts? 1 would like to know whether I am correct in this understanding.

SHRI TAPAN RAY: Yes.

माननीय सभापति: आज की इस कमेटी में सभी सदस्यों ने जो सुझाव दिए हैं, मैं चाहूंगा कि सबका जवाब 30 तारीख तक आ जाए क्योंकि हमें इस बिल को दो महीने में पास करना

है। मेरा विशेष रूप से डिपार्टमेंट ऑफ फाइनेंशियल सर्विसेज से प्रश्न है। उन्होंने कहा कि इनडिविजुअल बैंकरप्सी के केसेज के डाटा निकालकर असैस करेंगे कि डीआरटी पर कितना वर्कलोड है क्योंकि लम्बे समय तक डीआरटी दिल्ली में एक होटल के रूप में ही चला है। हमारा इन्फ्रास्ट्रक्चर क्या है, हमारे पास सुविधा क्या है और जो इनडिविजुअल केसेज हैं, उनका वॉल्यूम हम फाइनेंशियल सर्विसेज में देंगे तो ज्यादा ठीक रहेगा या सिविल कोर्ट ज्यूरिस्डिक्शन को देंगे तो ज्यादा ठीक रहेगा। We have a good experience of fast track court also क्योंकि डीआरडी में जब स्पैशलाइज्ड वकील जाते हैं, they have their own monopoly also to delay the cases. मैं फाइनेंशियल सर्विसेज से यह भी जानना चाहूंगा कि डीआरडी में पैंडैंसी कितने सालों से है। आपको डीआरटी एक्ट बनाने के बाद जो ऑब्जैक्ट दिया था, उसे हमने कितने प्रतिशत फुलफिल किया है, उसकी प्रैक्टिकल डिफिकल्टी क्या है। हम एक बहुत बड़े लिटिगेशन सैक्टर को केवल इसलिए ट्रांसफर कर रहे हैं कि इकोनॉमिक रिफॉर्म्स में उनको ईज़ आउट हो। ऐसे नहीं हो कि हम एक घेरे से निकलकर दूसरे में जाकर खड़ा कर दें। इन्फ्रास्ट्रक्चर, उसकी सुविधा, पुरानी डिफिकल्टीज, ये सब भी उसके बिल के साथ जब जाएंगे, उसके रिफॉर्म्स के हिसाब का इन्फ्रास्ट्रक्चर अगर हम तैयार नहीं करेंगे, तो रिफॉर्म्स के ऑब्जैक्ट को कोई एक इंस्टीट्यूशन एचीव नहीं कर सकता है। इस पर फाइनेंशियल सर्विसेज का एक प्रेजेंटेशन होना चाहिए ताकि हमारी रिकमेंडेशन में जाए कि तुरंत यह इन्फ्रास्ट्रक्चर रेडी होना चाहिए। अगर वह रेडी और एक्सपर्टाइज नहीं हुआ तो फिर हम कभी रिफॉर्म्स को एचीव ही नहीं कर सकते, मियरली एक्ट बनाने से एचीव नहीं हो सकता। इसलिए इस पर हमें अब तक के एक्सपीरिएंस का पूरा प्रेजेंटेशन चाहिए। आज हमारी पहली मीटिंग में डेलिब्रेशन ज्यादा चले, आप लोगों को इंतजार करना पड़ा। लेकिन हमारे सभी सदस्य बहुत उत्साह के साथ इस कमेटी में भाग ले रहे हैं। हम आज की मीटिंग समाप्त करते हैं। धन्यवाद।

(तत्पश्चात् समिति की बैठक स्थगित हुई)

PROCEEDINGS OF THE THIRD SITTING OF THE JOINT COMMITTEE ON THE BANKRUPTCY AND INSOLVENCY CODE, 2015 HELD ON MONDAY, THE 08TH FEBRUARY, 2016

The Committee sat from 1100 hrs. to 1530 hrs. in Committee Room No. 074, PLB, New Delhi.

PRESENT

Shri Bhupender Yadav — *Chairperson*

Lok Sabha

2. Shri P.P. Chaudhary
3. Shri Gopal Chinayya Shetty
4. Shri Subhash Baheria
5. Shri Nishikant Dubey
6. Shri Anil Shirole
7. Dr. Sanjay Jaiswal
8. Shri Jayadev Galla
9. Shri K.C. Venugopal
10. Ms. Sushmita Dev
11. Dr. P. Venugopal
12. Shri Kalyan Banerjee
13. Shri Bhartruhari Mahtab
14. Shri B. Vinod Kumar

Rajya Sabha

15. Shri Naresh Gujral
16. Shri Anand Sharma
17. Dr. Balachandra Mungekar
18. Shri Praful Patel
19. Shri Ravi Prakash Verma
20. Shri K.C. Tyagi

SECRETARIAT

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

MINISTRY OF FINANCE
(DEPARTMENT OF ECONOMIC AFFAIRS)

1.	Shri Ajay Tyagi	—	Secretary
2.	Shri C.K.G. Nair	—	Additional Secretary
3.	Shri Praveen Trivedi	—	Joint Secretary

MINISTRY OF LAW & JUSTICE
(LEGISLATIVE DEPARTMENT)

1.	Dr. Reeta Vasishta	—	Additional Secretary
2.	Smt. Veena Kothavale	—	Additional Legislative Counsel

JOINT COMMITTEE ON INSOLVENCY AND BANKRUPTCY CODE, 2015

Verbatim Proceedings

Date : **8th February 2016**

Time : **1100 hours**

Venue : **Committee Room '074'**
Parliament Library Building
New Delhi

PRESENT

1. Shri Bhupender Yadav — Chairperson
2. Shri Praful Patel — Member

WITNESSES EXAMINED

1. Shri R. Gandhi
   Deputy-Governor, Reserve Bank of India
2. Shri N.S. Vishwanathan
   Executive Director, Reserve Bank of India

HON. CHAIRPERSON: Shri R. Gandhi, Deputy Governor, Reserve Bank of India and your colleagues, I welcome you all to the sitting of the Joint Committee. As you are aware, the Joint Committee is examining the Bill titled 'The Insolvency and Bankruptcy Code, 2015'. The Committee have decided to hear the views of the Reserve Bank of India, being the Central Bank to regulate and supervise Banks, on the provisions contained in the aforesaid Bill. The memorandum containing the written comments and suggestions in this regard has been received in the Secretariat and has been circulated to the Members of the Committee.

Now, I request you to present your considered views before the Committee. The Members may be raising certain queries during the course of deliberations, which you may kindly respond to in the end and also send written replies to the same.

(DIRECTION 58 WAS READ OUT)
(INTRODUCTION OF WITNESSES)

SHRI R. GANDHI: Sir, the Reserve Bank of India welcomes this initiative. We have been recommending that a proper Bankruptcy Code will be useful for the banks and financial institutions to manage their assets properly. The draft Insolvency and Bankruptcy Code covering all aspects of the personal and business insolvency in India, as introduced in Lok Sabha, is under examination by this Joint Committee. We had earlier given our comments to the Government on the Report also. Later on, when the Code came, we have given our written comments to the Government and to the Committee as well.

We strongly believe that India needs a Bankruptcy Code. The new Bankruptcy Code is expected to help banks take control of the business where promoters have defaulted on loans. It provides a model, unified, comprehensive and just insolvency/bankruptcy by a resolution framework, which is fair to all the stakeholders. It is a pre-requisite and it will be helpful for developing deep bond market also.

We find that the proposed Code provides a unified and comprehensive resolution framework which is expected to resolve corporate insolvency in a time-bound and efficient manner. This can be invoked either by the borrower or by the creditor on default in payment of dues.

We have certain concerns with the scope of the Code that empowers the Central Government to make Codes applicable to the financial service providers or categories of financial service products at any point of time by issue of a notification. There we have a particular

concern, which we can explain later; we have written to the Government also in this regard.

That means that regulators should have a say in the initiation and conduct of the winding of the proceedings of the financial service companies. Then too much emphasis has been placed on information utility. It is not clear that such a utility will be viable. It would be good if the code suggested bankruptcy procedure that would be drawn from the existing information from the credit information companies, credit information bureaus and the bond trustees and others. That would be one of the considerations that we have. Then specify the threshold for applying for fresh start order is very critical because it has certain possible dangers in the sense that it can discourage banks and micro financial institutions to lend to small debtors. That has to be handled in a very careful fashion. Overall the code is forward looking and its recommendations have an elaborate structure for bankruptcy. We do support many of the provisions that have been made. We have some concerns on certain specific provisions. I can present it for your consideration. One is that the code does not include any provisions relating to debtors in possession concept. Of course, the Committee had recommended that because of the past experience in the matter of BIFR and others, they chose not to recommend it. But banks and financial institutions will always like to have that option also.

HON. CHAIRPERSON: Can you elaborate that?

SHRI R. GANDHI: Banks and financial institutions will not initiate any extreme action just because a party fails to pay up one instalment. By definition of the proposed code, a default is a default. Even for a single day when the money is not paid, it is a default. In that case, today, the draft code presents that either the debtor or the creditor can initiate the proceedings and once the proceeding starts, the restoration professionals will take charge of the assets and the company. In the process, it goes into the neutral and professional hand. Debtor is no longer in-charge of the operations of the unit. In certain circumstances, it may warrant that because that is a fair to both the debtor and the creditor. That is fine. But in the initial stages, the bankers would normally expect the party to come around. So, there will be advantages for the debtors to be in control of the company in the initial stages. Of course, the code does not prohibit that. But if there is an explicit provision for that, it may be helpful. That is the point.

SHRI PRAFUL PATEL: What is the formulation?

SHRI R. GANDHI: Today, before insolvency proceedings are started, under the RBI's regulatory arrangement, there is a provision called the Joint Lenders' Forum where the debtor can continue in its possession. If that provision is allowed to continue and so long as it is not contradicting with that law, may be useful.

SHRI ANAND SHARMA: Is it for restructuring or what?

SHRI R. GANDHI: It is for restructuring and not for insolvency.

SHRI PRAFUL PATEL: In that event, creditors will immediately move forward. They will not really give the window of restructuring. That means, a little margin of flexibility is required.

HON. CHAIRPERSON: But CDR is already a different agreement. It is not binding in the legal courts. You have already entered into the agreement that you have entered into the CDR. Then the party will not go into the court. So, that is not affected.

SHRI R. GANDHI: It is not affecting the provisions of the code. So long as it is not affecting the provisions of the code, it should be allowed to continue.

SHRI ANAND SHARMA: You want a specific mention where an understanding has been reached in SDR or CDR, then the insolvency code will not be invoked.

SHRI R. GANDHI: It is not like that. The first is the restoration process. Afterwards only, the insolvency process comes. As of now, the restoration process compulsorily goes into the hands of the neutral professionals. If there is an enabling provision for the debtor to be in control, then it can be for the turn around.

SHRI PRAFUL PATEL: CDR and SDR is between the bank and the creditor. What about the unsecured creditors and the other persons? They have not entered into it.

SHRI R. GANDHI: That is why, the code has provided that it should go into the neutral professional.

SHRI P.P. CHAUDHARY: You are suggesting that too much emphasis has been placed on information utility. You are suggesting about this rating agencies and why we are bringing it. If we see the definition in the code, they are required to be registered under Clause 210. It provides that every application for restoration shall be made by the

Board and all the information utilities are required to be registered. But you are suggesting that these are not registered. Do you think that there will be a commitment of these rating agencies with respect to it? Once a particular information utility is registered under clause 210, then they incur a sort of commitment. It has a binding effect on them. But the rating agencies are free. It is not necessary that whatever information any person wants, they must be collecting that.

SHRI R. GANDHI: Exactly, that is the point we wanted to mention. We need not necessarily create an exclusive new entity called information utility. There are utilities like the credit information companies which can serve that purpose and they should be enabled to do it.

SHRI P.P. CHAUDHARY: Under the code, it is permissible. But once it is not registered under the code, then the penal consequences are not available and applicable to those agencies. That is why the registration is necessary.

SHRI R. GANDHI: That is correct. On that note, there is no difference of opinion. The only point which I wanted to make was that under clause 216, the information given to the information utility cannot be given to anybody else. It prohibits. That will be prohibiting the credit information companies to function and anybody giving information to credit information companies. That needs correction. That is the way that clause has been constructed. It can even prevent anybody giving information to the regulator. That needs some careful rewording.

SHRI ANAND SHARMA: I think this is important.

SHRI PRAFUL PATEL: You submit the written submission.

SHRI R. GANDHI: We will submit the written submission elaborating that point.

SHRI BHARTRUHARI MAHTAB: It is mentioned that as may be specified, it will come under the rules.

SHRI R. GANDHI: Actually, the Act itself should give that power because the information has to come to the regulator periodically from the banks.

SHRI BHARTRUHARI MAHTAB: We are not disputing that. We are saying that if it is provided in the rules, why do you want it in the Act?

SHRI R. GANDHI: Legally, the regulator should have the right to get the information about the funds that are distributed by the banks. Secondly, the very purpose of the credit information companies is to get credit information from anybody.

SHRI ANAND SHARMA: Are you saying that the information intermediaries exist? So, the credit information bureaus will give information.

SHRI R. GANDHI: In addition, they can give information.

SHRI ANAND SHARMA: So, they should not be barred.

SHRI R. GANDHI: This bar should not be there.

SHRI P.P. CHAUDHARY: It is mentioned that the Board may specify it.

SHRI R. GANDHI: That is true. Why should we leave it to rules? It should be in the law itself.

SHRI ANAND SHARMA: It will lead to further delays.

SHRI R. GANDHI: That is true.

DR. BALACHANDRA MUNGEKAR: The crux of the matter is when to initiate the process of insolvency and bankruptcy, rather than tying up today and keeping the whole assets to be liquidated in the course of time and depreciation. As you mentioned, the system should not be so rigid that after one default, you immediately start the process. But there has to be certain time limit, either in terms of time unit or in terms of default or irregularity of default. For example, somebody pays this month, does not pay after two months, and then he again pays for two months. Some enabling provision has to be there strictly in terms of law when to start the process.

SHRI R. GANDHI: That is well appreciated. The right to initiate the proceedings at the time of default should be there.

SHRI PRAFUL PATEL: If you become overenthusiastic and put something on paper, nobody will be willing to take a decision to the contrary. That is more often than not the problem in our country. Once it is there on paper, somebody has to answer CVC, somebody has to answer his own CVO, and somebody has to answer CBI. All these problems exist in our country. So, we have to be careful. Ultimately, banking world works on the principle of prudence. As you rightly said, at one default, our NPA cannot lead to a situation. Who is going to turn that company around? It is the person who has a vested interest and not somebody who does not have a vested interest. So, while we have very bad cases and we have extreme cases which have led to people like us going into this, but we should also have a balance between the two.

SHRI ANAND SHARMA: Could you tell us whether there is any ban from the RBI on the PSUs from sharing the information on NPAs even with Parliament, particularly where the defaults are as high as Rs. ten thousand crore plus. If so, why?

SHRI R. GANDHI: We have not given any such instructions. Bankers are guided by the Bankers Book of Secrecy Act and related provisions.

SHRI ANAND SHARMA: Today's papers say that we know the quantum of the NPAs and how the RBI is concerned about it. The papers only tell us about Rs. 1,48,000 crore which have been written off during the year. There is another Rs. seven lakh crore plus. That information we had asked and we were given an answer in writing that this information cannot be shared.

SHRI R. GANDHI: It is the names that cannot be shared.

SHRI ANAND SHARMA: Why not? It is public money that is above Rs. 5,000 crore. That is the issue.

HON. CHAIRPERSON: That is a separate subject.

SHRI R. GANDHI: That we will explain in writing.

SHRI PRAFUL PATEL: But how does this information become public? It is published somewhere. Of course there are people who have defaults.

SHRI R. GANDHI: The default is not published. What is published is the suit filed in the court.

SHRI BHARTRUHARI MAHTAB: Once a matter goes to the court of law, then only it becomes law. They are not supposed to publish this.

श्री प्रफुल पटेल: इसमें आप इंकॉपरेट कर सकते हैं कि एनपीए हुआ तो कम से कम उसका पब्लिश करने में कोई हर्ज़ नहीं है। Why do you have to amend only the Banking Act?

माननीय सभापति: इसमें एक और जो प्रोविज़न है कि जो प्रोफेशनल को अपॉइंट किया है, वह यही है कि 180 दिन के अंदर-अंदर प्रोफेशनल एक बार पूरा असेस कर के सिचुएशन को फिर आगे प्रोसीड करे तो इसमें उसको एकदम 180 दिनों के अंदर सारी चीज़ें उसके पास आ जाएं, उसका प्रोविज़न इसमें किया गया है।

SHRI R. GANDHI: Another improvement we would suggest in the Code relates to the concept of 'Netting'. Financial sector works on several instruments where the underlying security interest is

automatically built-in, like repo transaction, derivative transactions and for delivery thereof there has to be a provision in that code, what we call the safe harbour for the financial instruments. So, here the typical arrangement available elsewhere is the netting, whether it is close-out netting, multilateral netting or bilateral netting, should be available. As of now, the way the Code has been constructed, it allows multilateral netting. That has been provided for. But we would suggest that even the bilateral netting should be allowed.

SHRI P.P. CHAUDHARY: Somewhere in your written representation, you made the reference of the Bankruptcy Law Reforms Code. There is a difference between the Bankruptcy Law Reforms Code and the present Code. So, the numbers of clauses are different.

SHRI R. GANDHI: I am sorry for that confusion. Now, Clause No. 36(4)(b) provides for security interest, provided it is multilateral netting. What we would submit is that same kind of facility should be available for other financial instruments like derivatives where it is based on bilateral netting.

SHRI ANAND SHARMA: Does the RBI have any concern on (4)(b).

SHRI R. GANDHI: Under the clause 227, it is now proposed that applicability of the Bankruptcy Code should be for the financial service providers also when they are liquidated. But this idea has to be handled with care. Already, the Government and we are all working on creating a structure what we call a resolution corporation based on the FSLRC recommendation. It is a new institution coming up whose task will be exclusively to resolve the financial institutions, whether it is banks or other types of financial institutions.

SHRI ANAND SHARMA: I just read it together. It says, 'notwithstanding anything to the contrary contained in this Code or any other law for the time being in force, the Central Government may, if it considers necessary, in consultation with the appropriate financial sector regulator, notify financial service providers or categories of financial service providers for the purpose of their insolvency and liquidation proceedings'. So, what should be the RBI's concern to this because it would be in consultation with the RBI? Do you find it overlapping or do you think RBI alone should be left to deal with it?

SHRI R. GANDHI: That is not our submission. Here, quite a bit of flexibility has been put into this clause which is well understood. Things like 'with prior consultation' and 'not for the particular segment' things have been provided here.

What I wanted to submit was that the resolution proceedings for a bank is different from the resolution proceedings for a corporate. That is the only point. So, the rules and other provisions available in the Bankruptcy Code may not exactly suit when a bank is going to be resolved.

SHRI ANAND SHARMA: In your memorandum, it says the same. Here clauses 2 to 7 ensure that you would be consulted and you would have a say. There is a conflict in what you are saying. Or, does it address your concern?

SHRI R. GANDHI: There are two statements. The clause says that for the applicability of this code on the financial institutions, it would be done in consultation with the regulator. That is provided for. Thereafter in each case of the bank of NBFC when it is going to be resolved, at that time also the concerned regulator would have to have a hand in that.

SHRI ANAND SHARMA: If there has to be a specific proviso, where should it come?

SHRI R. GANDHI: It may be required to be amended here only.

SHRI P.P. CHOUDHARY: You are correct but you could not present it well. You are saying that the analogous provisions are available in Banking Regulation Act. So, in the case of conflict, how would the Court interpret it? According to you, this is a left out Act and we have to incorporate it in the Schedule and the necessary amendments are required to be made with the effect that notwithstanding anything contained in the Banking Regulation Act, it would have an overriding effect. So, they have included the 13 Acts in the Schedule and this Banking Regulation Act is also to be included in that because it is not there.

SHRI BHARTRUHARI MAHTAB: But the purpose is different.

SHRI P.P. CHOUDHARY: So, you have to suggest this basically. You have only suggested that there is a conflict in the case of the Banking Regulation Act in this Code.

SHRI BHARTRUHARI MAHTAB: It is not actually a conflict. Why should we say it is a conflict? It is a concern of the RBI that the banking institutions should be left to the RBI and other corporate bodies should be left to the Government. That is the point put forth by the Deputy Governor. At any point of time in Independent India, has the RBI initiated any action against any bank?

SHRI R. GANDHI: For resolution?

SHRI BHARTRUHARI MAHTAB: Yes.

SHRI R. GANDHI: Definitely. Several resolutions have taken place either as a going concern the bank's assets and liabilities have been sold to another bank; or if it was not possible, it has been taken to liquidation; or, a part of that has been shifted to good bank and the bad bank has been allowed to close.

SHRI BHARTRUHARI MAHTAB: Why do you think, liquidation or insolvency procedures concerning financial service providers — that is the broad terminology being used - would have huge implications? You have used the expression, 'huge implication for the market'. If they are notified under the Insolvency and Bankruptcy Code, what do you apprehend?

SHRI R. GANDHI: The Bankruptcy Code as it is presented in the draft says anybody, any stakeholder, any creditor to that corporate can initiate the proceedings. So, once that kind of a thing starts in a financial service in the case of a financial service provider, that extra care would be needed; professional opinion would be needed whether it is the right thing to start the resolution proceeding or not. Any and every creditor, just because he has lent money can start proceedings. Here in a financial service provider, the funds are given by the public to the bank or AMC or whatever it is.

SHRI BHARTRUHARI MAHTAB: Do you say you would not be in a position to stand up to the Central Government action, when the initiation would done jointly after consultation?

SHRI R. GANDHI: What has been provided in the Code is, in principle the financial service providers resolution to be brought under the Code and the Central Government will consult the respective regulators. That is the policy decision. After the policy decision in each individual bank cases how is it going to be resolved is where we say the regulator should still have a bigger role.

SHRI AJAY TYAGI: One thing Mr. Gandhi said is right that for financial institutions there has to be a separate mechanism and we are examining setting up of a resolution authority for a financial institution for instance where there is a run on the bank and depositors' money is to be protected different type of issues need to be resolved in terms of either reconstitution, rehabilitation or liquidation of a bank which is different from that of a firm. There is a separate legislation which is

being attempted. On this here the issue was that RBI have limited powers in the Banking Regulation Act to take over banks. This is my knowledge which Mr. Gandhi can correct whereas in USA if there is a run on a bank there is a corporation which takes over the Bank and reconstitutes it or sells it off.

There was a representation from RBI about omission of Chapters 19 and 20 of the Companies Act, 2013, which are yet to be notified. Under the Banking Regulation Act, they can initiate but when it comes to actual liquidation, they have to follow the procedure under Chapters 19 and 20 of the Companies Act. If you remove that, there is no procedure left. So, we have already provided that in consultation with the financial regulators for the financial firms action would be taken under Bankruptcy Code. So, this clause has been provided to give comfort to RBI. There is also a representation from SEBI. So, it would be done in consultation with them. This has been done only for ensuring that there is no void till the Resolution Corporation Bill comes. That is the limited purpose. There is no intention of turf war or anything like that. In our opinion, it is very clearly worded. If they want something more, we can look at it again. Since it has been provided only to give comfort to RBI, SEBI and Financial Sector regulators, it would be done only in consultation with the regulators.

श्री निशिकांत दुबे: महोदय, इसमें हम बड़ी लिमिटेड चीजों से आरबीआई के केवल प्रस्पेक्टिव को देख रहे हैं। हम BANKRUPTCY, INSOLVENCY पूरे देश का या कारपोरेट का देखने की बात कर रहे हैं। आज सभी सेक्टर में हमने एफडीआई खोल दिया है तो एफडीआई में आरबीआई इन्वॉल्व नहीं है। जो बाहर के फाइनेन्शियल इंस्टीट्यूशन हैं, उनका भी पैसा इन्वॉल्व है तो सरकार ने यहां के लिए तो मैकेनिज्म दिया ही है कि आरबीआई और सेबी से हम बात करेंगे, यहां के रेग्युलेटर से बात करेंगे, लेकिन बाहर के लोगों ने जो यहां पैसा दिया हुआ है, उसके लिए भी तो कोई मैकेनिज्म होगा तो यह जो क्लॉज है, इसमें आरबीआई का कन्सर्न बड़ा लिमिटेड है और मुझे नहीं लगता कि इससे इनकी ऑटोनमी में कोई फर्क पड़ने वाला है।

SHRI PRAFUL PATEL: They also get approval; they have to get registered. Before investing in India, they cannot bring the money into India; they have to be registered with the RBI. It is not only for the banks but for the financial institutions also.

श्री निशिकान्त दुबे: सेबी में एफआईआई का जो इन्वेस्टमेंट है, वह आरबीआई से थोड़े परमीशन लेगा। सेबी के चेयरमैन केवल केवाईसी नॉर्म्स भरते हैं।

SHRI PRAFUL PATEL: What is your solution?

श्री निशिकान्त दुबे: मेरा यह कहना है कि यहां के लिए इन्होंने, 227 को जो फ्रेज किया गया है, वह फ्रेज बड़ा ठीक ढंग से किया गया है और मुझे नहीं लगता कि उसमें आरबीआई

की ऑटोनमी पर या बैंकिंग रेग्युलेशन पर कोई फर्क पड़ने वाला है। मेरे कहने का मतलब, लिमिटेड परपज इतना ही है।

SHRI PRAFUL PATEL: Why do we not get the views of the Finance Ministry on this?

SHRI AJAY TYAGI: The issue is that if FDI is there in any firm which is going for bankruptcy, the same law would apply for which RBI has no objection. What RBI is saying is that for financial institutions, there should be provisioning. This was done only after they said that if you remove everything in Chapters 19 and 20, of Companies Act, 2013 there would be a void till there is a proper law. So, we said, for the time being, in consultation with financial regulators this would be done. So, there is no way it impinges on the regulators' turf and that is not the idea at all.

The Companies Act is not now supposed to be notified. Those powers of rehabilitation and liquidation are being brought in Bankruptcy Law. So, Chapters 19 and 20 would not be now notified. Their apprehension was that there should not be a void. RBI have limited powers and the procedures for liquidation were to be followed as per the Companies Act, 2013. That could how be done under the proposed code which is in fact faster process than the Companies Act.

SHRI P.P. CHAUDHARY: You should be clear on the issue of 227. We would like to know whether you want it under 227 or not. Do you want to bring the Banking Regulation Act in the 227 or you want it out of the ambit of the 227? It is not clear. But it is very important.

SHRI R. GANDHI: Sir, our submission is that this clause should not obviate the powers that we have under the Banking Regulation Act.

SHRI P.P. CHAUDHARY: Then you would like to suggest that the exception clause should be made under 227 just like it says that notwithstanding anything contained except in RB regulations. Or in the case if you want to bring this Banking Regulation Act under the ambit of this code, then we will have to provide for it in the Schedule because we have provided for in the 13 Acts and not it will go as 14.

SHRI R. GANDHI: I am not the legal person to comment on this.

SHRI P.P. CHAUDHARY: You may not have seen the Schedule. Have you seen the Schedule?

SHRI R. GANDHI: Sir, that I have seen.

HON. CHAIRPERSON: You have suggested amendments in three Sections 36(iv), 216 and 227. As suggested by our hon. Member you will send us the language and the amendment which you want. Also, as has been suggested by Shri Tyagi with the comparison of the Companies Act Chapters 19 and 20. So, in respect to Chapters 19 and 20 you will send your suggestions in writing to the Committee.

SHRI R. GANDHI: Sir, yes.

Sir, one last submission both in case of corporate debtor and individual debtors, after the proceedings are completely through and once they are discharged then they become eligible for the next round of support from the banking and financial system. There is no clear indication in the code. We would submit that there should be a decent gap between the time they are discharged and before they become eligible for fresh set of financial and banking support. I think the sacrifices which are made by the creditors that should not go waste and so there has to be a reasonable balance.

SHRI BHARTRUHARI MAHTAB: Sir, I have a little bit of clarifications. It is mentioned in clause 227 that it goes against the spirit of Payment and Settlement Act, 2007. In your note in page 4 you have mentioned this. I would like to understand how it goes against the spirit of Payment and Settlement Act, 2007. What serious consequences do you apprehend? You have also mentioned that the information utilities will not be viable. Why do you think it will not be viable? It is because in due course of time, the idea is that you will have a system in place. Just because some other affluent countries do not have these types of utility centres that does not mean that we cannot evolve a mechanism. What is the reason that you are apprehensive that it will not be viable? What do you suggest should be done to alley the apprehensions of banks and lenders to provide small loans? One concern has also been expressed about education loans where banks may not attend to that provision. You can tell us little about that.

SHRI NARESH GUJRAL: I have one general question. You are saying that any creditor can play mischief by saying that okay I am taking you to insolvency. This is not just for financial services company but for all companies, do you think that there should be a minimum threshold which is linked to the net worth of the company that only if they cross that then can a creditor go under this Act? It is because that will then prevail this being used as a tool to blackmail.

श्री निशिकांत दुबे: सभापति जी, इन्होंने अपना कंसर्न रेज़ किया 227 पर और इन्होंने अपना जो प्रेजेंटेशन दिया है, उसमें 4बी में यही बात कही है। आज आरबीआई एक रेगुलेटर

है। सरकार का उस पर कोई दबाव नहीं है। देश में एनपीए की क्या स्थिति है? जो एनपीए का आज का सिस्टम है, उस एनपीए में लगभग 4 लाख करोड़ के आसपास फिलहाल एनपीए हो चुका है और लगभग 6 लाख, 8 लाख करोड़ स्ट्रैस्ड एसैट्स के तौर पर हो चुके हैं। 64335 करोड़ रुपये के विलफुल डीफाल्टर हैं, यह आरबीआई मान चुकी है। जो सीडीआर मैकेनिज्म है, वह कंप्लीट फेल्योर हो चुका है। यह फैक्ट है। सीडीआर के बाद जो आपने एसडीआर 525 स्कीम कहा और एआरसी जिस तरह से हेयरकट के आधार पर टल रही है, मैं झारखंड का एक उदाहरण जानता हूं कि एक बिजली कंपनी ने 7000 करोड़ रुपये का लोन लिया। 4000 करोड़ रुपये कोई देने को तैयार था। स्टेट बैंक ने कहा कि हम बिडिंग में जाएंगे। तो 2000 करोड़ रुपये की बिडिंग आई पहली बार और दूसरी बार 1000 करोड़ की बिडिंग आई। इसमें आपको लगता है कि 227 में जो सरकार ने बैंकरप्सी कोड में आपको भी रेंगुलेट करने का प्रयास किया है, वह गलत है? इसके बाद आरबीआई को क्या लगता नहीं है कि उनका रोल कहीं न कहीं फेल हो रहा है क्योंकि इसमें सरकार का तो कोई दोष नहीं है। जिस तरह से महताब जी ने प्रश्न पूछा कि बैंक्स ने अभी तक क्या कार्रवाई की है, यदि इन चीजों को हम देखें, आज ही इंडियन एक्सप्रैस की एक बड़ी सी स्टोरी है। सारे बैंक्स के बोर्ड्ज़ में आरबीआई बैठी हुई है। सारे रूल्स एण्ड रैगुलेशंस आर.बी.आई. गाइड कर रही है, उसके बाद भी यदि देश के ये हालात हैं तो इसमें दोषी कौन है? यदि आप दोषी हैं तो आपको मान लेना चाहिए कि ये चीजें हैं, आपको कोई दूसरा मैकेनिज्म समझना चाहिए कि नहीं समझना चाहिए और उसके आधार पर इसमें क्या एमेंडमेंट होना चाहिए, यह आपको बताना चाहिए? दूसरा, जो चैप्टर 11 यू.एस. बैंकरप्सी लॉ का है, उसमें से कई एक प्रोवीजंस हैं, वे बैंकरप्सी एक्ट में नहीं दिये गये हैं और उसमें वहां का जो यू.एस. फैडरल बैंक है, वह इन चीजों से गाइडेड है तो आप उसके बारे में दे सकते हैं, उसके कम्पैरीज़न में चैप्टर 11 और इसमें क्या-क्या चीजें एड होनी चाहिए, जिससे कि यू.एस. फैडरल बैंक के एट पार आर.बी.आई. अपने आपको मान पाये, ये दो सजेशंस आप दे दीजिए।

SHRI P.P. CHAUDHARY: You have rightly suggested about this clause 227. The Payment and Settlement System Act, 2007 has also analogous provisions. So, you want that it should also be made part of this Code. In the Schedule respective amendments should be carried out so that there will be no conflict. Is this your suggestion?

HON. CHAIRPERSON: Shri Gandhi thank you very much for your nice presentation. I hope that within three or four days you will send the replies to the queries raised by hon. Members.

(THE WITNESSES THEN WITHDREW)

HON. CHAIRPERSON: I have a request to make to all the Members. Suppose some Members have not raised any queries and if they feel that some queries are necessary, they can send them to the Secretariat. We will send them to the parties concerned.

WITNESS EXAMINED

SHRI ASHWANI KUMAR, CHAIRMAN, IBA

HON. CHAIRPERSON: Shri Ashwani Kumar, Chairman, IBA, I welcome you to the sitting of the Joint Committee. As you are aware, the Joint Committee is examining the Bill titled 'The Insolvency and Bankruptcy Code, 2015'.

I would like to draw your attention to the Direction by the Speaker whereby the Memorandum 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 circulated to any one or made public in any other media till the report is presented to the House.

Now, I request you to present your views before the Committee. It will be appreciated if you confine your suggestions to the various clauses of the Bill, particularly concerning your mandate.

The Members may be raising certain queries and you please note down and send your replies on the queries raised by the Members.

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

SHRI ASHWANI KUMAR: Mr. Chairman, Sir, good afternoon to you and to all hon. Members, we are privileged to be here to present our views on this.

(INTRODUCTION OF WITNESSES)

SHRI ASHWANI KUMAR: We want to raise two specific issues. One is the issue regarding the resolution mechanism. When the resolution mechanism goes and 270 days pass and nothing happens, then an order has to be passed. But we have not given any time frame within which it should be passed. So, again it can be kept lingering for a longer period. So, if we specify days within which the adjudicating authority should pass the order, like it should be passed within 30 days or 50 days, whatever the Committee thinks better, then that would good for faster resolution.

The second issue is this. We are facing difficulties in the DRT and SARFAESI. Though courts, as per the Act, should not intervene they are intervening. I think if we can put a clause that other than high courts

which have powers under them, other courts should not intervene. Otherwise, they keep on lingering. We have got cases where in one case the DRT said that you will not do the valuation also and we could not do the valuation. So, if we put a clause which restricts other courts from intervening, I think, the resolution process would be faster.

So, these are the two suggestions where we feel that if we make some amendments, then it would be helpful.

The third issue is regarding clause 53 (1) (b) which deals with the priority. The secured creditor should have priority in both the cases.

One issue which I would like to flag is this, which we have mentioned in our written submission also. The term 'debt' has been defined under the Companies Act as well as under the DRT Act. A common definition should be there to avoid any complication because somebody can go that it has not been classified as debt under the Companies Act or under the DRT Act. So, there should be a common definition.

SHRI AJAY TYAGI: 270 days is the upper limit for the Tribunal. This is how the time period has been mentioned. After that it has to go for liquidation. So, it has to be immediately thereafter.

On the term 'debt', the definition is provided in the Bill.

श्री निशिकांत दुबे: मि. त्यागी, वे पूछ रहे हैं कि 270 दिन किसमें हैं?

श्री अजय त्यागी: इन्होंने जो प्रश्न पूछा, माननीय आनन्द शर्मा जी ने, मैंने सोचा कि वह डेट ऑफ डैफीनिशन के बारे में पूछ रहे हैं, 270 दिन के बारे में नहीं पूछ रहे हैं।

DR. BALACHANDRA MUNGEKAR: The most important consideration in this is the process of insolvency and bankruptcy, that is relating to recovery or non-recovery of the debt. That is why there cannot be different definitions for 'debt'. It should be universal for the whole country. He was referring to it just now.

SHRI ASHWANI KUMAR: I am referring to the debt which has been defined as per the Companies Act and IDDB.

SHRI KALYAN BANERJEE: That is a different Act. When a statute gives the definition, that definition is to be governed by that statute. You cannot take shelter of a definition of another statute when the definition is clear. Law is so settled to be sustained that if a definition clause is there in the Act itself, you have to go by that definition. If it is not there in the Act, then you have to go by general meaning. If

the definition clause is not here, not exhaustive or inclusive or non-meaning, then you can adopt the definition of another statute. It is governed by a different statute. This is recovery of debts due to Financial Institutions Act. Therefore, today, the scheme of the Act, whatever it states, a recourse has to be taken under the provisions of the Insolvency and Bankruptcy Act, 2015 and in that, everything is applicable. You cannot recourse, in that case, and say that recovery of debts are due to banks and financial institutions. The claims which are not covered under this Act, which is covered only under the Act of the Debts and Recovery of Financial Institutions, that part would be governed by that. Otherwise, it has to be given this meaning, whatever it is there. I was astonished. Rather you have to clarify that clause or section 56, which is there, has to be made clear regarding the time limit. Unlike under the Industrial Disputes Act, it has been said that it has to be done only in 30 or 60 days. Here, in the first and second extension, how many days you can leave, thereafter, no extension is given. Therefore, it makes it a mandatory section 56. It is not directory.

श्री राजू शेट्टी: मैं यह मानने को तैयार नहीं हूं कि हम लोग जो एक्ट बनाते हैं, उसके संबंध में कोई कोर्ट में नहीं जा सकता। हम लोग डेमोक्रेसी में हैं। सुप्रीम कोर्ट के जजमेंट के बाद भी उस संबंध में हम महामहिम राष्ट्रपति जी के पास जा सकते हैं।

मैं आपसे यह जानना चाहता हूं कि ऐसे कितने केसेज में लोग कोर्ट में गए और कितनी केसेज में कोर्ट ने आपकी फाइंडिंग के विरुद्ध डिसीजन या जजमेंट दिया? इससे पता चलेगा कि हमारा वर्किंग स्टाइल कितना सही है, कितना गलत है? ऐसे कितने लोग कोर्ट में गए? मैं यह जानना चाहूंगा।

आपका जो यह मुद्दा है कि कोर्ट को इतने दिनों में जजमेंट देना चाहिए, मैं इससे सहमत हूं, क्योंकि बहुत से लोग कोर्ट में जाते हैं और उनका मामला पेंडिंग रहता है और हमारे इतने सारे प्रोसेस बिगड़ जाते हैं। यह आपका बहुत वैलिड प्वाइंट है। लेकिन, लोगों को कोर्ट में जाना नहीं चाहिए, इससे हम सहमत नहीं हैं।

श्री अश्विनी कुमार: सर, मेरा सबमिशन दूसरा था। एक्ट में जिन्हें इंटरवीन करने की पावर नहीं दी गयी है, they also intervene sometimes.

SHRI P.P. CHAUDHARY: You are saying about High Court, which is interfering. You are saying that they should make a provision.

SHRI PRAFUL PATEL: Provision should be that it should not go to High Court and above. That is what he wants.

SHRI P.P. CHAUDHARY: The provision is already there. Under Section 231, the Supreme Court has the jurisdiction. Under clause 231, no civil

court has jurisdiction in respect of any matter and the Board is empowered by this court to pass an order; no injunction has been granted by any court or other authority in respect of any action taken. So, all courts below High Court.

HON. CHAIRPERSON: He is giving an example of a case where SARFAESI Act, DRT interfere in the matter which is not under the jurisdiction.

SHRI KALYAN BANERJEE: If there is any such case, did you challenge that order. Articles 223 & 227, I have pointed out Article 32, these jurisdiction of the High Court cannot be taken away. That is the constitutional scheme. If you are aggrieved, only grievance will not do. Have you acted, the moment you felt it? No, other courts are interfering with the proceeds, there is no scope. Our experience speaks that BIFR passes an order, you have an appellate authority, go into the appellate authority, which passes the order. Then, you have to come to the High Court under article 226 or 227, or whatever, read with them... You have to deal. How many cases you have acted? Mr. Shetty has raised a very good question, which I fully support. Give us details, how many cases which are before the BIFR, what steps you have taken within time, in how many cases, the bank has suffered a loss, you went on appeal to the appellate authority, in how many cases, against the order of the appellate authority, when you have suffered, and went to the court under articles 226 or 227. Give us the list. Experience speaks about that. You don't represent before the BIFR. One officer goes and sit with the file. They don't open their mouth.

Debt definition according to me is a liability, everything has been said, or obligation in respect of a claim which is due from any persons, includes the financial debt, and operational debt. Therefore, this court has brought into the contentions of the persons regarding the date. I must say it is a very exhaustive Act covering everything.

SHRI P.P. CHAUDHARY: It is a much wider definition.

SHRI KALYAN BANERJEE: Of course, people are suffering. You are not dealing with it. When you are granting the loan, you are not making survey. You are saying, excuse me, Sir. You are pinpointing the bank manager, etc. You know a case is going on in Kolkata High Court, Rs.180 crore loan has been given, without examining anything. How big the scan it is? Who is pinpointed? The branch manager, poor fellow, he can't give anything unless there is a discretion of the Chairman or his intervention is there, Rs. 180 crore can be granted. Now, it cannot be recovered. What exercise you are making when you are granting loan?

We also want to understand – give us at least 15 latest cases, not picking and choosing, before the Act has come. In which way, you are granting a loan of at least for more than Rs. 15 crore, not below Rs. 15 crore. What assessments you have made before granting loan?

HON. CHAIRPERSON: Note the point.

श्री निशिकांत दुबे: सभापति महोदय, क्लॉज़ 21 और क्लॉज़ 36(3) में जो इन्होंने कंसर्न रेज किए हैं, as per the US Bankruptcy law, under specific circumstances, the secured creditor can obtain order from the court granting relief from the automatics. For example, when the debtor has no equity or the property and the property is not necessary for effective recognition, the secured creditor can seek an order from the court lifting the State to permit the creditor to foreclose the property sale and it can apply the proceedings to the debt. इसके बारे में अपनी क्या सोच है?

अभी डी.आर.टी. के बारे में इतनी चर्चा हुई। डी.आर.टी. की हालत क्या है? 3,75,000 करोड़ रुपए की राशि डी.आर.टी. कोर्ट्स में लंबित है। क्या आप लोगों ने इस बैंकरप्सी लॉ में या सरकार को डी.आर.टी. एक्ट में संशोधन करने की कोई बात कही है? सरकार के जो लोग यहां हैं, वे इनके सजेशन के बारे में क्या कह रहे हैं, क्योंकि पार्लियामेंट की जो फाइनैंस कमेटी है, उसने भी अभी एक बड़ा लम्बा-चौड़ा रिकमेंडेशन दिया है। उसने एक पूरा पेज ही खासकर डी.आर.टी. के ऊपर खर्च किया है। यह बैंकरप्सी और इंसॉल्वेंसी एक्ट तभी सक्सेसफुल हो सकेगा, जब डी.आर.टी. को आप मजबूत बनाने का प्रयास करेंगे। क्या इस एक्ट में आपने फाइनैंस कमेटी के सारे सुझावों को जोड़ने का प्रयास किया है या आपको जो एक्ट है, क्या इसी में हम उन चीज़ों को एकोमोडेट कर सकते हैं?

SHRI P.P. CHAUDHARY: Shri Kalyan Banerjee has said that in case of interference by the civil court in any matter, which they cannot do, under clause 231, you can approach the higher court.

HON. CHAIRPERSON: That is a suggestion.

SHRI ANAND SHARMA: I want to refer to para 1.4 of the Memorandum. You are talking about information utility and what you are saying is that if banks are required to provide some data of information utility, such an exercise will result in duplication and will involve huge cost. Why should banks have any reservation to share information? How can huge cost would be involved when at the press of a button the information is available these days? Under the Act, that power is given to share information and you should not be having any objection to it. I do not see any merit in what you are saying.

Then, part 2 of para 1.4 says that a provision needs to be included in the Code enabling existing credit information of companies as

information utility. I think for that portion you can give a specific formulation as to where it should come. Under the present system, you cannot be registered. I think we need clarity whether credit information agencies which exist or pre-exist can also register themselves. The provision is there for registration. We need clarity on this.

SHRI R. GANDHI: Regulators will have regulation if they fulfil those regulations, then they also can be registered.

SHRI BHARTRUHARI MAHTAB: The IBA has said in this two-page note that a provision needs to be included in the Code for enabling existing credit information companies to also operate as information utility and supplement its existing database with information that may be required under IBC. We have been hearing that there is no need to have any information utility mechanism as has been stated in this Code. Do you believe that the credit information companies that are existing today and the chartered accountant companies, all those mechanisms which are there which will be acting as a stop-gap arrangement till the information utility mechanism comes into force. This comes under Clause 3 (21) which defines information utility. Do you think this should continue to prevail as it is today? Do you say that this *ad-hoc* thing will continue and we do not want any separate utility mechanism in place?

Secondly, you have also mentioned in Clause 36 (3) that ownership rights have not been defined. You have also elaborated how it needs to be done. We would like to understand from you a little more about it because I am unable to get the full picture as what is stated in that paragraph. You have also mentioned that Clause 50 of the IBC provides for avoidance of any extraordinary credit transaction during two years preceding insolvency commencement date about which indirectly Shri Kalyan Banerjee was mentioned and asked you to give us a report of the last 15 cases. But here, the banks and financial institutions grant finance to borrowers under stress for revival resolution. I would like to understand from the Government on this aspect which the IBA has stated that in ordinary course, all banking transactions and such credit transactions need to be excluded from applicability of Clause 50. What is your reaction to this?

Then, in this Code, there is a provision of voluntary liquidation and the experience is that voluntary liquidation is unnecessarily getting delayed. That is the experience which we have come across. You should have done an empirical study. That has not been done. Of course, the Government has to explain as to whether any study has been done as to how to deal with this. Therefore, my suggestion would be that

Section 59 offers no solution to this vexatious problem. I would like to understand from the Government that here is a case where this Code is not attempting to address this. I would like to understand it both from the IBA and also from the Government.

HON. CHAIRPERSON: Mr. Tyagi, you also note down the query raised by Mr. Mahtab because the question is related to the Government also.

SHRI JAYADEV GALLA: In your note, in para 1.2 you mentioned that any default on payment of interest on loan also should trigger an application for insolvency resolution. Do you not think it is a bit excessive because a balance needs to be maintained between supporting genuine cases versus going after *mala fide* cases? In genuine cases, I feel it would be a bit excessive.

HON. CHAIRPERSON: You note down all the questions and give us a written reply later.

SHRI KALYAN BANERJEE: I was telling that there is a misconception that in any civil court today you will find it and there is a newspaper report also today that the Supreme Court has given a final judgement. Again the civil court has interfered and the party has gone to the Supreme Court and the Supreme Court has issued a contempt notice. You cannot point a finger at others. The experience is that you simply sit before the BIFR. What steps have been taken by you? In fact, you go and simply sit and whatever papers have been handed over, one representative silently sits there. There is no effective participation on behalf of the banks before this authority. Who is fighting? One claimant is fighting and those who have to pay, they are fighting. You are not establishing your case and you are not giving the details that these are the sufferings.

Regarding assessment, whatever terms are there, they are insignificant. The whole assessment system takes a lot of time today. It takes two years or three years. Then how can restructuring be made? Even restructuring is basically made on the basis of the advice of the banks or the authority who are there in the restructuring committee. In that case, if you take so much of time, then only the people will suffer. Here a time limit has been given. Incidentally you have to do it within 60 days and the authority has to complete it within that period. This is a beneficial legislation so far as the banks are concerned.

HON. CHAIRPERSON: Mr. Ashwini Kumar, various questions have been raised by our Members and some concerns have also been raised. Through this Bill, we are going to bring an institutional reform. But better

institutional mechanism is also required in the banks. That is a very good suggestion given. You give your views on this aspect and you reply to all the queries within five days from today.

Wherever some queries are related to the Ministry, I request the Ministry to please send the supplementary reply after every meeting. I thank you Mr. Ashwini Kumar and your team for having given a good presentation and valuable inputs to the Committee.

(THE WITNESSES THEN WITHDREW)

WITNESSES EXAMINED

1. Shri U.K. Sinha, Chairman, *Securities and Exchange Board of India (SEBI)*
2. Shri R.K. Agarwal, Whole Time Member, *Securities and Exchange Board of India (SEBI)*

(Please fill in the rest)

HON. CHAIRPERSON: Shri U.K. Sinha, Chairman, SEBI and your colleagues, I welcome you to the sitting of the Joint Committee on Insolvency and Bankruptcy Code, 2015.

Securities and Exchange Board of India is a statutory body established under the SEBI Act. Keeping in view the crucial role of SEBI in protecting the interest of the investors in securities and being the regulator of the securities market, the Committee have decided to hear your views. The Memorandum containing the written comments/suggestions in this regard has been received in the Secretariat and circulated to the Members of the Committee.

I would like to draw your attention to the Direction by the Speaker whereby the Memorandum 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 circulated to any one or made public in any other media till the report is presented to the House.

Now, I request you to present your views before the Committee. It will be appreciated if you confine your suggestions to the various clauses of the Bill, particularly concerning your mandate.

The Members may be raising certain queries during the course of deliberation and you will respond to their queries in writing within five days from today.

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

SHRI U.K. SINHA: Thank you, hon. Chairman, Sir, and hon. Members of the Committee. It is our honour and privilege to be here today.

(INTRODUCTION OF WITNESSES)

SHRI U.K. SINHA: Sir, the comments we have for this hon. Committee, I would broadly like to classify in two segments. One is with regard to our general comments about certain clauses. But, before that, I would like to comment about certain areas which this Bill touches upon or is likely to touch upon which concerns the securities market which is the area of the remit of SEBI.

I would like to inform that all over the world and in India also the security markets are a very important segment of the economic activity in the country. They represent and they are a barometer of how the economy is doing. Stock exchanges or settlement in the stock exchanges are very critical for the financial health of a country. For example, if a bank fails, it is really bad. But if a stock exchange fails, by the failure I mean that if the settlement does not take place, then it is a slur on the entire nation. So, one has to be very careful that whenever any trading happens at the end of the day, and we have a T+2 trading settlement, the settlement must take place without any problem. In that background, I want to bring the issues concerning SEBI and the area that we operate.

There are many institutions, companies, agencies which deal with money that they collect from investors. They keep that money in trust. In this Bill, our first position is that that situation has not been taken into account because there is general exception for companies in the financial sector. I would like to give an example. You might have heard that there are several cases of unauthorised money collection in the country. These are called CIS or other deposit taking companies. In exercise of powers under SEBI Act, we start recovery proceedings against that. But those proceedings, once this Bill is passed, will come in conflict with the insolvency requirements because if SEBI starts a proceeding for recovery from the assets of those who have taken money from hundreds of thousands of investors and we will like to recover that money from their assets. But the bankruptcy law will come into play. Even today it is coming into play. But later on, after the Bill is passed, it will come into play because, for example, the waterfall is such that the secured creditors will come in the play; other dues will come in the play. So my position is that the money which is taken by

brokers or by asset management companies or by CIS, these are not assets belonging to that company. These are assets taken by them in trust. They are trustees of the investors. This is not a part of the asset of the company that can be distributed at the waterfall. It has to be kept completely separate. This money or this asset does not belong to that company. So my first argument is that we should have a provision. There is a general exception here for companies in the financial sector. So there should be an exception for companies operating in the securities market.

In the Parliament also there have been series of debates. In 2014, the SEBI Act was amended. Why? It was amended primarily for the purpose of safeguarding the interest of investors. Our task is that the money collected from the investors must be repaid to them. Without naming a company, I would like to give an example of a broking firm. The broking firm became bankrupt. They took money from the customers, clients and then they invested that money in real estate and all the other things except for the purpose for which it was given. When they became bankrupt, we started a recovery proceeding. But then so many other claimants came. They said we are creditors to this company; we are employees of the company. It will be a travesty of justice if the employees of the company, who are responsible for diverting that money, have a higher position in the waterfall, because they are the workers, than the depositors. So the depositors, it is my submission, should be taken in a separate footing. It is their money; it is not the money or asset belonging to the company. So, that exception should be provided.

SHRI ANAND SHARMA: Where it should come?

SHRI U.K. SINHA: Sir, we have given a formulation that companies in the financial sector, there we are saying that there should be exception for companies in the securities market. We have given our comments on different clauses. The primary point I am raising is that depositors' money, investors' money is only given to them in faith and trust. That does not belong to the company. So, it should not be part of that.

SHRI NARESH GUJRAL: So does a loan for that matter. Even for a loan, interest is given and I will get my money back. Where is the difference between these two?

SHRI U.K. SINHA: There is a very big difference, Sir. If you are giving loan, you are a bank, you are a financial institution. You have done your appraisal; you have applied your mind. You are supposed to be a qualified institution whereas I am talking of people who give Rs. 1000 or Rs. 2000 or Rs. 3000 spread over villages and towns of this

country. They have to be given a different thing; they need protection. Bankers also can be a situation where they need protection of insolvency. I am not saying that they do not need. But the level of protection required and the type of situation in which they are, are quite different.

SHRI BHARTRUHARI MAHTAB: Creditors and investors, that is the difference.

SHRI U.K. SINHA: What happens is that in case of brokers, we give money. Suppose we are all clients, we give money to the brokers. In one case that I was saying the broker diverts that money. He bought some real estates, did all sorts of activities. They declared themselves bankrupt.

SHRI BHARTRUHARI MAHTAB: It is just for an argument as my friend Mr. Galla has been saying, the more is the risk the higher is the reward. Investor takes tremendous risk and gets multiple rewards. Why should they be at a better level to retrieve the money? It is just because you have put forth a very logical thing. I would say a person who is investing is not giving credit, he is investing and he gets better rewards. He is taking a risk.

SHRI U.K. SINHA: Sir, there are two situations where as an investor invests through banks or through asset management company but that particular company has violated all the rules and by-laws of SEBI and it has been a genuine loss in the market because the market has gone the economy has gone and there is a loss. I am not talking of that situation. What the Parliament has given powers to us in the SEBI Act is that if somebody has violated the provisions of the Trust then SEBI has been empowered. Our role comes in that situation. So in that case, we are talking that give that protection otherwise we will have a tremendous amount of conflict. There are cases after cases. I am sure, hon. Members must be aware of those cases.

SHRI KALYAN BANERJEE: I am really happy with your first answer. I know that you really want this for the affected persons. I would be happier if you would suggest us in which form you want this. If I understood you correctly, you want to say, let us be very frank those who are investing money in funds, chit funds, they should be protected. Last year, in the SEBI Act, an amendment has been made by which — that is First Proviso or Second Provision I do not know — for the first time you have been giving powers to return back the money. Now, you want to say that because of the liquidation you are losing that power. Under the Insolvency Act, the moment one would be declared as insolvent

there you cannot exercise that power and the poor people are affected due to this. That portion should be kept beyond the jurisdiction of the Act. I really appreciate your concern.

Now, I want the answers of my three questions. First, those who are functioning beyond the jurisdiction of this SEBI Law, what are you doing with them? From 1982-83, a number of chit fund companies are working and you are keeping your eyes closed. What steps have you taken? You will rise only when the matter go to the court. The court will pass the order.

Secondly, how many cases of this type are there where you have recovered the money and distributed it after the proviso has given you power to refund the money. I appreciate your first contention but tell me now nearly two years have gone. How much money have you really returned to them? Do not say anything for the academic purpose. Just say this for an effectively mechanism which has been given by the Parliament to you to return the money to the affect persons. We would like to know in how many cases you have returned that money. You should also give us in writing as to what you want to recommend for our consideration.

HON. CHAIRPERSON: Mr. Sinha you are giving a background of this Act. Whatever questions have been raised by our hon. members you just note down and send us a complete reply and complete data for that purpose because it is required for the purpose of understanding the working of SEBI and for protecting the small investors. In your written submission you have suggested Section 3 to Section 177 and you also want to insert some illustration also. You just confine your presentation on that aspect. After that our members will raise their queries about the particular amendment which is suggested by the SEBI.

SHRI U.K. SINHA: Sir, the second situation which I have in mind is that settlement of the stock exchange is very critical for the health of the economy and the market. What happens, a broker receives money from the client or the broker after receiving money from the client gives it to a clearing member and clearing member gives it to the stock exchange. Technically it gives it to the clearing corporation which is part of the stock exchange. What happens if that broker has become bankrupt? Then the authorities under this Act will also have right over that money which has been paid for the settlement. It is because in our system the settlement happens two days after trading has happened. So, suppose there is a broker who has given Rs. 100 crore for settlement,

it has to take place after two days or if he has sold securities, he has to deliver those securities. Either funds or securities have to be delivered. So, the clearing corporation will fail to honour the settlement if this money is impounded or made part of the other requirements. Just to substantiate my argument I would like to give you an example. There was a Supreme Court case in which in 2015 the order has come. The income tax authority had impounded the money given by a broker towards settlement. They said that under the CPC this is right and the High Court had given the order. We went to the Supreme Court and the Supreme Court had said that settlement on the stock exchange is paramount and this money in any case is given for settlement. It is not the money belonging to a particular broker or institution. So, they gave that order in favour of SEBI saying that SEBI is justified in ensuring that the trading settlement takes place and there is no problem.

SHRI KALYAN BANERJEE: What is that reference?

SHRI U.K. SINHA: Sir, that is Bombay Stock Exchange Vs. V.S. Kandalgaonkar & others (2015) 2 SCC 1. I can send you all the details. These are two things that the settlement does not suffer and the small investor does not suffer. If this hon. Committee is convinced by my logic then a necessary change which has been brought about is in the waterfall that this Bill has recommended. In the Bill the waterfall that has been recommended, the first claim is for the cost of insolvency then there is the claim of the secured creditors and certain dues of employees, the dues between the last three months and like that there is a waterfall.

So, if the hon. Committee is convinced that the money received on trust for the securities market as regulated by SEBI, that money or asset should be kept away from the waterfall. It should not be a part of the waterfall at all. The waterfall should be segregated before it starts operating.

SHRI ANAND SHARMA: You have given that recommendation.

SHRI U.K. SINHA: Yes, Sir.

In case of any situation emerging, we will provide a mechanism that has been given as to who is the insolvency authority or who is the NCLT. We will provide for that and they should be out of it.

SHRI BHARTRUHARI MAHTAB: Sir, he is referring to Clause 52 — Secured creditors in liquidation proceedings.

SHRI U.K. SINHA: Sir, we will clarify that point. I will give the exact point.

Now, I would request my colleague, Shri Ranganayakulu to clarify.

SHRI J. RANGANAYAKULU: They are given in Clause 36. The next one comes in Clause 53 and Clause 117.

SHRI U.K. SINHA: Sir, we have given that. We can clarify it again if it is required.

HON. CHAIRPERSON: You also give a written reply on this. I ask the Ministry people to send a written reply on this.

SHRI U.K. SINHA: Sir, in support of my argument, I had given an example of a Supreme Court case. I would also like to brief this hon. Committee that in the draft Report submitted by the Bankruptcy Law Reforms Committee this was included. They agreed with our suggestion, and in their draft Report they included it. But in the final Report that they have circulated, unfortunately they did not include it and it is not included in the Bill also. It is only by way of augmenting my argument, I am saying this.

SHRI AJAY TYAGI: Sir, what we have provided for is under Clause 36 (4) (a) (v). We have said that the Central Government can notify assets which may be excluded for the purpose of liquidation estate. Clause 14 (3), which we have provided, says: "that in consultation with the financial sector regulators, Government may notify transactions which should be kept outside the moratorium". So, the idea is that in consultation with the regulators to provide for exigencies, which the Chairman, SEBI has pointed out.

We do not feel that specifically you have to mention SEBI or banks or RBI or insurance companies and all because we have gone by the financial sector regulators which are defined in the Bill. In consultation with them, we have provided this. Beyond that, in our view, perhaps nothing more needs to be done. When their written comments come to you, Sir, we also want a copy of that so that we can comment on that.

SHRI K.C. VENUGOPAL: Sir, the apprehension raised by the Chairman, I think, is a valid apprehension. He has represented the first case. Shri Kalyan Banerjee has also talked about that. In our country, these things are happening. A lot of people are cheating public. One fine day, those who collect money from people vanish. There should be some strong mechanism to protect poor investors.

SHRI AJAY TYAGI: For protecting investors, there is a separate law. We have no quarrels with that. We are only saying that under the provisions of this Bill, in consultation with the regulator, these things can be taken out. So, in the waterfall there is no need to provide for them and they will not be a part of the liquidation estate. That is what I am saying.

SHRI KALYAN BANERJEE: You do not compare SEBI with any other institutions that you have referred to like LIC, etc. because SEBI is an authority who has been given the power to inquire, to enter into premises, to seize the materials. No other authority, under any Act, is having this power. This amendment had been brought two years back. In fact, this power is quasi criminal in character. The other institutions have not been given that power, even the quasi-judicial power.

Sir, these are completely two different things. People would be depending on SEBI. You may exercise Section 14, which you have referred to. It is a discretionary power that has been given to you. Your Secretary may exercise this discretion, may not exercise this discretion. Nobody knows as to when you will exercise this discretion. If this is excluded, SEBI will be having the power to enter into the matter because SEBI has said in their note. I want the Chairman, SEBI to see this. You have said about illegal proceeds — in a violation of a law it has been taken away. He is referring to legal proceeds, which is a common thing, within the purview of debts. Therefore, these are completely two distinct clauses.

No doubt, Sir, this is for the benefit of the people of the country. Normally, village people and poor people do it. If this money brought in the Bankruptcy Act, then they will not get back their money. And whether SEBI has been exercising this power today or not, that is a different thing. Of course, in future, I hope they will exercise this power.

HON. CHAIRPERSON: Your point is very well taken.

Shri Sinha, do you want to add anything?

SHRI U.K. SINHA: Sir, I will conclude in one minute. These are my observations with regard to securities market.

Sir, I have one general observation that in the past also, several efforts have been made to work seriously towards bankruptcy dissolution. Strict timelines were also given but those timelines have not been followed.

I am reminded for example of the recovery of debt due to bank. Six months' time was given. I think, the statistics will show that. May be in more than 90 per cent of the cases, six months' time is not met and it goes into years and all.

Here, timelines have been given. My suggestion is that suppose that timeline is not met and it exceeded, what is the consequence of that? That should be provided.

My last point is that in case of NCLT, how soon and in what timeframe they will decide. That has not been provided. So, I would request that for NCLT also, some timeline should be given.

DR. SANJAY JAISWAL: I think, the clarification is very good, and those things should be included.

SHRI JAYADEV GALLA: Sir, after listing to the earlier witnesses from RBI, IBI and now SEBI, it looks like that each of the witnesses is actually pushing the case of how to bring them on the waterfall, and each of them are making good points but there is a conflict between these. I think, as a Committee, we need to understand what should be the waterfall by looking at the picture as a whole rather than only the inputs given by each of the witnesses. How are we going to do that?

SHRI BHARTRUHARI MAHTAB: Sir, after hearing Shri Tyagi about Clause 36 (4) and Clause 14 (b), we would like to get a response perhaps in writing. Do you need those explicit clauses that were in the draft or this will suffice. Are there certain more improvements that need to be made?

Secondly, you are saying about the timeline. That is the point of concern for fast-track disposal of these cases. The timeline is there. Earlier in the TRT, the timeline was not maintained. We have a case in Odisha of 1947, which was resolved very recently, I think last. It was relating to the liquidation of a company. That is the history.

But I would like to understand. Your suggestion is very good. It was actually our concern. If a resolution timeline is there and it is not adhered to, who is to be held responsible? That mechanism needs to be developed as to who has to be made accountable and what penal provision will be provided. If that suggestion can come from your experience, I think, that will be of great help. We may incorporate it by consensus. But I feel that it is necessary.

SHRI NARESH GUJRAL: I have just one limited issue. I agree with you that there should be no disruption of the stock exchanges because of transactions that have taken place between the brokers. To that

extent, yes, there must be some of provision to safeguard that. But I do not agree with you on this point of money with the broker. If I have kept money with a broker to invest on my behalf, why should this money be different from his money, which has been given as good faith as a loan? They should be treated at a same level. I am entirely with you that stock exchanges must be protected at all costs. But I am not with the Chairman, SEBI that the investors, who have given money to any broking house, should be treated any differently from other secured money.

SHRI KALYAN BANERJEE: Mr. Chairman, I agree with you. But kindly clarify. Section 55, Proviso 2 has made it clear by saying:

> "Provided further that any extension of the fast track corporate insolvency resolution process under this section shall not be granted more than once."

Therefore, obligation of the presiding officer has been made, which is not there in the other Acts. But I agree with you that even if it is not done, what penal steps could be taken? If thereafter, a penal provision is there, then the claimant will suffer. Since you are dealing with such a big thing, kindly consider this aspect and give your recommendation also.

SHRI K.C. VENUGOPAL: I am in total agreement with the views of the Chairman. But there is one thing, where I need a clarification regarding insertion of a special chapter of municipalities. Is it only applicable to municipalities? If yes, what about the corporations and Panchayats?

SHRI KALYAN BANERJEE: Municipalities and corporations are under one Chapter in the Constitution.

SHRI K.C. VENUGOPAL: Is there any municipality where such activities are going on?

SHRI AJAY TYAGI: We haven't seen SEBI's memorandum.

श्री निशिकांत दुबे: यह जो पैसा है, इस पैसे में छोटे-छोटे इनवेस्टर्स के पैसे हो सकते हैं, सेबी के कंसर्न सही हो सकते हैं, लेकिन अगर सेबी के रूल्स लागू हो जाएंगे तो मुझे लगता है कि बहुत मुश्किल हो जाएगी। जो कंपनी है, मान लीजिए रियलिटी सेक्टर की कंपनी है, तो रियलिटी सेक्टर में एफडीआई भी आई है, बैंक्स ने भी लोन दिया है, इस तरह की चिटफण्ड कंपनीज के भी पैसे लगे रहते हैं, उस आधार पर अगर सारा काम सेबी को ही दे दिया जाएगा तो बैंकरप्सी और इन्सॉलवेंसी बिल का सारा मामला खत्म हो जाएगा। यदि आप सेक्शन 14(3) को देखें, इसमें कहा गया है: "The provision of Sub-section (1) shall not apply

to such transactions as may be notified by the Central Government in consultation with any financial sector regulator."

फिर सेक्शन 36(4) बहुत स्पेसिफिक है। यह कहता है: "Such other assets as may be notified by the Central Government in consultation with any financial sector regulator."

मुझे लगता है कि सेबी के कंसर्न को इसमें दिया गया है। यदि इसके बाद भी सेबी को कुछ लगता है तो उसे बताना चाहिए। दूसरे, सेक्शन 53 में जो एक्सप्रेशन ऑफ कैपिटल मार्केट इंस्ट्रूमेंट है, उसके बारे में मुझे सेबी से पूछना है कि यूरोप में 200 साल से लेजिस्लेशन है, उसमें बॉण्ड्स को प्रोटेक्शन प्रोवाइड किया गया है। जर्मनी, स्पेन आदि देशों में यह प्रॉविजन है और यू.के. में जो इन्सॉलवेंसी एक्ट है, उसमें कैपिटल मार्केट का जो ट्रांजैक्शन है, उसमें जो एडमिनिस्ट्रेटिव रिसीवरशिप है, शिड्यूल 2ए में है, इसको एग्जामिन करके बताना चाहिए कि यह प्रॉविजन यदि हम अपने बैंकरप्सी एंड इन्सॉलवेंसी बिल में डालेंगे तो कितना बेनिफिट होगा? जो सिक्योर्ड लेंडर है, उसमें बॉण्ड्स का जो सबॉर्डिनेशन और सबॉर्डिनेट है, उसके बारे में सेबी की क्या सोच है? एनसीएलटी के बारे में जो आपने कहा है कि टाइम लिमिटेशन हो, वह टाइम लिमिटेशन कितनी होनी चाहिए—वह 30 दिन हो, 60 दिन हो या 90 दिन हो। यूरोप के कई देशों में यह 90 दिन है। इस तरह से एनसीएलटी के बारे में स्पेसिफिक सुझाव देने चाहिएं।

HON. CHAIRMAN: Do you want to say something?

SHRI U.K. SINHA: Sir, we will be sending the written replies to all the questions. But I would like to respond to just one point raised by the hon. Member, Shri Gujral. He said about a situation if somebody has given money to the broker, and how is it different from the loan taken by the broker. If the money has been given by the client to the broker, the broker has given that money or he has intermingled a lot of money and given it to the stock exchanges towards settlement because he has traded, what we are suggesting is that after the settlement has taken place, if there is any balance, we do not mind if that is given back for the system. But our money is only to ensure that the settlement takes place. If has got Rs. 100 crore from so many people, Rs. 75 crore is required for settlement on T+2, Rs. 25 crore can be taken by the Bankruptcy Code, as their assets. Whatever they want, I have no problem.

SHRI NARESH GUJRAL: So, there should be no disruption of the stock exchanges.

SHRI U.K. SINHA: Yes, Sir.

HON. CHAIRPERSON: Thank you, Shri U.K. Sinhaji and all other officers. Kindly send your written replies within five days. Now, we adjourn.

आप सभी माननीय सदस्यगण एवं अधिकारीगण लंच के लिए सादर आमन्त्रित हैं।

(मध्याह्न-भोजनावकाश)

(AFTER LUNCH BREAK)

WITNESSES EXAMINED

1. Shri Devender K. Sikri, Chairperson, Competition Commission of India
2. Ms. Smita Jhingran, Secretary, Competition Commission of India

(Please fill in the rest)

HON. CHAIRPERSON: Shri Devender K. Sikri ji, Chairperson, Competition Commission of India and his colleagues, I welcome you all to the sitting of the Joint Select Committee. As you are aware, the Joint Select Committee is examining the Bill titled 'The Insolvency and Bankruptcy Code, 2015'.

The Competition Commission of India is a statutory body, which plays an important role to ensure a clear competition in market so as to provide access of goods and services to common man at the cost of competitive prices. The mandate of CCI includes prohibition of anti-competitive agreements, abuse of dominant position by enterprises and regulates combinations. In this background, the Committee have decided to hear your views.

In the Memorandum CCI has wholeheartedly welcomed the proposed legislation, which is stated to be an effective legal framework which would facilitate exit of inefficient players, encourage entrepreneurship, mergers and acquisition activities they were promoting efficient and competitive economic environment.

The Committee would like to hear from you to the specific provision of the proposed legislation, which would promote effective competitive economic environment.

You may also suggest amendments to any of the provisions contained in the Bill particularly concerning your mandate.

I would like to draw your attention to the Direction by the Speaker whereby the Memorandum submitted to the Committee as well as the

deliberation held at the sitting of the Committee would be a 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.

Now, I would request you to present your views to the Committee. Before your start your presentation, I would request you to kindly introduce yourself and your colleagues to the Committee. After your presentation, if the Members raise certain queries during the course of the deliberation or after that, please ask your team to note them down and send a written reply to the Committee within five days from today.

(INTRODUCTION OF WITNESSES)

SHRI DEVENDER K. SIKRI: Sir, thanks for your introductory comments and you also read out from the brief sent by us.

We have seen this Code from the point of view of the Competition Act of 2002, which came into effect in 2009. So, our idea is to see that it does not in any way impede or obstruct competition or promote any anti-competitive practices. From that point of view, I would say that the area of examination was not very fast but limited. What we find is that this Code, consolidates the existing laws relating to insolvency of companies, limited liability entities, unlimited limited partnerships and individuals, which are now scattered in a number of legislations. So, in that sense, bringing them under the umbrella of a single legislation is going to be extremely helpful.

Secondly, the Code also seeks to improve the handling of conflicts between creditors and debtors, avoid destruction of value. Otherwise, the asset used to get eroded absolutely. Sir, I had handled a sick unit when I was with a fertilizer company in Gujarat. I was also managing a scooter plant. I know how the assets got dissipated. They could never be put to any productive use. Sir, we had no clue as to how the liquidator accrued and how the liquidation was enforced. Now, that image came to my mind.

Sir, the Code distinguishes malfeasance *vis-a-vis* business failure and balances the interests of all stockholders including the alteration in the priority of payment of Government dues. It also seeks to establish an Insolvency and Bankruptcy Fund. So, I think, in all respects, our humble submission is that this is a very wonderful code which is being brought into effect, and it will improve the exit of insolvent companies very smooth, and at the right time. We were really impressed with the provisions in terms of that the person can even decide himself that he

wants to close and settle the debt. This is something remarkable. This option was not available earlier. I remember that in the scooter case that I had no option of closure and settling the debts, or if I was settling the debts, yet I had no control even on the assets. They were decided by the liquidator as to how to dispose of the assets and practically we lost Rs. 140 crores in those times, and the entire project did not get a pie out of it.

So, I think, in every respect, I find that this is something which will help in promoting competition, helping in filing of merger's proposal with us, wherever there is a need, and to that extent since it is in sync with the Competition law, we from the Competition Commission support it fully.

SHRI ANAND SHARMA: Would you suggest any amendment to the Code?

SHRI DEVENDER K. SIKRI: Sir, the only provision that we looked at is Clause 234. But then, there was a discussion in the Commission, especially on Clause 234. It says:

> "The provisions of this Code shall have effect, notwithstanding anything inconsistent therewith contained in any other law for the time being in force or any instrument having effect by virtue of any such law."

Now, the Commission looked at it and also compared it with what exist in the Competition Act. We have provided this under Section 60 and Section 62 in the Competition Act. Section 60 says:

> "Act to have overriding effect: The provisions of this Act shall have effect notwithstanding anything inconsistent therewith contained in any other law for the time being in force."

So, this is almost at par with Clause 234 of the Code.

Sir, I will now draw your attention to Section 62 of the Competition Act, which reinforces actually. It says:

> "The provisions of this Act shall be in addition to, and not in derogation of, the provisions of any other law for the time being in force."

The Commission debated whether this can also be added to reinforce so that there is no confusion left. But then, the view was that when

there is nothing inconsistent with the Competition law, why should we be insisting on reinforcement? That was the limited point we discussed. So, we did not press this point beyond this. Otherwise, if the hon. Committee feels that this can add further value, we are in agreement with that.

SHRI ANAND SHARMA: Since you do not have any reservation or concerns at all, you are supporting this Code.

SHRI DEVENDER K. SIKRI: Yes, we are supporting it.

SHRI ANAND SHARMA: In other laws, which you were referring to, in the Schedule, already 30 have been listed, where the repeal of the amendments will take place but we have not found anything involved in the Competition law.

SHRI DEVENDER K. SIKRI: Sir, there is nothing.

HON. CHAIRPERSON: Does the Ministry want to give a clarification?

SHRI AJAY TYAGI: I think, perhaps there is no need for further reiteration of the same thing. This provides that this Act actually will have an overriding effect over other laws. Saying it once is enough.

SHRI ANAND SHARMA: This will be followed by the repeal and amendments of the laws which would otherwise somehow not in sync with certain provisions of this Bill.

SHRI DEVENDER K. SIKRI: That is why we did not press.

SHRI BHARTRUHARI MAHTAB: In Section 31(1)(a) of the Code, about the Initiation of Liquidation, we would like to understand your views. Failure of resolution plan is not included as a ground for initiating liquidation under Section 33(1)(a). Don't you think this could cause confusion and delay? I am saying 'failure of resolution'. This Code also supersedes provisions of the Companies Act, 2013 relating to rehabilitation and winding in various firms dealt with in Sections 253 to 365. Should we believe that these automatically get repealed once this Code comes into effect?

SHRI DEVENDER K. SIKRI: Yes. This would receive precedence over that. That is what we understand. But we do not know the exact linkage with the Ministry. We have not seen them. But that is the implication we took. I am told that the Ministry is also coming tomorrow before the Committee.

SHRI P.P CHAUDHARY: About the functions of the Competition Commission, whether your functioning has nothing to do with the insolvency and bankruptcy?

SHRI DEVENDER K. SIKRI: Sir, *per se*, no.

SHRI P.P. CHAUDHARY: So, there is no question of conflict with the court. The powers which are required to be exercised under the court are entirely different.

SHRI DEVENDER K. SIKRI: Absolutely.

SHRI P. P. CHAUDHARY: Even you have read Section 60 saying that notwithstanding any provision contained in this Act will have overriding effect. It make no sense.

SHRI DEVENDER K. SIKRI: That was a general observation.

SHRI P.P. CHAUDHARY: So, you have nothing to do with the court.

SHRI DEVENDER K. SIKRI: We do not see anything, which is anti-competitive.

SHRI P.P. CHAUDHARY: Have you seen it?

SHRI DEVENDER K. SIKRI: Yes, Sir. We have examined in the legal and combination division. I myself have gone through all the provisions.

SHRI P.P. CHAUDHARY: So, you are not concerned with the insolvency and bankruptcy.

SHRI DEVENDER K. SIKRI: No, Sir.

श्री निशिकान्त दुबे: चेयरमैन साहब, आज जो एनपीए हो रहा है, मोर और लेस यह है कि यदि कंपनियां डूब रही होंगी तो यह bankruptcy and insolvency act उस पर लागू होगा। इसका एकमात्र ध्येय है कि कैसे मैनेजमेंट चेंज हो जाए, पैसा आ जाए, क्रेडिट करने वाले लोगों को पैसा चला जाए। जो 234 कह रहा है कि वह इस एक्ट का ओवरराइडिंग इफेक्ट है, तो कॉम्पिटिशन तो कहीं न कहीं मारा जाएगा। उदाहरण के लिए मान लीजिए कि स्टील सैक्टर है, सारे स्टील सैक्टर डूब रहे हैं। आज हिन्दुस्तान में एक या दो स्टील कंपनियां हैं, जो कि थोड़ा बहुत प्रॉफिट में चल रही हैं। हो सकता है कि मैनेजमेंट चेंज हो कर उन्हीं कंपनियों के पास चला जाए। इसी तरह से दूसरे सैक्टर में, सीमेंट सैक्टर होगा या कोई भी सैक्टर होगा जो मोनोपॉली आप देखने का प्रयास करते हैं, इसके बारे में कभी आपने सोचा है तो कॉम्पिटिशन कमीशन के हिसाब से इस पर राइडर होना चाहिए या नहीं होना चाहिए? आप जिस तरह से इसको आउटराइड सपोर्ट कर रहे हैं और जिस तरह से आपने कहा कि 60-62, उस हिसाब

से कभी देखा है कि इस पूरे एक्ट में ओवरराइडिंग इफेक्ट है कि मतलब वह पूरा का पूरा सब इसमें सबस्युम्ड हो जाएगा। जैसे पेट्रोकेमिकल का एक उदाहरण है कि एक पर्टिक्युलर कंपनी ही सब कुछ कर रही है तो उस तरह के सिचुएशन तो पैदा ही होंगे, रोज पैदा होंगे। उसके बारे में सीसीआई क्या सोचती है।

SHRI DEVENDER K. SIKRI: Sir, you have raised two very important points. I must respond to them. One is about merger and amalgamation that would depend on certain thresholds. If they second the threshold which is laid down in the Competition Act, they have to come before the Competition Commission for approval. At that time, we would examine the proposal in totality whether with the amalgamation and consolidation, what would be the impact on the market. We would see it minutely. That has to have the clear approval of the Commission before the amalgamation takes place.

SHRI NISHIKANT DUBEY: What is the time limit for that?

SHRI DEVENDER K. SIKRI: Sir, we have to clear it within 210 days maximum.

श्री निशिकांत दुबे: मतलब उनको पूरा प्रोसेस 270 दिन में पूरा कर लेना है?

श्री देवेंद्र के. सीकरी: सर, 210 दिन में करना है।

श्री निशिकांत दुबे: चेयरमैन सर, यदि ये 210 दिन में इसको पूरा करेंगे, पूरा जांच करेंगे तो 270 दिन वाला, जो कि कंसर्न्ड है कमेटी के सभी सदस्यों का, वह कैसे पूरा होगा? यह सबसे बड़ा सवाल है।

श्री देवेंद्र के. सीकरी: सर, 210 तो मैक्सिमम है। आज कमीशन का जो रिकार्ड है हम मैक्सिमम 20 डेज़ में क्लियर कर रहे हैं, यह मैं एवरेज़ समय बता रहा हूं, किसी में तीस, किसी में चालीस दिन भी होते हैं। हमारी कोशिश यही रही है कि जितने भी केसेज़ हैं, उनको जल्दी से जल्दी निकाला जाए। ऐसे केस जो कि इन्सॉल्वेंसी के आएंगे, इसमें तो सर्टनली हमारी भी कोशिश रहेगी कि जल्दी से जल्दी इनको पूरा किया जाए। So, that would be our endeavour. यही हमारी कोशिश रहेगी तो 210 दिन तो हमने शायद किसी भी केस में नहीं लगाए होंगे। कोई एक्सेप्शन केस होंगे, जिसमें आपको पब्लिक में जाना पड़ा आदि, उसमें काफी समय लगता है क्योंकि पब्लिक नोटिफिकेशन आदि निकालने पड़ते है, उसमें समय लगता है। In case of clear cases, we clear them very fast and we clear them in less than 20 - 20 days. So, I do not think there should be any conflict of time.

श्री निशिकान्त दुबे: इसमें मंत्रालय को यह नहीं लगता है कि एक टाइम लिमिटेशन सीसीआई को भी दे देना चाहिए, क्योंकि बाद में मैक्सिमम प्रॉब्लम्स यही होने हैं।

SHRI AJAY TYAGI: About this 180 days, which is extendable by 90 days, the resolution plan has to be approved; if it is not approved, then the only option is to go in for liquidation. Now, once the resolution plan is approved, that would have some ingredients that this way the resolution would be done. That has to be agreed by the Creditors' Committee. After that, implementation of that is outside 180 or 270 days. During that process, as the Chairman, CCI said, if there is an issue of amalgamation, merger or acquisition or competition, they would examine it.

SHRI ANAND SHARMA: Specifically speaking, if there are 10 case of insolvency or liquidation, how many would you, realistically, expect to be going to the Competition Commission?

SHRI DEVENDER K. SIKRI: Threshold is very high.

SHRI ANAND SHARMA: Absolutely, it is much higher.

SHRI P.P. CHAUDHARY: This is not within your jurisdiction as per the duties assigned.

SHRI DEVENDER K. SIKRI: Yes. The threshold is very high.

SHRI P.P. CHAUDHARY: But I do not think, you can perform these functions. It is completely a different type of competence. The Competition Commission is entirely for a different purpose.

SHRI DEVENDER K. SIKRI: Sir, they have to come to us only if there is a merger or acquisition and not otherwise.

HON. CHAIRPERSON: Thank you, Mr. Devender K. Sikriji and your team for your valuable contribution to the Committee. आप तो नए वर्ष में बने हैं, तो आपको बहुत-बहुत शुभकामनाएं। अगर फिर भी इस इकॉनमिक रिफॉर्म्स को ले कर आपको लगता हो, क्योंकि देश के आने वाले आर्थिक विकास के लिए एक बड़ा रिफॉर्म करने जा रहे हैं। एक लंबे समय से देश में इन्सॉल्वेंसी एक्ट था ही नहीं, जो था वह सन् 1909 और सन् 1920 का था। लिक्विडेशन और बाकी देरी वाले विषयों का आपका लंबा अनुभव रहा होगा। उसको ले कर नया इकॉनमिक रिफॉर्म्स देश की प्रगति के लिए हैं। आपका कोई बड़ा रिटेन नोट जैसा हम एक्सपैक्ट कर रहे थे, वैसा कॉम्पिटिशन कमीशन से आया नहीं है, इसलिए हम चाहेंगे कि पांच दिन के अंदर आपकी तरफ से एक वैल्यु एडिशन वाला नोट इस कमेटी को मिले, ताकि हम उसको कमेटी के सुझावों के संबंध में भी सम्मिलित कर सकें।

DR. BALACHANDRA MUNGEKAR: Chairman Sir, just permit me to speak. I would finish within half a minute.

I have seen the resolution. These 180 or 290 days are the matters of technicality. These are the time limits for completing the process. The substance of competition in consistence with economic reforms is that the elements of monopoly need to be removed. Now, in view of this, the competitive economy – as we understand the economic theory – always tends towards monopoly under one pretext or the other, largely because of the viability, sustainability and economies of scale. Now, under these conditions, keeping your technicality apart, 200 days or four years, for example, what are the implications of the threshold limit for expanding the whole essence of competition? The acquisitions and mergers are taking place in the Indian economy basically for various purposes.

In view of that, would Competition Commission review the threshold limit to give more scope to the competition? We do not want answer immediately but this should be the substantial issue other than technicalities so far your commission is concerned.

SHRI DEVENDER K. SIKRI: I would like to explain that we are not against monopolies. Now, we are looking at them so that they can grow as long as if it is not indulging in any abuse of dominance or not entering into any anti-competitive agreement. We are not against becoming anyone a dominant player. So, the tune and tenor of the new act is very different from the Monopolies and Restrictive Trade Practices Act. If they amalgamate or if they acquire or if they are going to adversely effect the competition in the market, then it is called appreciable adverse effect on competition (AAEC) and in the Act, there is a complete regime laid down how to assess AAEC. There is a lot of economics analysis that go into this. So, we now evaluate entire proposal from that point of view. If there is no appreciable adverse impact and the *prima facie* case is clear, we clear it in 30 days time. Only when we see some AAEC is coming into it, then the 210 days limit starts operating.

We want the economy to grow and we also want the country to grow. So, we supported it very liberally. But only when there is an appreciable adverse impact on competition, then we step in and then of course, the process takes some time. So, Sir, there is nothing like monopolies which we are against. If they are within the threshold or even when you do not become a dominant player and you are not creating a threat in the market, you may see industrial growth.

DR. BALACHANDRA MUNGEKAR: The term monopoly and perfect competition are the most irrelevant terms in the economic theory. In

the entire history of capitalized development, neither there was monopoly nor there was always oligopoly and there was perfect competition beyond imagination.

SHRI DEVENDER K. SIKRI: That is an ideal concept. We agree with that. We are of the view that perfect competition can never be there.

SHRI ANAND SHARMA: When it comes to acquisition and knowing companies to go, particularly with regard to the acquisition of planning enterprises and with the investments coming in sensitive sectors, this has been a nature of intense debate within the Government. An Indian company was acquired by the US multi-national company. We as professionals would know some of the strong differences within the Government and among the investors. But that went ahead. We allowed it. Eventually, US did not allow that company to monopolise. Our concerns were emanating from different points. That was the public good and in the public interest. That is the access to the life saving medicines at affordable prices and this would have taken that way. Our concern was not about a company being allowed to acquire or to go. When it comes to the Competition Commission work, they will also reflect on this aspect that if it is actually a merger or a takeover is taking place in a sensitive sector, it is not just economic decision. There are other dimensions which come into for a final verdict.

SHRI DEVENDER K. SIKRI: I am sorry. I am depending on the input from my colleague. She is aware of the details. In the mylar case. As far as the US markets were concerned, there were appreciable adverse impacts, so they did not allow. But as far as our market was concerned, this was not affecting us.

SHRI ANAND SHARMA: I am on a different point. If it is in a sensitive sector, for example, when it comes to drugs, pharmaceutical industry is a very most strategic sector. India has serious concern for future particularly when it comes to pharmaceutical industry. It lost its capacity even to make Pencillin for one or two facilities. This is very energy intensive. China which came in and China has virtually taken over the Indian market there and also the ingredients when we talk of EPIs, they are also coming from outside. So, the pharmaceutical industry is dependent. When it comes to these medicines which are for life threatening diseases, that is as far as talking of the oncology verticals and injectible which have been taken over one after the other, that is where the concerns emanated. Actually, I was celebrating when the US decision came because we were opposing. So, it was just purely an academic query. Do you also in your work look at that dimension and

consult the concerned Ministries or the institutions that were in particular acquisition is going to effect when it comes to the public policy?

MS. ARCHANA GOYAL GULATI: Respected Chairman, you are very right. When we look at sectors particularly pharma sector, we would look very carefully, a little bit more carefully than we would look at non-sensitive sector like just to consumer goods in general. In pharma sector including this particular case, we look very carefully particularly if there are patented products in world, there are pipeline products, research and development issues are involved. Every geographic market however, for example, as explained earlier by the Chairman CCI, the US conditions will be different from the Indian conditions. So, to that extent, there would be differences. We also looked in this particular case that the non-compete that means the Indian promoter should not be prevented from competing, so we look very carefully at the duration of the non-compete, the scope of the non-compete and in general, though we cannot look at strategic issues, we are guided by the factors set out in the Act that is sub-section 4 of the Section 20 of the Act lays down how the Commission is to assess AAEC but we are very careful when we are looking at certain sectors for example, pharma.

SHRI ANAND SHARMA: There have been cases. I just want to confirm for my benefit. When Competition Commission has actually disproved of acquisition or merger, was there a non-compete clause to the proposal?

MS. ARCHANA GOYAL GULATI: Sir, we have not had any case where we have actually disproved the combination which we call but we have asked for changes in the non-compete clause.

SHRI AJAY TYAGI: In addition to this, with all these liberalisation and FDI policy which the Government has done, in pharma sector while in the green field, it is 100 per cent automatic route. In brown-field, any percentage has to be through FIPB route and in that, conditions for no non-compete clause, expenditure in R&D etc. are provided for. There are four conditions which are put. If those conditions are not there, then approval is not given.

SHRI ANAND SHARMA: I am saying this because this particular went to a small group chaired by the Prime Minister. I was there as the Finance Minister. What you are referring to about the brown-field and also the conditionality of the FIPB approval, it is because of me, I dug in my heels.

HON. CHAIRPERSON: Thank you very much. We hope we received your written submission also.

(THE WITNESSES THEN WITHDREW)

WITNESSES EXAMINED

1. Shri Heera Lal Samariya, Central PF Commissioner, Employees' Provident Fund Organisation
2. Shri Hemant Contractor, Chairman, Pension Fund Regulatory and Development Authority.

HON. CHAIRPERSON: Shri Heera Lal Samariya, Central PF Commissioner and Shri Hemant Contractor, Chairman, PFRDA, I welcome you to the sitting of the Joint Select Committee.

As you are aware, the Joint Committee is examining the Bill titled 'The Insolvency and Bankruptcy Bill, 2015'. The Employees' Provident Fund Organisation and Pension Fund Regulatory and Development Authority are statutory bodies set up under the EPF Act, 1952 and PFRDA Act, 2013 respectively. Clause 53 and 178 of the Insolvency and Bankruptcy Code, 2015 provide the priority for distribution of asset of the company on liquidation and repayment of debts of the bankrupts respectively. Being the important Government bodies to protect the interest of the employees, workers in the matters of Employees' Provident Fund and Pension Scheme, the Committee have decided to hear your views particularly on clause 53 and 178.

The memorandum containing the written comments and suggestions in this regard have been received in the Secretariat and circulated to the Members of the Committee also.

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 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 EPF and EPFO to present their views before the Committee followed by presentation of PFRDA. It will be appreciated if you confine your suggestion to the various clauses of the Bill particularly containing your mandate. The Members may be raising certain queries during the course of deliberation. Please note down and send a written reply to us within five days from today for all the queries raised by the hon. Members.

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

(INTRODUCTION OF WITNESSES)

SHRI HEERA LAL SAMARIYA: Hon. Chairman and respected Members of the Committee, I feel honoured on the invitation of the Committee to be present as a witness.

I would like to bring to the kind notice of the Committee that EFP and MP Act, 1952 is a piece of social legislation to provide for PF to the pensioners and insurance benefit to the employees. The contributions are made by the employers and employees to the Scheme. The employees get a lump sum amount as a provident fund as well as pension when he retires. In case of death of an employee, his family gets the PF and insurance benefits.

Respected Sir, since it is a social security legislation, provisions have been made under section 11 of the EPF and MP Act for payment of EPF dues in priority to all debts. In case of distribution of property upon insolvency of an establishment or winding up of a company as provided under Section 327 of the Companies Act, 2013, which was Section 530 of the old Companies Act, 1956, and even the hon. Supreme Court also held that the EPF dues shall get priority over all other debts including secured creditors.

Sir, in the proposed Insolvency Bankruptcy Code 2015, the priority of payment of debts is changed and EPF dues has been placed on a lower priority and the Eleventh Schedule of the Code proposes that Section 326 and 327 shall not be applicable in the event of liquidation under the Code. By this the provisions of Section 11 of the EPF and MP Act are rendered null and void. The proposed Code will have an adverse effect on the social safety net provided by the legislation to the poor workers.

श्री निशिकांत दुबे: 178(2) को ज़रा पढ़कर बताइए।

SHRI HEERA LAL SAMARIYA: Section 178(2) reads as follows: "The debts in each clause is specified in sub-section (1) shall rank in the order mentioned in that sub-section but debts of the same clause shall rank equally amongst themselves and shall be paid in full unless the estate of the banker is insufficient to meet them in which case they shall abate in equal proportion between themselves."

श्री निशिकांत दुबे: जो आपका कंसर्न है, उसको तो फुलफिल कर ही लिया है। यदि पूरा फुलफिल नहीं हो रहा है तो सबको बराबर डिस्ट्रीब्यूट कर दिया जाएगा। इंप्लाइज को भी पैसा चला जाएगा और सभी लोगों को पैसा चला जाएगा। 178(2) तो आपके कंसर्न को देख

ही रहा है। आपका प्रैजैंटेशन मैंने इसलिए रोका कि आपका जो मेन कंसर्न है, 178(2) में आप क्या और इनक्लूड करना चाहते हैं, वह बताएं तो उससे कमेटी को सुविधा होगी।

SHRI HEERA LAL SAMARIYA: My request is that we do not get the priority.

श्री निशिकांत दुबे: 178(2) कह रहा है कि सैक्शन 1 में जो चीजें हैं, वह सबमें ईक्वली डिस्ट्रिब्यूट कर देंगे। तो उसमें तो सबको ईक्वल पार्टनर बना दिया। उसमें एक नंबर पर कौन है, दो नंबर पर कौन है, उसका तो झगड़ा ही खत्म कर दिया है।

SHRI HEERA LAL SAMARIYA: But we do not get the priority.

HON. CHAIRPERSON: You want your priority.

SHRI HEERA LAL SAMARIYA: We want our priority because it is workers' money.

श्री निशिकांत दुबे: पहले नंबर पर वर्कमैन आना चाहते हैं, यह इनका कंसर्न है।

SHRI HEERA LAL SAMARIYA: Yes, Sir.

SHRI AJAY TYAGI: Section 36(4)(a)(i) relates to actually assets held in Trust for any third party which are excluded from liquidation estate. It is on page 25. Also sub-clause (iii) is, contribution in respect of employees' pension. The idea is not to have EPFO money to be part of liquidation. So, those have been kept apart from the liquidation.

SHRI NISHIKANT DUBEY: Yes. ये जो कह रहे हैं, यह सही है। He is right. 36(4) talks of assets held in Trust for any third party. The EPFO is a Trust. उसमें जो पैसा है, उस पैसे को तो ये ला ही नहीं रहे हैं। इनका कोई मतलब ही नहीं है। इंप्लाई का जो पैसा है, वह इंप्लाई का पैसा है। ये तो केवल कह रहे हैं कि जब कंपनी बंद हो जाएगी तो 12 महीने की सैलेरी की बात ये कर रहे हैं। सैलेरी का पेंशन से कोई मतलब नहीं है, ईपीएफओ से कोई मतलब नहीं है। 36(4) क्लियर है।

SHRI BHARTRUHARI MAHTAB: The concern which actually is being expressed is: does this provision, as Mr. Tyagi read out of 36(4)(a) overwrites the Supreme Court decision, once we implement this as a law? That is their concern. As Nishikant ji very rightly pointed out and you have also mentioned about it, our interest would be to protect the workers' right. That is the point which is being said. Of course, Jayadev ji has one more question relating to SEBI because that did not strike us during that time. There has been a mentioned of the Supreme Court judgement by PFRDA. Can you just explain your views about that?

SHRI AJAY TYAGI: What we are saying is that in case of liquidation, that will be the priority under Section 53 for corporate and 178 for individual bankruptcy. But what will be the liquidation estates. Like in case of SEBI in consultation with the financial sector regulator, in respect of regulated intermediaries and entities, they can be kept out. There it is work in consultation. But here it is a straightaway provision. So, there is a provision which says: (i) assets held in trust for any third party; then (ii) contributions in respect of employee pensions. It is mentioned in 36(4)(a). So, these will not be part of the liquidation. Whatever money is there with the corporate to be divided amongst various secured creditors and all, will be kept aside for the simple reason that this belongs to the employees.

SHRI P.P. CHAUDHARY: I think this is the interpretation which you are giving. The expression here is 'assets held'. The PF not paid is a different thing. What they are saying. They are saying 'PF not paid'. That is not common with the assets held. It is because if PF is not paid, that will not come under the category of assets held.

HON. CHAIRPERSON: In that case they have to take action against them.

SHRI P.P. CHAUDHARY: They are saying it on the question of priority. You want to include the term 'PF not paid' and here the expression is 'assets held'. The question is whether the 'PF not paid' amount comes under the category of 'assets held'. It will not.

SHRI AJAY TYAGI: It does not. Sir, let me just submit, without waiting for a company to come to liquidation, that should be regularly seen. That is a very long drawn process.

SHRI P.P. CHAUDHARY: We are only talking about the priority and nothing more than that.

SHRI AJAY TYAGI: My simple submission is that this is the requirement which should have been done much before a company comes for liquidation.

HON. CHAIRPERSON: We are making a law which itself is an extraordinary step. Whenever a company is set, it does not want to go in for insolvency. But if the circumstances arise and the funds of the employees are not deposited, in that situation it is the requirement.

SHRI AJAY TYAGI: Let me give a quick submission. One is, here we are saying that there is an easy and quick trigger. In case of single

default anyone can go for initiating bankruptcy. What is more important is 'while' it is not in the Companies Act, as an operating creditor, even the employees and workmen can also go for initiating it. What I am saying is that it provides for quick initiation, which can be done even by a workman. It provides that in 180 days it should get decided, either rehabilitated or liquidated. So, it is a very quick process. If someone has been violating those laws for much before it went for trigger for insolvency, then those laws have to take care of those things. But what we are providing for is that even for single default a workman can also initiate insolvency proceeding which has never been provided in any other law.

DR. BALACHANDRA MUNGEKAR: Tyagi ji is mentioning the procedural matter. Again we are counting it in terms of days. Earlier they were talking about threshold limit. Strategic Rs. 10 crore is more important than even Rs. 1000 crore of non-strategic investment. The question was asked whether the 'assets held' were different from 'PF paid' or not. There are hundreds of instances in the country where the employers neither paid their own contributions nor the contributions paid by the workers and employees. You are saying that it is a long drawn process. There are several reasons. The point is how to take care of it. I do not know how but the concern raised by the Provident Fund Authority is absolutely logical. Their concern is whether they will be ranked in the same proportion or they will be getting the priority. The point no. 36 which you mentioned, there also they are not getting priority. Again you are differentiating between 12 months wages. Last time we discussed this point which says: 'any amount due to the State Government and the Central Government in respect of the whole or any part of the period of two years before the liquidation commencement date'. For the Centre and the State Government, which are the sovereign authorities, two years have been mentioned and for workers, who have no shelter, no security, only 12 months are mentioned. How these anomalies should be allowed in the original text of the law itself. I am of the opinion that the workers are indispensable part. They are most vulnerable sections. The position of the unorganised workers is even worse. Almost 92 per cent workers in our country are unorganised, without social protection. So, the question is that we have to incorporate serious concerns, if possible, on priority basis for workers and the employees.

SHRI AJAY TYAGI: Of course, the hon. Committee's considered view is that under Section 36(4)(a)(iii) contributions in respect of employee pension also is one item which is mentioned. Now, the case, where the employer is not really contributing its share or is even using the

employees' contribution for something else, is a serious violation of the labour law. The assets held in trust for the third party will be kept outside the liquidation state.

As regards the priority is concerned, the Government's priorities have been lowered down. Two years or even three years will come only once it actually takes care of 12 months salary of employees and workers. So, when you say that 12 months for workers and two years for Government dues, you will get two years only when you take care of 12 months.

DR. BALACHANDRA MUNGEKAR: Where is it mentioned in this Act?

SHRI AJAY TYAGI: I will tell you that it is mentioned. Waterfall Mechanism is that you will reach Government dues only when you have paid for 12 months to workmen and employees. That money may not be sufficient after paying to them for 12 months to come to the Government level at all.

DR. BALACHANDRA MUNGEKAR: If the money is not sufficient to pay even for 12 months, what will happen then?

SHRI AJAY TYAGI: If it is sufficient for six months, they will be paid for six months. Whatever money is available, it will be paid only for that in that priority.

HON. CHAIRPERSON: Is PF also included in the salary for 12 months?

SHRI P.P. CHAUDHARY: Chairman Sir is correct. What you are reading is contribution in respect of employees' pension.

The question is whether this PF has anything to do with the pension because pension component is entirely different from the PF. That is why, Shri Mahtab referred to the Supreme Court judgement. The Supreme Court is very serious about the PF. You have also referred to the Directive Principles of State Policy.

SHRI ANAND SHARMA: PFRDA Chairman may kindly enlighten us.

SHRI HEMANT CONTRACTOR: Sir, I will talk more about the Government pension because that is where we are largely involved. Prior to 2004, the entire Government Provident Fund Pensions were handled by the Government itself. That was under the old Defined Benefit Scheme in which the Government employees were paid pension based on certain formula, which was roughly about 50 per cent of the

last drawn salary. Since this was going to be too burdensome for the Government, there was a change made in 2004 and it became a Contributory Pension Scheme. Now, we deal only with pension fund. So, it became a Contributory Pension Scheme under which the employees started making contributions and it was also supported by the Government by making a co-contribution. This is what we handle. These moneys are invested in the market and there is no guaranteed pension here. Whatever returns are generated by the market, they are given to them by way of a pension. Basically, what we handle is the pension payable largely to the Government sector and later on, we opened it up for the voluntary sector also. But our role is confined to pension. We do not handle the provident fund at all.

SHRI P.P. CHAUDHARY: So, it is clear that pension and provident fund are separate.

SHRI HEMANT CONTRACTOR: Yes.

SHRI HEERA LAL SAMARIYA: Sir, that is why, I was proposing that this Code will have an adverse affect on the social safety net that is provided by the legislation to the poor workers and it will be highly detrimental to the interest of the workers.

Sir, I would just like to say about the PF and the pension.

SHRI ANAND SHARMA: It would be better if you confine to your organisation.

SHRI HEERA LAL SAMARIYA: Yes, Sir.

The employee contributes 12 per cent of his wages towards the provident fund. The employer also contributes 12 per cent where 8.33 per cent goes for the pension and 3.67 per cent goes for the PF. If the employer goes insolvent and has not paid amount to the worker and in such a case, if we do not get priority, it would be an injustice to the workers. It cannot be treated like that because this is part of the workers' wages.

SHRI P.P. CHAUDHARY: It will not only be an injustice, but it is against the mandate of the Supreme Court judgement also.

श्री निशिकांत दुबे: चेयरमैन सर, इसमें जो श्री त्यागी ने कहा, वह महत्वपूर्ण है। यह बैंकरप्ट्सी और इंसॉल्वेंसी तो तब लागू होगा, जब कंपनी पूरी डिफॉल्ट में चली जाए। इनका जो एक रेगुलेटर के नाते या एक कलेक्टर या ट्रस्ट के नाते जो काम है, क्या वे यह नहीं देखेंगे

कि यह जो कंपनी है, वह इम्प्लॉइज के कंट्रीब्यूशन के बाद अपना कंट्रीब्यूशन दे रही है या नहीं? जो असली सवाल है, वह यह है कि क्या ई.पी.एफ.ओ. वाले यह देखेंगे कि नहीं? सबसे पहला सवाल तो यह है कि कर्मचारियों को पैसा मिल रहा है या नहीं, यह इनको पता चलेगा, क्योंकि यदि कंपनी डूबने की स्थिति में होगी, तो सबसे पहले कर्मचारियों का वेज कट होगा कि आपको आपके वेतन का 30% देंगे, या 40% देंगे। वेतन का जो 12% ई.पी.एफ.ओ. फण्ड में जाता है, तो क्या आप यह देखेंगे कि उसे वह कर्मचारी दे पा रहा है या नहीं? फिर वह जो इम्प्लॉयर है, वह इसका कंट्रीब्यूशन दे रहे हैं या नहीं। उसके लिए जो उन्होंने कहा कि आपके पास तो संसद की तरफ से कानून बनाकर आपको दिया हुआ है। जब आप इस एक्ट के आधार पर अपना पैसे लेने का प्रयास करेंगे तो आप पहले संसद के कानून को क्यों नहीं लागू करेंगे? आपके पास तो वह टूल पहले से मौजूद है। आपके उस टूल को यह एक्ट कहां खत्म कर रहा है?

सर, ये जो प्रॉयोरिटी की मांग कर रहे हैं, तो प्रॉयोरिटी तो तब होगी।

माननीय सभापतिः क्या आप कुछ कहना चाह रहे हैं?

श्री अजय त्यागीः सर, अगर कोई पिछले पांच-छह साल से अपना कंट्रीब्यूशन दे ही नहीं रहा है और फिर छह-सात सालों के बाद उसकी लिक्विडेशन की बात आ रही है, तो अगर वह इनकी लाएबिलिटी हो जाएगी, तो फिर सिक्योर्ड क्रैडिटर्स को क्या मिलेगा? अगर उनके कानून का उल्लंघन पांच-छह या आठ सालों से हो रहा है और अगर आप इसके माध्यम से सेफ्टी नेट को निकालने की कोशिश करें, तो फिर इसमें सिक्यूरिटी क्रैडिटर्स को क्या मिलेगा?

श्री भर्तृहरि महताबः प्रश्न यह नहीं है कि वह करे या न करे, बल्कि प्रश्न यह है कि ग्रेडेशन में यह तो है कि जो उनका ड्यू है, वह उन्हें मिलेगा। पर, सुप्रीम कोर्ट का जो डिसीजन है कि ये प्रॉयोरिटी में पाएंगे, तो मैं यह समझना चाहता हूं कि once this Code comes into operation जो प्रॉयोरिटी सुप्रीम कोर्ट ने दे रखी है, वह प्रॉयोरिटी डायल्यूट हो रही है या नहीं? बस इसके बारे में बताइए। जो उनका ड्यू है, उससे कोई इन्कार नहीं कर सकता। वह तो होगा ही। वह उन्हें कितना मिलेगा, कैसे मिलेगा, तो वह जैसे इन्कम टैक्स वाले अपने हिसाब से निकाल लेते हैं, वैसे ही ई.पी.एफ.ओ. वाले भी निकाल लेंगे। It all depends on how much arrangement they have with the bank. आपने प्रोवीजन में यह जो एक, दो, तीन, चार करके लिखा है- contribution in respect of employee pension. यह तो अलग है, एश्योर्ड है। दूसरा है- other contractual arrangements which do stipulate transfer of title but only use of the assets. यह बाद में लिखा है। जो वकील लोग हैं, वे तो इनका एक्सपैन्शन कर सकते हैं कि यह कहां-कहां तक जाएगा।

श्री अजय त्यागीः सर, उच्चतम न्यायालय आर्डर से इसे हम एक बार पढ़ लेते हैं। हमने अभी तक इसे नहीं पढ़ा है। हमारा जो कंसेप्शन है, वह यह है कि यह तो स्टेट से बाहर है। इसे तो देना ही देना है। लेकिन, अगर कोई लम्बे समय से इसे वॉयलेट कर रहा है और फिर इसकी लाएबिलिटी ही इतनी बन जाएगी, तो वह तो दूसरा मुद्दा है। हम इसे एक्जामिन करेंगे।

माननीय सभापतिः त्यागी जी, लाएबिलिटी बन जाए, यह भी हमारा एप्रीहैन्शन ही है। विषय यह है कि जब आप रिफॉर्म्स के ऊपर आते हैं, तो सोशल सिक्यूरिटी के बिना कोई रिफॉर्म नहीं हो सकता, नहीं तो एक नया अनरेस्ट पैदा हो जाएगा। अभी तो समस्या यह है कि केवल इंवेस्ट करने वाले ही नहीं, बल्कि जो श्रम लगाने वाले लोग हैं, उनका भी भविष्य सुरक्षित नहीं है। आप जजमेंट को पढ़ कर अपना लिखित जवाब दीजिएगा कि हम सोशल सिक्यूरिटी को कितने बेहतर तरीके से एड्रेस कर सकें।

श्री सुभाष चन्द्र बहेड़िया: सभापति महोदय, पी.एफ. ऑथोरिटी को काफी अधिकार मिले हुए हैं। उन्हें यह भी अधिकार है कि अगर कोई डिफॉल्ट करता है, तो वे एक-डेढ़ महीने में उनकी प्रॉपर्टी को भी सीज कर सकते हैं। वह लिक्विडेशन में जाए, इससे पहले वे यह क्यों नहीं कर दें?

श्री आनन्द शर्मा: अगर आप अपना काम ठीक करेंगे तो आपके पास पावर्स हैं। छह साल तक कैसे कोई डिफॉल्ट करेगा? If you allow this, it means that you are not doing your duty.

श्री सुभाष चन्द्र बहेड़िया: सभापति महोदय, इवेन उन्हें उसे अरेस्ट करने का अधिकार है, अगर वे एक महीने में पेमेन्ट नहीं करते हैं। वे उस पावर का यूज कर सकते हैं।

SHRI ANAND SHARMA: They have the powers.

SHRI NISHIKANT DUBEY: Yes, they have the power.

SHRI P.P. CHAUDHARY: Shri Tyagi, there is a consistent view taken by the Judiciary even in case of Government employees – Central Government or State Government – that in case of recovery from the employee, you can recover anything, but you cannot recover from his PF. The PF is sacrosanct and very important. We are not talking of the employees of the Central Government or the State Government; we are talking about the workmen.

DR. BALACHANDRA MUNGEKAR: In addition to what has been said just now, not only recovery cannot be made from the Provident Fund, but even if the worker is indebted to somebody, then more than 1/3rd of the total recovery from the salary of the worker also cannot be recovered because the family is having a claim on the wages. Wages belong not only to the worker, but it has family member's claim also. It is because the worker is working because family members including wife and children are supporting him and that is why he is working. It is much deeper than the Supreme Court judgement. It will be again the principle of natural justice.

SHRI HEERA LAL SAMARIYA: Sir, my request is that priority can be given because the Supreme Court judgement is also there.

HON. CHAIRPERSON: Priority to you also. What about your inaction? Who will take action against you?

DR. BALACHANDRA MUNGEKAR: It is right. It is because they are not using their powers.

HON. CHAIRPERSON: It is a due diligence.

SHRI HEERA LAL SAMARIYA: Sir, actually, our officers are there.

HON. CHAIRPERSON: You have put your point, but please send us in writing specifically in which section what you want to add. It is not an alternative that you have not recovered and alternatively you have recovered from there. What is additional in your Act and not alternatively that you want to add?

SHRI BHARTRUHARI MAHTAB: Actually, we are in the making of a law and here a concern, as you have rightly put forth, अगर हम कुछ रिफार्म ला रहे हैं, प्रोग्रेसिव रिफार्म को अनडू तो नहीं कर रहे हैं, यह एक प्रश्न हमारे सामने है। Do not give us directly an instant answer, but let us understand from the Law and Justice Department, Legislative side, that they must have gone into this aspect. You give that in writing examining this issue because ultimately जो मैं बाद में कहना चाहता था, later on to you that there is also a provision, I think concerning Mr. Tyagi also, and an issue also is coming up whether the Parliament is competent enough to go into insolvency. This also needs to be tackled in our Report because I will be putting that question to elucidate answers from the concerned Department because this question, of course, is not being debated publicly, but let us understand this limited point that has been put forth by EPFO mentioning about the Supreme Court judgement. Does it contravene or override the decision of the Supreme Court? Parliament, of course, can formulate a law, but it should not get stuck up again in the Supreme Court. This should be our concern. Thank you, Sir.

SHRI HEMANT CONTRACTOR: Sir, I represent the PFRDA. This is an Authority, which was set up in 2004, and we largely deal with the pension contribution of the Government employees. All Central Government employees are covered under our scheme and all States and Union Territories, barring two States, have joined the National Pension System.

The funds that we manage, 90 per cent of the funds belong to this category of subscribers, namely, State Governments and Central Government because later on the scheme was opened up to the private

sector also. So, now 10 per cent of the total corpus that we manage are coming in by way of contributions from the private or voluntary sectors.

These contributions, that we receive, are invested in the market and almost 1/3rd of the investments that we make go in investments in corporate bonds. This Bill impacts us to the extent of the bankruptcy of these companies in which these funds are invested. So, should the investee company, in which our pension funds are invested, go bankrupt, then our plea is that since these funds represent the long-term savings and pension contributions of large number of people, mostly, Government employees, we should be given a priority in the settlement of dues under the liquidation process. It is because the money that is invested in the corporate bonds represents the pension savings and contribution of largely Government employees. So, that is our case.

SHRI BHARTRUHARI MAHTAB: But it is an individual issue if individual employees or workers of the Government invest in those. It is not compulsory that they have to invest in PFRDA.

SHRI HEMANT CONTRACTOR: No, Sir. It is mandatory for all employees who have joined Government service from 1.1.2004.

SHRI BHARTRUHARI MAHTAB: I was under the impression that it was optional.

SHRI HEMANT CONTRACTOR: It is not optional now. It is mandatory.

SHRI P.P. CHAUDHARY: Can you demonstrate that pension and Provident Fund is a part of the fundamental right? If it is so, then it will automatically come over the secured creditor because for the secured creditor to realize the money is not a fundamental right.

SHRI ANAND SHARMA: Actually, you said that 1/3rd of the corpus held by you currently are invested in the corporate bonds. Recently, there has been some decision about where the pension fund will get invested. Are you opening it wide or are you having a judicious and cautious approach when it comes to investing the pension funds? Do you invest with LIC or UTI where it is most secured or investing in the corporate bonds of companies which already have huge debts that they owe to the public sector banks or have heavy external commercial borrowings? So, while investing in the corporate bonds is the Authority cautious that you do not buy corporate bonds of such entities?

SHRI HEMANT CONTRACTOR: Absolutely, Sir. In fact, we have very strict prudential guidelines in place and one of the most important

criteria that we go by when we invest in corporate bonds is the ratings. We do not invest in any corporate bond, which has the rating less than 'AA'. So, 'AA' is the minimum that we go to. So, in terms of safety, it is a fairly safe portfolio.

श्री निशिकांत दुबे: आप यह कहना चाहते हैं कि आप सुपर सिक्योरिटी सिस्टम लागू करना चाहते हैं अपने इनवेस्टमेंट के ऊपर।

SHRI HEMANT CONTRACTOR: Sir, we are seeking a parity with the...

श्री निशिकांत दुबे: यह प्रोविजन है इनसाल्वेंसी एक्ट में 2 ए में, कि सारी कंपनीज और सारी चीजों पर यह लागू होगा। क्या आपने अध्ययन किया है कि अमेरिका और यूरोप में जो इनसाल्वेंसी और बैंकरप्सी एक्ट है, वह इस तरह के जो फंड हैं, जैसे आपका सिक्योर्ड फंड है, उसके बारे में उनकी क्या सोच है? उनके यहां जो लॉ है, उससे कंपेयर करके आप बतायेंगे, तो हम लोगों को ज्यादा सुविधा होगी। हम अपनी कंट्री में एक नया प्रोविजन यदि लागू करने का प्रयास करेंगे, क्योंकि आपने इनवेस्ट किया, आपका जो पोर्टफोलियो मैनेजर है, उसने गलती की, इसको आप मानने को तैयार नहीं हैं। आपको फाइनली जो पैसा दे रहा है, आप कह रहे हैं कि ठीक है कि सिक्योर्ड पैसा नहीं है, लेकिन आपके ऊपर वह ट्रस्ट करके दे रहा है कि आप मेरा पैसा यदि कहीं लगाएंगे तो उसका रेट ऑफ रिटर्न बढ़िया होगा और फाइनली वह बुढ़ापे का सहारा होगा। यही इसके पीछे का रीजन है। जो आपका पोर्टफोलियो मैनेजर है, उसने यदि गलत ढंग से किसी कंपनी को, क्रेडिट रेटिंग एजेंसी में ए कर दिया, बी कर दिया, सी कर दिया और आपने इनवेस्ट कर दिया और आप अपने खतरे को इनसाल्वेंसी एक्ट के माध्यम से यदि लाना चाहते हैं तो अदर कंट्रीज में क्या है? यह आपको बताना चाहिए।

SHRI HEMANT CONTRACTOR: Sir, we will look into what the US practice is, but what I would like to tell you is that these are long-term investments. We invest in bonds or Government security for 15-20 years and at the time of investment it is a good decision. We go by all the norms that we set, but over a period of 10-12 years nobody knows what can happen.

HON. CHAIRPERSON: The point raised by our hon. Member is that we are a poor country and the money of workers must be secured. So, please send us good suggestions after doing a comparative study of the laws existing in developed countries. Please send it in writing to the Committee.

SHRI HEMANT CONTRACTOR: We will do that.

SHRI GOPAL SHETTY: Which are the two States which have not joined the scheme and what was the reason? What action have you taken since it is mandatory?

SHRI HEMANT CONTRACTOR: The two States which have not joined are West Bengal and Tripura. We have been taking it up with them for the last two or three years.

SHRI K.C. VENUGOPAL: What is their point of view?

SHRI HEMANT CONTRACTOR: They feel that the existing system which they have is basically...

DR. BALACHANDRA MUNGEKAR: That is not the reason. Both the States feel that if the pension funds are invested in market bonds, companies, etc., there will be uncertainty and volatility and there would not be any assured rate of return. That is the reason. When it is eight per cent, 8.5 per cent or whatever, that is an assured return. But they do not want their workers to be exposed to the market. That is the basic reason.

SHRI HEMANT CONTRACTOR: We have discussed with both the States. What they say is, "We will wait and see", and they do not give any definite answer.

SHRI BHARTRUHARI MAHTAB: When PFRDA was being discussed, as far as I recollect and Shri Nishikant Dubey can help me out, in the Bill form, at that time, there were a number of differences, dissensions and all that. One thing which the Committee at that point of time had insisted, and subsequently the law was made, that there has to be an assured source of return. A suggestion was made that what is being assured by EPFO has to be assured; and if somebody is going in for risk, then that can be left to the decision or discretion of the employee concerned. There were two provisions during that period of time, as far as I remember.

DR. BALACHANDRA MUNGEKAR: It is right.

SHRI BHARTRUHARI MAHTAB: Now, it is being said that it is mandatory. If someone who is employed after 2004 and for him it is mandatory, and if for someone who is employed before 2004, it is optional, I am not clear. In that respect, at least, you have to impress upon this Committee because once it becomes mandatory, then this insolvency, bankruptcy and all these will come into force. It has to be taken at a different platform. If it is optional, then why should it be that this insolvency and other things should become so compulsory that we have to prioritize it and get it done because he is taking a risk?

SHRI HEMANT CONTRACTOR: More than half of the portfolio is invested in Government securities.

SHRI BHARTRUHARI MAHTAB: Where you are investing, that is another part. The person who is contributing is our concern.

HON. CHAIRPERSON: Please note down these points.

SHRI ANAND SHARMA: You have certain guidelines when it comes to investment in certain portfolios. What has been your experience when it comes to assured returns?

SHRI P.P. CHAUDHARY: While dealing with this aspect of priority, we have to keep in view the social aspect of the entire matter and the constitutional mandate. Of course, I cannot say it is a constitutional mandate, but you can say that it is a part of the Directive Principles of the State Policy. It is an obligation on the part of a State which has to protect the interests of the workmen. Keeping this fact in view, we have to examine this issue of giving priority. One way, it is the secured creditors/commercial *versus* the social aspects. So, we have to weigh it in accordance with the mandate of the Directive Principles of State Policy.

HON. CHAIRPERSON: Thank you for your nice inputs and contribution. We await your written submission on this aspect.

One question raised by Shri Bhartruhari Mahtab is about the competency. The subject has been mentioned in the Concurrent List of the Seventh Schedule as Item No. 9.

SHRI BHARTRUHARI MAHTAB: Sir, I would like to just mention here that it is about partnership and individual bankruptcy. Partnership and individual bankruptcy are matters belonging to the State List.

HON. CHAIRPERSON: No, the same thing has been mentioned in the Concurrent List also as Item No. 9 — both bankruptcy and insolvency.

The Legislative Department will give a reply to it. I am only adding to it.

SHRI ANAND SHARMA: My submission is that you may kindly have it examined in depth and then give it to us so that we can go through it.

HON. CHAIRPERSON: I thank all the hon. Members for their contribution to the Committee. We will meet again tomorrow at 11 a.m.

(The Committee then Adjourned.)

PROCEEDINGS OF THE FOURTH SITTING OF THE JOINT COMMITTEE ON THE BANKRUPTCY AND INSOLVENCY CODE, 2015 HELD ON TUESDAY, THE 09TH FEBRUARY, 2016

The Committee sat from 1100 hrs. to 1425 hrs. in Committee Room No. 074, PLB, 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 Nishikant Dubey
6. Shri Anil Shirole
7. Shri Gajendra Singh Shekhawat
8. Dr. Sanjay Jaiswal
9. Shri Jayadev Galla
10. Ms. Sushmita Dev
11. Dr. P. Venugopal
12. Shri Bhartruhari Mahtab
13. Shri B. Vinod Kumar

Rajya Sabha

14. Shri Ajay Sancheti
15. Shri Naresh Gujral
16. Shri Anand Sharma
17. Dr. Balachandra Mungekar
18. Shri Ravi Prakash Verma
19. Shri Sukhendu Sekhar Roy

SECRETARIAT

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

Ministry of Finance
(Department of Economic Affairs)

1. Shri Ajay Tyagi	—	Secretary
2. Shri C.K.G. Nair	—	Additional Secretary
3. Shri Praveen Trivedi	—	Joint Secretary

Ministry of Law & Justice
(Legislative Department)

1. Dr. Mukulita Vijayawargiya	—	Additional Secretary
2. Smt. Veena Kothavale	—	Additional Legislative Counsel

JOINT PARLIAMENTARY COMMITTEE ON INSOLVENCY AND BANKRUPTCY CODE

Verbatim Proceedings

Date : 9th February, 2016

Time : 1100 hours

Venue : Committee Room 'G-74'
Parliament Library Building
New Delhi

PRESENT

1. Shri Bhupender Yadav — Chairperson
2. Shri Nishikant Dubey — Member

WITNESSES EXAMINED

1. Shri Gyanendra Kumar
   Member, Confederation of Indian Industry
2. Shri Sunil Kanoria
   President, ASSOCHAM

HON. CHAIRPERSON: I welcome the representatives of Confederation of Indian Industry, Federation of Indian Chambers of Commerce and Industry, the Associated Chamber of Commerce and Industries of India, International Centre for Alternative Dispute Resolution and also the officers from the Ministry of Finance and Ministry of Law and Justice. As you are aware, the Joint Committee is examining the Bill titled 'The Insolvency and Bankruptcy Code, 2015'. The proposed legislation seeks to provide an effective legal framework for timely resolution of insolvency and bankruptcy of corporate persons, partnership firms and individuals as well as to improve Ease of Doing Business and facilitate more investments leading to higher economic growth and development. Thus, corporates are important stakeholders of the proposed Bill.

CII, FICCI and ASSOCHAM are non-government organisations representing industry. ICADR is another organisation which works for the promotion and development of Alternate Dispute Resolution (ADR) facilities and techniques to facilitate early resolution of disputes and to reduce the increasing burden of arrears in Courts. In this background, the Committee have decided to hear your views on the Insolvency and Bankruptcy Code, 2015. The memoranda containing the written comments/suggestions in this regard has been received in the Secretariat and circulated to the Members of the Committee.

I would like to draw your attention to the Direction by the Speaker, whereby the memorandum 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.

Now, I request the representatives of CII to present their views followed by presentations by the other organisations one by one. The members may be raising certain queries during the course of deliberations, which you may kindly respond to. Before you start presentation, I request you kindly to introduce yourself and your colleagues to the Committee.

(INTRODUCTION OF WITNESSES)

SHRI SIDHARTH BIRLA: Sir, FICCI welcomes the move of the Government to introduce the Insolvency and Bankruptcy Code. Having said that, we believe that a lot of development will be needed in the entire eco-system apart from a good law but we will need a lot of development to the entire eco-system which is how the professionals behave, how the banks behave, how people take commercial decisions in order to have success of this law.

Certain barriers in both entry and exit for business have potential to hinder efficient operation of markets and can create negative consequences for both productivity and economic growth. In this backdrop, we see the successful implementation of this code as having greater reach and consequences compared to say just improving ease of doing business or tackling banking. The challenges currently includes Parliaments assent to the code, creation of appropriate implementation infrastructure and capacity including setting up of NCLT as well as the training and development of insolvency professionals. Though this may not be a panacea as some observers tend to articulate, it will be a major step ahead whether we call it reform or a better alignment with global business practice. We have already placed before the Committee our pressing concerns for your kind consideration. My colleagues have the necessary domain knowledge and experience to make the submissions and will place some important views for your kind attention.

SHRI PIYUSH MISHRA: Our first concern is in terms of efforts must have been made before Corporate Insolvency Resolution Process which is actually initiated. To ensure that, we recommend that a notice should have been served on the borrower in a prescribed format before even the application commences. So, we are proposing a two stage process where we first serve a notice in a straight format – a statutory notice giving details of debt, defaults, giving them an opportunity of hearing, pretty much of what Mardia Chemicals said in the context of securitisation that there must be some sort of dialogue before we initiate a Corporate Insolvency Resolution Process pursuant to a default. This should be followed when the actual Corporate Insolvency Resolution Application is filed. It should ideally be filed through the information. It should immediately be a part of information utility so that the other creditors as well as the debtors get the notice. That is a two stage process – initiation for about two or three weeks followed by CIRP process where the notices are served on all parties. What we will also suggest is in terms of disputed debt. Right now, the position is not too clear if disputed debt can also trigger CIRP process or not. In case of operational creditors, there is clearly a bar but in the case of financial creditors, the position is it says due in payable. Frankly, it is not due in payable if it is disputed. But it is open to interpretations. Therefore, we recommend that if there is a dispute pending and the disputed amount do not exceed the threshold for the CIRP which is one lakh rupees, then there should be a *prima facie* case on merits and that should be looked upon by the adjudicating authority before admitting the application because we are suggesting notices earlier, the evidence should be fairly clear because there would have been exchange of information through the information utilities on this and parties will be

allowed a right to hear in between. We also suggest that as part of the two week of the CIRP process that is prescribed right now, the borrower or any secured creditor should be allowed to make a representation.

The representation could be in written form. It need not necessarily be a hearing. Based on the evidence, the adjudicating authority might decide to give an oral hearing, hopefully limited to one hearing in this case unless the situation is fairly complex.

We would also request that the moratorium period right now starts from the date the application of CIRP is admitted by the adjudicating authority. It creates two problems. In the interim period, from the time the application is actually filed, creditors can take action in-between those two weeks' period. Though it is a short period, possibly action can be taken especially against cash lying in bank accounts, for example, where creditors have a charge. The moratorium period should, instead of starting from the date of admission of application, start from the date the application is made. That is why, the idea of a notice to the borrower earlier is fairly important in this context. The moratorium provisions currently do not envisage a kind of stay on contracts. I think, we need to build that. Otherwise, a lot of contracts might just get terminated by filing of the application. So, we should probably broaden the ambit of moratorium to include that.

More importantly, right now, the moratorium is worded in a very broad sense. Not only is it mandatory and automatic, there seems to be no discretion with the adjudicating authority to decide whether this particular kind of moratorium is required in this particular instance or not. So, we recommend that unless the operation of the order, otherwise automatic, can be modified by the insolvency resolution professional or the adjudicating authority, depending on the facts of the case so that they could at the time of passing of the order itself say that it may not apply in X, Y or Z instances, but otherwise 'yes'. For the first two weeks, it should be automatic and it should be broad-based.

The other issue that arises is that transactions in the ordinary course of business right now are not too clear as an exception in moratorium. That should also be part of the exception from moratorium.

The CIRP application should be without prejudice to underlying dispute. The merits are probably being decided by the relevant authorities. It should not really act as an operational suit; it should act as enforcement. The bar should be on enforcement and not on the actual process that is already underway.

In regard to meeting of creditors, one of the issues is 75 per cent of the creditors present and voting should be taken into account and not 75 per cent in total. Right now, the Code does not draw a distinction between meeting of creditors and committee of creditors. That bifurcation is important. On a day-to-day operation basis, you cannot run everything past entire creditors of the borrower. So, you need a representative committee of creditors where day-to-day operations and whatever delegation the meeting of creditors decides, is done to the committee of creditors which should consist of about five to ten people. However, the broader decisions should be taken in the meeting of creditors where the people present and voting should count rather than the overall value. Otherwise, the function of the meeting might be completely defeated if people are not participating in the meeting.

SHRI NARESH GUJRAL: Why should a power of attorney or somebody else not represent you?

SHRI PIYUSH MISHRA: Yes, it could be done through a proxy. As long as somebody is attending, it is okay because the clause is so broad that they could be retail creditors or bondholders who are just not interested in meeting. Proxy is perfectly fine but somebody should be present and voting on your behalf. If people choose not to participate, their votes should not be counted until and unless in a meeting, of course, where the tribunal thinks that it is not sufficiently representative, they could always reset a decision. For example, in the UK, they say that if 50 per cent of the creditors vote against that decision in the last meeting, it is annulled. So, we can think of those issues.

Now, I come to the liquidation priority. The undischarged debt of secured creditors pursuant to enforcement of security should be treated at least at par with that of unsecured creditors. So, secured creditors have enforced their security independent of the liquidation process. For the undischarged amount, they should at least be at par with unsecured creditors and not below them. Right now, they are below them as are Government dues. I think, in unsecured creditors, a clause of related party should be taken out as they probably have a different priority than the actual arm's length unsecured creditors.

We also need recognition of subordination arrangements in liquidation because in a lot of investment agreements, there is a liquidation priority. Certain preference shareholders want a priority over other preference shareholders. We should probably allow that contractually as long as they do not upset the priorities in other clauses. Right now, within the same class, people are not allowed to contractually agree to have a different priority *inter se*. I think, that should be permitted because internationally it is very well recognised that subordination is fine.

Another area of major concern is that financial creditors can cross default into the default of another financial creditor irrespective of whether that financial creditor has called in a default or not. That seems to be a slightly unfair provision from the industry's perspective because if the other creditor has chosen not to do anything about it, why should CIRP application be filed by another financial creditor whose default has not taken place in the first instance? There is no public interest element involved in insolvency. In fact, these are all private rights of creditors and debtors.

श्री निशिकांत दुबे: जो ऑथारिटी बनाई गई है वह फॉलो-अप करेगा, क्लॉऊज 7 के सेक्शन 4 में यह कहा गया है यदि किसी ने एप्लीकेशन दिया है इसमें क्या परेशानी है, यदि उसे लग रहा है डिफॉल्ट हुआ है उसमें क्या दिक्कत है, उसमें हमें विश्वास होना चाहिए। आरटीआई अगर कोई किसी के खिलाफ डाल रहा है तो किसी को परेशानी नहीं हो रही है।

श्री पीयूष मिश्रा: सेक्शन 7 में एक्सप्लेनेशन है हम चाहते हैं कि वह हट जाए इसमें कहा गया है कि अगर एक फाइनेन्शियल क्रेडिटर डिफॉल्ट करेगा तो दूसरा फाइनेन्शियल क्रेडिटर एप्लीकेशन डाल सकता है।

श्री निशिकांत दुबे: सेक्शन 7 का क्लाऊज 22 है, बरोअर नोटिस दे या क्रेडिटर नोटिस दे यह बात बराबर है, यदि किसी ऑथारिटी के पास मामला जाएगा तो दोनों की बातें सुनी जाएंगी, जिसने क्रेडिट दिया है और जिसने बौरो दिया है, दोनों अपने-अपने केस को रिप्रेजेंट करेंगे। आपका पहला प्वाइंट को बरोअर को देना चाहिए, क्लाऊज 7 का सेक्शन 5 है पूरी क्लेयरिटी के साथ है इसमें दोनों की बातें सुनी जाएंगी और दोनों में जो कोई भी अपनी बात मनवाने में सक्षम हो जाएगा उसके पास डिसीजन होगा, दोनों को मौका बराबर है। किसी क्रेडिटर के कहने से बरोअर का इन्ट्रेस्ट खत्म नहीं होगा। जिस लॉजिक के साथ आप चल रहे हैं वह सस्टेन करने वाला है।

श्री आलोक धीर: डेब्ट कई बार डिस्प्यूटेड होता है क्लेमेंट कहता है कि मुझे इतने पैसे लेने हैं और बरोअर है जो कहता है कि मेरे को पैसे नहीं मिले हैं।

श्री निशिकांत दुबे: ऑथारिटी को पॉवर दिया हुआ है बरोअर आकर कहेगा कि यह डिस्प्यूटेड है।

श्री आलोक धीर: नॉर्मली नोटिस देने का मतलब होता है कि प्राइर इस प्रोसेस को चालू करने से पहले नोटिस दिया जाए, जो भी डिस्प्यूटेड है वह पेपर पर आ जाती है और प्रोसेस स्टार्ट हो जाता है, 14 दिन का समय स्टार्ट हो जाता है यह समय इस चीज में वेस्ट नहीं होना चाहिए कि उसने क्या रिप्लाई दी, उसका क्या जवाब है, उसका क्या स्टैंड है, डिस्प्यूटेड क्या है वह पहले ही आ जाएगी। फिर उसके बाद 14 दिन का टाइम स्टार्ट होगा, अगर हम 14 दिन में हम कहेंगे कि जवाब दें वह पूरा समय नहीं है कम है। बोनाफाइड डेब्ट है, इस लॉ में

ऑपरेशनल क्रेडिटर और अनसिक्युरड क्रेडिटर इसको ट्रिगर कर सकता है। अगर वेस्टेड इंट्रेस्ट आरएटी क्रेडिटर के खिलाफ एक्शन लेना चाहता है, इस प्रोसेस को चालू कर देता है 180 दिनों में एक्शन भी नहीं लिया जा सकता।

श्री निशिकांत दुबे: आरटीआई एक्ट में भी वही है, एक कंपनी दूसरी कंपनी के खिलाफ सूचना निकालती रहती है, एक व्यक्ति दूसरे व्यक्ति के खिलाफ जा रहा है, इसका मतलब है कि आरटीआई एक्ट को बंद कर देना चाहिए। इस डर से कि चीजें अखबार में चली जाएंगी, पब्लिक डोमेन में चला जाएगा, उसको मौका मिल रहा है। बरोअर और क्रेडिट देने वालों को समान मौका मिल रहा है।

श्री पीयूष मिश्रा: आरटीआई में इन्फोर्मेशन आ रही है, हम चाहते हैं कि ज्यादा इन्फोर्मेशन आएं We are on the same page. हमारा विषय यह है कि कल अगर आप एक एप्लीकेशन डालते हैं तो कोई भी क्रेडिटर अपनी सिक्युरिटी इन्फोर्स नहीं कर सकता, मेरे पास क्रेडिटर के रूप में दो कॉल हैं, अगर किसी क्रेडिटर ने एप्लीकेशन डाला या तो मैं अपनी सिक्युरिटी को इन्फोर्स करूं या न करूं As a creditor lawyer, I would say that enforce your security and take away all that you can. एप्लीकेशन शुरू हो गई है और 14 दिन के बाद एक मोरेटोरियम पीरियड आ जाएगा। under the current framework. To prevent that, we are saying आप उस मोरेटोरियम पीरियड को उस डेट के एप्लीकेशन से लगा दें ताकि कोई भी क्रेडिटर इसका नाजायज फायदा न उठा सके। उसके लिए हमारे पास पर्याप्त सबूत होना चाहिए।

श्री निशिकांत दुबे: मैं यह कह रहा हूं कि 14 दिन में क्या फर्क पड़ जाएगा? जो बोरोअर है, उसका क्या डिस्प्यूट है, वह 14 दिन में बता ही नहीं पाएगा।

सभापति महोदय: आप कितने दिन का सजेशन देना चाहते हैं?

श्री पीयूष मिश्रा: हम चाह रहे हैं कि अगर नोटिस पहले हो जाए।

श्री निशिकांत दुबे: मेरे मत से नोटिस पहले कर दीजिए। 21 दिन काफी हैं। उसके बाद 14 दिन का चालू करिए।

SHRI PIYUSH MISHRA: We are saying 21 days plus 14 days.

माननीय सभापति: वैसे आपने जो अपना मैमोरेंडम दिया है उसमें आपने डेट क्लिअरली नहीं बतायी है कि कितने दिन पहले देना चाहिए। आप जब अपना दूसरा सप्लीमेंट दें तो आप इसको क्लेरिटी के साथ दें।

श्री पीयूष मिश्रा: ठीक है।

SHRI P.P. CHAUDHARY: Once a notice is issued, then at the same time other implications of the code will continue. Once a notice is

issued, he may transfer or dispose of the property. So, once the notice is issued and received, then either from the date of receipt of notice it should be there so that other provisions of the code are equally applied.

श्री पीयूष मिश्रा: सर, उसमें एक प्रोविजन यह है कि जिस दिन नोटिस इश्यू होगा, उसके बाद बोरोअर प्रोपर्टी को एलीनिएट नहीं कर सकता।

SHRI P.P. CHAUDHARY: You make a difference in issue and receipt of notice. What if you are issuing and putting it in my drawer?

SHRI ALOK DHIR: Sir, we leave it to you. The date of issuance of notice and not the date of receipt should be the relevant date. क्योंकि रिसीट कोई रिसीव नहीं करता।

SHRI P.P. CHAUDHARY: What if I issue a notice and keep it with me?

SHRI ALOK DHIR: Sir, issue means by putting it in public domain by post.

माननीय सभापति: आप इसको आगे लीजिए लेकिन एक विषय सब लोग ध्यान में रखें। रिफॉर्म्स का एक बड़ा उद्देश्य है और वह बड़ा उद्देश्य यह है कि बाजार में लोग जो भी पैसा देते हैं, उसकी सुरक्षा होनी चाहिए। आज के समय में अगर उद्योगों में पैसा ही नहीं आएगा और उसको अगर हम केवल टैक्नेकैलेटीज में लगा देंगे, काम करने वाले की तो अपनी पारदर्शिता होनी चाहिए। उसको बोनाफाइड नुकसान हो सकता है। उसको परिस्थितियों के कारण नुकसान इसलिए हो सकता है, जो चीजें आयात की वह ले रहा है, उसमें कच्चे माल में कल को दिक्कत आ सकती है, उसके कारण उसको नुकसान हो सकता है। उद्देश्य टैक्नेकैलेटीज में जाना नहीं है। यह सिर्फ लौयर्स की तरह एक्ट नहीं बनना है। यह रिफॉर्म्स के लिए एक्ट बन रहा है। इसलिए बड़े उद्देश्य को ध्यान में रखते हुए हमें अपने विषय को रखना है।

SHRI PIYUSH MISHRA: Sir, there are two more points, which is more for the consideration of the Committee. Should payout of original applicants bring an end to the Corporate Insolvency Resolution Process (CIRP)? It is because sometimes you might have an issue of holdout creditors, especially, if an entire group of creditors is sitting. An unsecured creditor had made an application. The business might be viable in the view of a lot of creditors, but because one creditor has given an application and other creditors are like okay, let us pay him out. Suddenly, 100 other creditors might join in and say okay, if you are paying him out, then it is good time that I will also pay him out. It is the standard thing that happens in the context of bonds. We need to address somehow the issue of holdout creditors and the class suddenly ballooning in terms of being paid out.

One possible solution is obviously to exclude the class of creditors, which is being paid out. There are voting decisions and if a majority—of the rest of the class or 75 per cent or whatever their threshold is—agrees on pay out of a creditor to close out the insolvency resolution process, then that should be permitted. Obviously, it has to club with some kind of agreement between the creditors and the moratorium period. Otherwise, the moment you pay out the creditors, we have fixed the process in the interim, but another creditor, then again can restart a CIRP process and we might end up on the same position. We need to do something about that aspect of holdout creditors and one defaulter being paid out and that not upsetting the entire system as long as the creditor believes that the system is viable.

SHRI NARESH GUJRAL: What is your precise suggestion in this? What should be done?

SHRI PIYUSH MISHRA: The suggestion is only that either we allow a creditor the freedom to sit and say that we will pay out this guy and close the CIRP. Right now, it is not envisaged. So, you allow the creditor to be paid out. You categorize a particular class of creditors, which will probably become holdout creditors because they have common interest and you say that for the purpose of voting this class of creditors is not entitled to vote.

SHRI NARESH GUJRAL: If one class has 75 per cent, then they can say that our class should be paid out and rest are left holding the can.

SHRI PIYUSH MISHRA: Sir, it is like saying 75 per cent of creditors, let us say secured and unsecured let us take a scenario of 80 per cent of secured creditors and 20 per cent unsecured, and 80 per cent secured creditors think that this entire thing works and its viable, then there is no problem. The moment secured creditors are 60-65 per cent, then they think that the business is viable and 35 per cent unsecured creditors—depending on someone agreeing and someone disagreeing—even in 65 per cent because there are bond holders who are not agreeing, we are not getting the requisite majority. But let us say 51 per cent are of the view that the business is viable. One creditor has filed CIRP. They say, okay, why do not we pay this guy and save the company from liquidation because we think genuinely that this is a viable proposition. Even if they pay out, the CIRP process does not close.

To my mind, in a resolution plan context it should be permitted, but obviously with checks and balances. So, the first check and balance would be the moment I try to pay out a particular creditor, 10 other creditors of same class will come in. So, all that I am saying is that at

the time of insolvency resolution plan because the code says 75 per cent of the people have to agree even if there is a lower threshold or a similar threshold in a different class, we suddenly split it into classes. The creditor being paid out is put in a separate class and the voting of that class is not taken into account. So, if he is a working capital lender and we say a working capital lender will not vote on this because the moment they vote, everybody will say pay me out, which the other creditor will say and then it might become unviable. So, as a pure bargaining technique, we say that other creditors get to say whether that guy should be paid out or not rather than the same class of guys.

श्री निशिकांत दुबे: क्या उसमें बनाया हुआ है कि इसको कैसे मिले? How will they get it?

श्री पीयूष मिश्रा: सर, सिक्योर्ड क्रैडिटर में क्लास ऑफ क्रैडिटर्स उसमें नहीं है। उसको सिक्योर्ड क्रैडिटर्स ही एक कैटेगरी बनाते हैं।

श्री निशिकांत दुबे: उसमें कहा गया है कि यदि इस तरह की संभावना है तो उसके प्रपोर्शन के हिसाब से बांटेगा। प्रपोर्शन डैब्ट का है।

श्री पीयूष मिश्रा: प्रपोर्शन डैब्ट का है। इश्यू यह है कि एक फस्ट चार्ज होल्डर होता है और दूसरा सैकेंड चार्ज होल्डर होता है।

श्री निशिकांत दुबे: धारा 178 का क्लॉज 2 है, उसको आप जरा पढ़िए।

श्री पीयूष मिश्रा: सर, यह जो क्लॉज़ 178 है, यह बाइंडिंग-अप की स्टेज पर है। जब रैस्क्यू प्रोसैस हम लोग चाह रहे होते हैं, जैसे सीआईआरपी है, उस स्टेज के ऊपर जो कमेटी है, उसमें क्लॉस ऑफ क्रैडिटर्स के ऊपर डिसीजन मेकिंग नहीं है। सिक्योर्ड क्रैडिटर्स को एक एनटायर फाइनेंशियल क्रैडिटर्स में माना गया है। अब क्लॉस ऑफ क्रैडिटर्स अलग होते हैं, जैसे माननीय महोदय ने कहा कि क्लास ऑफ क्रैडिटर्स को हम लोग कांसैप्चुअली समझते हैं। हर लोअर क्लॉस ऑफ क्रैडिटर्स इंटरेस्ट रेट बढ़ाता है, जैसे वर्किंग कैपिटल टेंडर उसका सैकेंड चार्ज लेता है, फिर इंटरेस्ट ज्यादा लेता है। फस्ट चार्ज होल्डर इंटरेस्ट कम लेता है लेकिन टर्म लोन लेता है। इसलिए जब एक क्लास के अंदर इन्होंने कमेटी बना दी जिसके अंदर सारे फस्ट चार्ज होल्डर और सैकेंड चार्ज होल्डर और सारे ही फाइनेंशियल क्रैडिटर्स को एक ही क्लास में डाल दिया तो वो डिसीजन कैसे लेंगे क्योंकि उन सबके राइट्स फर्क हैं, उनकी डिसीजन मेकिंग रिक्वायरमेंट अलग है।

HON. CHAIRPERSON: What would you suggest in it?

SHRI ALOK DHIR: I would suggest that separate meetings must be called for different class of creditors.

श्री पीयूष मिश्रा: अगर सब क्लास ऑफ क्रैडिटर्स नहीं मानेंगे तो यह वर्किंग अरेंजमेंट कभी वर्क नहीं करेगा। सैकेंड चार्ज होल्डर्स अगर भारी हो जाएंगे तो फस्ट चार्ड होल्डर का राइट होने के बावजूद उसको ओवररूल कर दिया जाएगा।

SHRI ANAND SHARMA: What guarantee is there that if separate meetings are called, then there will be a resolution? Should there not be some specific provision put in the definition itself when we are talking of the concerned/relevant section here? We are talking of a law, and you have to secure it under law and not by a separate meeting alone. Two separate meetings may be held and the resolution may still not take place. What would you suggest can be done to have more clarity in the law itself?

SHRI ALOK DHIR: According to us, the concept of creditors must be brought into this law.

SHRI ANAND SHARMA: Kindly give us a formulation with your suggestions.

SHRI ALOK DHIR: We will work out a formulation and suggest how the meetings should be held. Currently also, in the winding up process, different class of creditors meetings are held and they vote separately because they have separate interest, but for an insolvency professional to work a plan, which will be workable for everybody is the requirement of the insolvency professional. He has put forward a scheme understanding different class of creditors and satisfying them. A second charge holder will be satisfied if the first charge holder let us say rather than taking 100 per cent of what is his claim is willing to give up 20 per cent for unsecured creditors.

Usually in resolution packages, even though class of creditors vote for making the project work because ultimately it has to work only when they get value out of it they are willing to give cross-subsidy to different classes of creditors. It is the job of insolvency professional, but the entire process the voting must be done by separate classes of creditors.

We will make in Section 21 when the Committees are established and meetings are held. We will make a dispensation for the kind consideration of this Committee.

SHRI ANAND SHARMA: Earlier you were talking about the notice because a notice should be given before the proceedings start. That is what you have said. If it is not done and if the proceedings start, then

there is provision for the secured creditors. Do you have any suggestion in this regard? Should there be a proviso there?

SHRI PIYUSH MISHRA: We are now giving advance notice. We have evidence that there has been a dispute; notice has been served, etc., through information utilities. I think information utilities will play a very important part in the entire process.

SHRI ANAND SHARMA: You have referred to the practice of the World Bank on that.

SHRI PIYUSH MISHRA: Yes, Sir.

SHRI ALOK DHIR: Sir, worldwide, on issuance of a notice, moratorium starts, but equally, a clause starts which says that non-alienation clause starts. Under the SARFAESI Act, as the Committee may be aware, the issuance of a notice under Section 13 (2) in terms of Section 13 (3) says, "On the date of issuance of the notice, non-alienation of the assets..."

SHRI P.P. CHAUDHARY: It should be there. Otherwise, he will do away with the entire property.

SHRI ALOK DHIR: So, the non-alienation clause can come.

SHRI ANAND SHARMA: That grey area remains as it is.

SHRI ALOK DHIR: If the suggestion is taken from FICCI that a notice be given prior to starting of this arrangement – before they start, they give a 21-day notice – the issuance of notice itself will be having a non-alienation clause.

SHRI P.P. CHAUDHARY: What is the objective behind issuing that notice? What do you want to achieve? What is the rationale behind it?

SHRI ALOK DHIR: It is the determination of a *bona fide* debt. In this case, the CIRP can be started by any financial operation.

SHRI ANAND SHARMA: Can we ask the Legislative Department whether they have examined this aspect?

SHRI AJAY TYAGI: Actually, the point is that *prima facie* these cases will be admitted for non-disputed debt. Actually, in the original draft, NCLT was to be decide about admission with in two days. So, time is of essence. If it is a disputed debt, it is not a case that will be really admitted. Moratorium should start only when a Tribunal or Court admits

it. It cannot be that from the day of application moratorium should start. That is a very wrong formulation. For operational debtor, notice has been suggested because operational debtor can be of various types; it can be even an Electricity Board.

SHRI ANAND SHARMA: They are talking about non-alienation of assets.

SHRI AJAY TYAGI: After moratorium starts, it cannot be alienated.

SHRI ANAND SHARMA: But in the intervening period, what prevents it? That is the question. They are referring to the SARFAESI Act.

SHRI AJAY TYAGI: SARFAESI Act is a different thing. Here what we are saying is that after issuance of notice, once it is admitted that this debt is due, then it cannot be alienated.

SHRI P.P. CHAUDHARY: In SARFAESI Act, there is such a provision. But here the adjudicating authority is competent, once the professionals file the petition before the adjudicating authority, whatever objection you want to raise, you can raise before the adjudicating authority. So, the notice basically is extending the period to 14 days or 15 days time. Why is the Secretary talking about the application being admitted before the adjudicating authority?

HON. CHAIRPERSON: Please do one thing. Please give your reply in writing with your specific suggestions. The Legislative Department will examine it.

SHRI PIYUSH MISHRA: Sure, Sir.

SHRI ALOK DHIR: I would only carry on from here. My learned friend was only raising the issues relating to technicalities. According to us, this legislation is a very monumental change and a reform, as the hon. Chairman has pointed out. Of course, the monumental changes are coming from the Vishwanathan Committee Report. The real change is that the entire system in this country, which was creditor-centric under the Companies Act with respect to SICA has been turned inside out and now this entire legislation is what is called 'creditor-centric' legislation. The entire focus of the legislation is recovery of dues and of course some other very valid objectives. Now, there is another very marked change in this that the entire enactment is based on the commercial wisdom of the creditor and not the judicial wisdom. So, that has been a very significant departure. The entire enactment is now going to be run on the premise of the commercial wisdom. So, judicial intervention has been taken away from this altogether. From a

theoretical standpoint and from a jurisprudence standpoint, the commercial wisdom and the processes are now going to be run by the creditors and by the insolvency professionals, rather than any judicial forum. So, judicial overview has been given a go-by.

The third element which has been introduced, which is also very, very important here, is the infrastructure – the creation of what is called insolvency professionals which we do not have in this country today. So, the entire process is going to be run by the commercial wisdom. We believe in this enactment that the creditors know what is best for them and that is the premise on which the entire enactment has been prepared. However, it is a view which we would like to express that insofar as the eco-system of the country is concerned, the commercial wisdom, let us assume, the PSU banks is not something; they are not able to take very speedy decisions and they are not able to take commercial decisions which are sometimes in their own interest because they have problems with respect to, if I may say so, CVC issues; they do not want to take commercial decisions. Loans may have been given on valuations which ultimately are much lower. So, when they come down to a commercial decision, they cannot do it.

Fourthly, we are seeing that creditors are very concerned with provisioning in their books of accounts. If they have to write down something significantly, they are not able to take a commercial decision. Similarly, statutory creditors, the liabilities...

श्री निशिकांत दुबे: आप यह बताएं कि अगर कमर्शियल डिसीजन नहीं लिया तो इतना बड़ा एनपीए कैसे हो गया? किसी प्रोजेक्ट को प्राप्त करने के लिए एक कम्पनी दूसरी कम्पनी के खिलाफ जाने के लिए एग्रेसिव बिडिंग करती है। इक्विटी और डेब्ट का जो खेल है, इक्विटी ऐसी चीज है जो बिजनेस में रिस्क लेता है, यह आपका रिस्क है लेकिन डेब्ट के खिलाफ उतने एसेट्स होने चाहिए। आप समझिए कि लगभग चार लाख करोड़ रुपये का एनपीए है। सात लाख करोड़ एसेट्स स्ट्रेस एसेट्स हैं। इसमें आप कह रहे हैं कि पीएसयू बैंक ने कमर्शियल डिसीजन नहीं लिया।

श्री आलोक धीर: महोदय, एनपीए इसलिए ज्यादा हुआ क्योंकि कमर्शियल डिसीजन नहीं लिया।

श्री निशिकांत दुबे: कमर्शियल डिसीजन लिया इसीलिए एनपीए बना। एक्सिस बैंक के लोग बैठे हुए हैं उनका इसलिए नहीं हुआ क्योंकि सर्विस सैक्टर में उनका चालीस प्रतिशत से ज्यादा पोर्टफोलियो है। इंफ्रास्ट्रक्चर में पीएसयू बैंक ने पैसा लगाया है। इनका अगर कम है तो उसका कारण यह है कि वे सर्विस सैक्टर में जा रहे हैं।

माननीय सभापति: अब सीआईआई के अधिकारी अपनी बात कहें।

SHRI GYANENDRA KUMAR: Sir, first of all, I think this is a great move towards moving into a more international system of having a new insolvency system for resolution. Until today, we were looking at recoveries being in the methods of enforcement. This is a great move going towards a resolution process rather than a winding up process. I am looking at this Code as something which looks at trying to revive a company by starting this resolution process. We have gone through this exercise of understanding that until the company is performing, it is in-charge of its own decisions and when it stops performing and starts paying, gets into default, there is somebody else who is put in-charge of those decisions. That is the movement of the decision making process.

There has been a lot said about the process of determining a default and the process of notice. It is my reading of the Code where I do not see a requirement to provide a notice to a defaulting debtor, for instance. It is purely in the form of a determination of a factual default. The assumption in this Code is that default is not a question of law; it is not a question of dispute, but it is a question of fact.

That fact is being determined through this process of information utility. While as lawyers, we do have a problem with this process of determination, I think, the overall objective of the code being to try and eliminate longer process of determination. Today the maximum time which is taken by the courts is on determination whether there is a default or not. The question is whether there is an admitted debt or not. This code makes a departure from that. Initially the first draft of the code as rightly pointed out, will provide two day period between the filing of the petition and the determination of the default before the entire resolution process. The new code has now brought in a period of 14 days with a deliberation whether a notice should be issued or not. I would delete that with something which may be contained in the rules. We will have to be vary of the fact that that may result in a challenge from a process of natural justice of the party whose interests are being affected, is not being given notice. That is a 14 day period. The suggestion of the CII on this is that when we say determination of default, if there could be parameters laid down. There is one to allow this entire thing to go into a detailed adjudication process which today a court takes a period of two to three years to determine whether there is an admitted debt or whether there is a default or not. The second thing is to determine the parameters on which the default is to be determined. For example, you establish parameters in the form of saying that there should be infusion of funds and secondly there should be a notice of default given and third, there should be no rectification

of the default. Maybe a few of these parameters, if they are able to be achieved, the determination of default is done as distinct from making it again a completely adversarial process where you have representations, replies, arguments for which a period of 14 days would not suffice. We should try and bring them a shorter period. The idea should be to bring in clarity by the relevant sections 7(4) and 7(5) where they use the word that there should be a satisfaction of default. What are the parameters of that satisfaction of default? There is no clarity on that. Our suggestion is to try and avoid this process of dissatisfaction being questioned and being challenged time and again. There should be clear parameters put in that here is how you will reach a satisfaction whether there has been a default or there has not been a default. That would help in preventing a challenge.

SHRI P.P. CHAUDHARY: When it is a quasi-judicial authority, this satisfaction cannot be subjective, it is always an objective satisfaction based on the record. We are not required to explain as to whether which type of satisfaction is required for adjudication. The quasi-judicial authority is always required to see whenever satisfaction is there, that satisfaction is not subjective satisfaction.

SHRI GYANENDRA KUMAR: The objective of our suggestion is to bring in a clarity within the fold to prevent a challenge mechanism. The entire scheme of the code is towards reducing the time period which is required to move from a company which has started to default to getting into a stage where the creditors take charge of the decision making and get the company rolling. If the company is unable to turn around itself, it is then we are going towards dissolution of the company and not before that. That process is going to crunch down the challenge, crunch down the time to prevent constant judicial intervention. The greater the clarity given into it, the lesser is the possibility of judicial intervention coming. If at all the judicial intervention is to come, it would come today to define it. There are three clarities are given under the code to determine default. Maybe we should add one more criterion. Once that is satisfied, we kill the possibilities of introducing more and more disputes into the system, challenges into the system. That is our first suggestion.

I am going to focus on aspect which requires a little elucidation and would be a little more useful. I will go to the part which deals with disqualification of a corporate debtor who is undergoing a CIRP from initiating a CIRP itself. A corporate debtor in one instance may be a corporate creditor in another incidence. The code in section 11A clearly places disqualification on a corporate debtor who is undergoing a CIRP

from initiating a CIRP. This disqualification in the view of CII is not appropriate if for instance debt is determined, if for instance default is determined. There is no reason to disqualify him from applying for a CIRP just because he is undergoing a CIRP. Our suggestion is to delete this disqualification which is attached to it.

The third set of suggestions is about moratorium. It has been discussed in a bit of detail. But there are few more aspects that we would like to bring to your kind attention in the aspect of moratorium. Firstly, there has to be exceptions to moratorium. There is a committee of creditors which is there. Either we can give power to the adjudicating authority or the committee of creditor to allow. That is very important. Even today in winding up and other process that is allowed. This exception should be, therefore, allowed. Second is the default provision. It is very common for us to see in loans that if there is a winding up process initiated; if there is a resolution process initiated. Then there is an automatic default under the loan agreement. What we would like to suggest is that this on a stand alone basis should not be allowed to be a ground for a default. The agreement that is prescribed that if an RPA is filed, the winding up petition is filed, the entire loan becomes due and payable. Stand alone, it is not a sufficient justification to be classified as a default. If it is coupled with something else, it makes sense. It just will have a ripple effect which comes into play. We would suggest that that be taken care of. I believe that because of the moratorium, we would need a modification to the Limitation Act which extends limitations of people who are unable to take action during this intervening period. Our suggestion is that you bring an amendment to the Limitation Act as well which is there in any of the other statutes but may be required to be brought in out here specifically.

HON. CHAIRPERSON: Do you agree with this?

DR. MUKULITA VIJAYAWARGIYA: We will examine it and further under Section 1(5) of the Limitation Act there is such a provision, the proceedings are extended. We will examine that.

SHRI GYANENDRA KUMAR: The third leg of our suggestion is with regard to people who are qualified and disqualified from presenting a resolution plan. Today under the scheme of the Act, we are going with the assumption that there are three categories of people who are capable or entitled to file a resolution file which is a corporate debtor himself, which is any of the corporate creditors and finally the resolution professional himself. There are three broad categories to understand these people who are qualified to present a resolution plan.

Our suggestion is that while there are no specific qualifications put, probably it would be a good idea to put in some defined disqualifications. For example, if an investment is made by the corporate debtor for fraudulent purposes, if it is failed to contribute to equity required under the financial documents, if there has been a diversion of funds, if it has been declared a wilful defaulter by the bank; some of these aspects could be taken to say that if you come in these categories then we will disqualify you from presenting a resolution plan because your bona fides are in question now. We can no more rely on the fact that the resolution plan is not going to be a dilatory tactic, it is not going to be something which is motivated by reasons which we are unable to see. So, we are suggesting that we bring in disqualifications while even if there are no qualifications specifically brought in.

Our next suggestion is with regard to distribution of assets to secured creditors. There is a priority defined out in 53(1)(b), as was pointed out earlier. Priority has been given to all secured creditors to be treated equally. Once they have given up their security and chosen to come within the process of recovery as was prescribed out here. Our suggestion is the extent of security should be taken into consideration. It flows a bit from what Piyush has been pointing out; the first level security, second level security and also to do with what is the valuation of the security. If I have a debt of Rs. 100 crore and the valuation of my security is 250 sq.m. of land lying in a village in Andhra Pradesh which was created only for the purpose of capping my stamp duty then that valuation of the land is probably going to be Rs. 50 lakh, I cannot get a priority to the extent of Rs. 100 crore on account of giving up a security which is worth Rs. 50 lakh into the kitty. So, there has to be a parity between the value of the security and the priority given to the secured creditors. This classification of secured creditor is not sufficient to be giving him the same level of security as everybody else.

SHRI ANAND SHARMA: How do you do grading? In the law itself how do you do the grading? There are millions of loans. How can you put it in the law? Somebody may have a security of Rs. 100 crore and somebody may have the security of Rs. 1 lakh and may have lent much more. It is never ending. You have to provide a solution which is actually pragmatic.

SHRI NARESH GUJRAL: The day security was given the value may be Rs. 100 crore, like it happens in the property market now, it has come down to Rs. 50 crore so, which value will you take, that value or today's value?

SHRI AJAY TYAGI: Sir, this issue was raised by FICCI and CII. As per our understanding and knowledge to have classes within that class of secured creditors, this is not uniquely defined as instruments in India. In US there are instruments which are actually defined as per law. This will depend upon different debtors. I as a debtor may agree to have some contract for taking credit based on some consideration. He may take on some other consideration. It is difficult to uniquely define various classes within those creditors. While I agree that class 1 creditors in that would have more interest than the subordinate ones, but it is not defined in any law. As the hon. Member said rightly it will vary from case to case. So, to mention all those categories in law is not doable.

SHRI NISHIKANT DUBEY: Like they have the voting rights, ज्यादा पैसा जिसने दिया है, स्वाभाविक है कि उसका अधिकार ज्यादा है। उस तरह के वोटिंग राइट्स उन्होंने उसमें पहले से इनकॉरपोरेट किए हैं।

माननीय सभापति: रिपिटेशन के बजाय आप अपने वर्ड्स में अमेंडमेंट्स लिखकर दे दीजिए।

SHRI GYANENDRA KUMAR: Right, Sir.

Finally, I will just come down to the last point that I have to make before my colleague takes over from me. In the voluntary liquidation process where we allow a party to come to this forum for a voluntary liquidation there is a declaration required from the majority of directors that they are of the opinion that full recovery can be made upon sale of the entity. We are suggesting that this be qualified a bit to make it in their reasonable expectation or something of that nature because today what happens is it is an effective guarantee that is expected out of the directors. And, therefore, even where a voluntary liquidation is necessary for the company the directors fail to come up and give those declarations, refuse to come up and allow the company to go down. So, there should be some protection given to them because this is something of the future. When the sale happens or recovery could happen sufficient enough to pay to the creditors of the company but if the sale happens at a point of time which is not sufficient, today they can take an evaluation. It can be a reasonable evaluation. It should not be a deterrent for the directors.

SHRI T.S. ASOKRAJ: For banking sector way back in 1996 we introduced the Debt Regulatory Tribunal Act. In line with that there has to be a separate cull out for banking sector claims under this code. It is an organised sector where proving and all these things can be simplified. That is one aspect of it.

The second aspect of it is, it does not talk about the security trust. Now the concept of trustees and lead bank is there. It does not talk about security trustee or lead bank making an application. So, that is another thing that the Committee has to consider.

श्री निशिकांत दुबे: उसने क्रेडिट दिया है तो वह एप्लीकेशन भी डाल ही सकता है।

SHRI T.S. ASOKRAJ: On representative basis the lead bank can do it.

श्री निशिकांत दुबे: यदि आपने लोन दिया है तो आप एप्लीकेशन मूव करने के लिए इनटाइटल्ड हैं। उसके लिए किसी से पूछने की क्या आवश्यकता है।

SHRI T.S. ASOKRAJ: In the Act itself it talks about trustee representing in the proceedings. That can be extended in the initial stage itself. That is our understanding.

The third thing is, in my opinion a security creditor who wants to stand outside need not be a member of the Committee of Creditors.

SHRI NARESH GUJRAL: What do you mean by outside?

SHRI T.S. ASOKRAJ: Section 53 talks about security creditor standing out and realising his own dues without coming through the process. If the security creditor decides to be like that then he need not be a member of the Committee of Creditors. That is what our submission is.

As far as banks are concerned, there are regulators compulsions. All those guidelines should be aligned with this provision of moratorium so that banks are not under stress of one regulation or the other.

Banks are having detention account in various cases. That should be allowed to continue even when the proceedings are going on, subject to accountability.

Provision of 32(b) talks about approval; Proceeds in the case of operational creditors, they should be paid an amount not less than the amount the operational creditor would have got as a part of proceed from the liquidation trust. In other words he wants to protect the operational creditors as far as their dues are concerned. In my view they are unsecured people. So, they should be treated at par with the unsecured creditors instead of giving this type of preferential treatment.

HON. CHAIRPERSON: I think all the points you have given have been covered.

श्री निशिकांत दुबे: हर हालत में पहले सिक्योर्ड क्रेडिटर की ही बात होगी। अनसिक्योर्ड की बात कहकर आप फिर इक्विटी और डेट पर चले गए। यदि कोई कंपनी बनाना चाहता है, अपनी इक्विटी डालना चाहता है तो वह उनका रिस्क है। वे अपना रिस्क लेना चाहता है कि हम यह बिजनेस करेंगे। लेकिन जब आप कर्ज लेते हैं, तो कर्ज लेकर बताते हैं कि हम इसमें से इतना पैसा आपको लौटाएंगे। इसके लिए हमें इतना पैसा चाहिए और उनकी इतनी एसेट होनी चाहिए। इस देश की सबसे बड़ी समस्या आज यही है। आप बैंकर होकर ऐसी बात कैसे कह सकते हैं।

SHRI GYANENDRA KUMAR: Sir, if I may just clarify this, in the resolution plans, there are certain criteria for a resolution plan to be passed. One of those criteria is that the operational creditors should get as much money in the resolution plan as they would have got if the company was getting wound up at the time of initiation of the process. So, basically there is an assumption being created under this Act telling that let us take an assumption when the process had started if the company had wound up what would be operational creditors get. Say, they were getting one-tenth of their dues. So, the resolution plan qualifies only if you are assuring them of one-tenth of the dues. The point which is being made out here is limiting the ability of the financial creditors or the committee of creditors to create a resolution plan which is best for the Company rather than which is best for the operational creditors alone. That is the idea. You are giving them a security which they do not deserve.

HON. CHAIRPERSON: We understood that. Thank you.

Now ASSOCHAM and you confine all your arguments to ten minutes.

SHRI SUNIL KANORIA: Hon. Members, I will be brief as just a few points are there.

Firstly, I must compliment that first time ever there is an acceptability in the society that business can fail and this law can create a mechanism that if a business enterprise can fail in an environment and a society, how to deal with it. I think it is a great thing for the country as a major reform to go forward.

One key suggestion which we would have from ASSOCHAM as an industry body is that when there is a default, there are two aspects to it. One is the money and second is the physical assets which may be there. So money aspect as per the law which has been written here is good in terms of water fall mechanism, secured creditors, etc. I would suggest as my friends also said, in the secured creditors, there may be

a definition of senior secured or different classes of secured creditors because, as India is also moving towards global environment, a lot of new products and creditors are being created. So, if this can be captured today, it will help in evolution of a better economy for tomorrow.

Second key aspect is the physical asset. If a person who has provided the physical asset to that debtor whether by way of lease or hire purhcase, you shall have the right to take away his asset and he should not get into the line of that period. His money part will come under water fall but what about his physical asset. I have given the instances. Many companies have been providing equipment on a hire and rental basis to the contractors working with NHAI. If the contractor with NHAI defaulted, as a result, whatever equipment were lying on a rental basis given by smaller contractors and smaller rental companies to this contractor, that asset was also taken away by NHAI and confiscated. The asset was released through courts after ten years when it was a piece of scrap. He is a small guy who has given his asset on rental. He is an operational creditor and he can go into the system by the time bankruptcy happened. Even in the US, under Section 362 (d) of the US Bankruptcy Code, they had made a provision that if there is a physical or a real asset not belonging to the contractor, then he may take away his assets. But for his dues, he will have to fall in the line for claiming his dues as per the defined rules. But that distinction of money and physical asset should be created.

SHRI ANAND SHARMA: Let the Legislative Department examine this aspect.

SHRI NARESH GUJRAL: In an agreement, let us say 80 per cent has been paid and just for 20 per cent, he is able to take the asset away. Would it be fair?

SHRI SUNIL KANORIA: But under the agreement, it is mentioned that if he recovers surplus beyond that, it has to go back to the company. So, that provision is there. So, he cannot take away that. Suppose the person who has provided that piece of asset, he recovers more money out of that asset than his over all dues, then he has to surplus money as per the agreement itself today and he has to give it back to the company. So, that has been well protected. But a key differentiation in the law should be brought in about money and physical aspect. Otherwise, it will be a national waste which we are seeing even today that assets go into litigation and they become a piece of scrap by the time it is released legally.

श्री निशिकांत दुबे: उसके पहले जो क्रेडिटर्स को, ट्रस्टीज को, डैट लेने वाले के साथ जो ओथ लेने वाला यू.एस. लॉ है, उसे भी इन्क्लूड कराना चाहते होंगे, तब ये चीजें सम्भव होंगी। Under the US Bankruptcy Law, the US trustee and creditors may question the debtor under oath at the meeting concerning the debtors act, conduct property and the administration of the case. यह आएगा, फिर वह आएगा।

SHRI SUNIL KANORIA: I agree. It is fine to protect that. अगर कोई फिजीकल एसेट है, अगर कोई आज लीज पर दिया है।

HON. CHAIRPERSON: Tyagi, what will be role of Insolvency professional at that time?

SHRI AJAY TYAGI: Actually, at liquidation estate, again going back to clause 6(4) (a) (iv), it excludes any contractual arrangements which do not stipulate transfer of title but only use of assets. So, some one is using some one's machine, those are excluded from the liquidation estate.

HON. CHAIRPERSON: I think the opinion of the insolvency professional is there.

SHRI NISHIKANT DUBEY: Sir, they are already excluded.

SHRI SUNIL KANORIA: Sir, I would urge that Section 362(d) of the US Bankruptcy Law has dealt well to protect. We can work out similar guidelines into this law.

HON. CHAIRPERSON: That is there.

SHRI SUNIL KANORIA: That is for certain leased assets. It does not cover if there is bankruptcy, the person has his physical asset. He can take away his asset and go. He cannot claim money from the system.

HON. CHAIRPERSON: Actually here we are all talking about hypothetical things like it will happen, that will happen, that will come, that notice will be issued, that will be taken care by the court, etc. But here we are for the reforms. They are talking as lawyers.

SHRI P.P. CHAUDHARY: If you see clause 14 (1) and (b), it is basically for the debtor. It has nothing to do with that property. But you want that it should be included.

HON. CHAIRPERSON: We understand section 362 of US.

SHRI SUNIL KANORIA: All right.

The second part would be basically that in terms of capital market instrument, even countries like UK and US have brought in because the bond market and the economy has to evolve. So, when the retail investors come into the bond market, the capital market investors are given preference over other senior creditors. It is a suggestion to review that.

श्री निशिकांत दुबे: आज केपिटल मार्केट में कितने रीटेल इंवेस्टर्स हैं?

श्री सुनील कनोरिया: बाँड मार्केट डवलप हो रही है।

श्री निशिकांत दुबे: केपिटल मार्केट की बात पहले करें, फिर बाँड मार्केट की बात करेंगे। केपिटल मार्केट में आज कितने प्रतिशत रीटेल इंवेस्टर्स हैं?

श्री सुनील कनोरिया: मैं इक्विटी इंवेस्टर्स की बात नहीं कर रहा हूं, सिर्फ डैट की बात कह रहा हूं।

SHRI ANAND SHARMA: What would you define as a capital market?

SHRI SUNIL KANORIA: Sir, corporate bonds under SEBI are part of over all capital. The bond market development for the country is critical and therefore many countries have looked at it and changed their regulations to protect capital market investors and bond market investors under the SEBI guidelines. Like in India whatever comes under SEBI guideline, only that is there. That is only a request if that can be taken care of.

श्री निशिकांत दुबे: कल पेंशन फंड वालों ने, पीएफआरडी के चेयरमैन आए थे। उन्होंने यही बातें कही थीं कि सबसे पहले उन्हें मिलना चाहिए। चूंकि पेंशन फंड में इंवेस्ट किया है, वे छोटे-छोटे इंवेस्टर्स हैं। यदि हम उन्हें प्राथमिकता दें, फिर इनको दें, तो जो सिक्योर क्रेडिटर्स हैं, वे तीसरे-चौथे नम्बर पर चले जाएंगे। एज ए बैंकर आप बताएं न कि एज ए एसोचैम चेयरमैन। एज ए बैंकर आप क्या फील करते हैं कि बाँड मार्केट को मिलना चाहिए?

आप रिटेल बैंकर के तौर पर बोलिए।

श्री सुनील कनोरिया: रिटेल बैंकर के हिसाब से भी हम यह नहीं बोल रहे हैं कि अगर सिक्योरिटी बैंक्स के पास में है, उसकी सिक्योरिटी लेकर मार्किट में दें।

श्री निशिकांत दुबे: कल ईपीएफओ ने कहा कि प्रोयारिटी के आधार पर सेक्शन 53 और 178 में जो वॉटर फॉल है, उसमें वर्कमैन को सबसे पहले प्रायोरिटी मिलनी चाहिए। सुप्रीम कोर्ट

कहता है सबके ऊपर होना चाहिए। यदि उसके हिसाब से मार्किंग करें तो पहला नंबर वर्कमैन का हो गया, चाहे उनका पेंशन का हो या ईपीएफ का हो गया। दूसरा, पेंशन फंड वाले, पीएफआरडीए वाले बोल रहे हैं, वह भी रिटेल है। तीसरा, बॉन्ड मार्किट है और चौथा सिक्योर्ड क्रेडिटर होंगे, तो क्या यह चीजें चल पाएंगी?

HON. CHAIRPERSON: You are very clear. What is your priority? We have seen the memorandum.

SHRI SUNIL KANORIA: My third point is on the filing of the petition. It is not defined. I believe, whatever I read of, is that where the application for the insolvency will be filed? Will it be where the debtor is domiciled or where the creditor is domiciled? It may be better if it is clarified. It may help in the implementation of the law.

Second, of course, as my friend also said that it is important to create a congenial infrastructure, NCLT/DRT and also a time limit must be given to the NCLT/DRT that within this time it has to be disposed of. Also, there could be many instances because here the law has said that in corporate cases, it will go to NCLT and individuals will go to DRT. There could be an instance whereby the debtor is a company with individuals with personal guarantee, etc. So, if there is a conflict, it can be brought into one function. Otherwise, there will be two cases going on in both the NCLT and DRT. So, if there is a clause, it can help to have a better implementation of that. Thank you.

SHRI B.S. SALUJA: Sir, I am grateful to the hon. Chairman and Members of the Joint Committee for giving me this opportunity. I may mention at the outset that I am not an expert in insolvency law. I have been a Legislative Counsel in the Ministry of Law for more than 14 years. So, I have given some suggestions and comments based on my experience as a Legislative Counsel.

So, the first observation is that there is no definition of an adjudicating authority, as you have observed, there are two adjudicating authorities, National Company Law Tribunal and Debt Recovery Tribunal. So, throughout the law this expression is being used. So, I think it will be helpful if the definition of adjudicating authority is incorporated in the law.

SHRI P.P. CHAUDHARY: You are saying about the adjudicating authority. There are two types of adjudicating authorities. One is for the company, National Company Law Tribunal, and another is for the individual. I think you have seen the definition in clause 78. It is in part-III. Basically, part-II relates to company and part-III relates to the individuals.

If you see part-III, it starts from clause 78. From the beginning it has been given. You see clause 78 sub-clause 3.

SHRI B.S. SALUJA: I am sorry, Sir. I have overlooked this. It can be given in the relevant part also.

SHRI P.P. CHAUDHARY: You are correct. If it has not been given, it should have been there. But it is already there.

SHRI B.S. SALUJA: Next there is some urgency in bringing the law into force as and when it is framed. But the whole corporate insolvency resolution process depends, as I see it, on the insolvency agencies and insolvency professionals, and the Board, which will be constituted, has been given powers to specify the minimum eligibility requirements. Section 196 talks of minimum eligibility requirements for registration of insolvency professional agencies. Similarly, clause (e) says, minimum curriculum for the examination of insolvency professionals for their enrollment. So, how much time will be taken in framing regulations and byelaws for this purpose is not known. That might delay the process.

SHRI ANAND SHARMA: Then, there is a stipulated period during which the byelaws are made.

SHRI AJAY TYAGI: Also, there is a transition provision that till the regulator comes, the Government can devise the requirements of insolvency professionals for their requirements and all that.

SHRI B.S. SALUJA: So, my feeling as a draftsman is that some minimum eligibility criteria could be incorporated in the legislation itself.

SHRI ANAND SHARMA: The Government does it as a rule or it can put it in the Schedule, but not in the Act itself.

SHRI B.S. SALUJA: It can be put in the Schedule also.

SHRI AJAY TYAGI: The broad requirements of insolvency professionals, insolvency professional agencies and information utilities have been provided but we thought that if we go into actual qualification and all in the statute, that will be actually tying up our hands. I agree that over a period of time only, insolvency professionals will develop and the regulator will come but we want that it should kick in quickly.

SHRI ANAND SHARMA: Can the minimum criteria be put in the Schedule?

SHRI AJAY TYAGI: Schedule also becomes a part of the Act.

SHRI ANAND SHARMA: How do you then include it?

SHRI AJAY TYAGI: The requirements are already mentioned what broadly the insolvency professionals will be but it does not mention what should be the qualification.

SHRI ANAND SHARMA: There has to be some qualification. Otherwise, everybody will fall and anybody can apply for registration.

SHRI AJAY TYAGI: Sir, if you see Section 241, broadly it is mentioned that the Central Government by regulations in the transition period may provide regulations for the following matters: recognition of persons, category of professionals and persons having qualification, experience in the field of finance law management or insolvency.

Now to go beyond that and describe that what type of experience, how many years and all that, will perhaps be slightly more prescriptive in the Act. So, it is felt that perhaps, through rules it can be done. It is an evolving thing. I agree it is an evolving thing. That is why, we have provided for this.

SHRI ANAND SHARMA: So, we are keeping it open ended and vague. Somewhere it should be there. Some qualifying criteria should be there.

SHRI NARESH GUJRAL: It is based on demand and supply.

SHRI ANAND SHARMA: That is separate. But we cannot keep it very open ended. Then arbitrariness comes in. Who will decide who will qualify?

SHRI B.S. SALUJA: Sir, because the whole process starts from agencies being registered having minimum qualifications. Then, they in turn recruit the professionals based on an examination and curriculum to be notified. So, everything will be a vicious circle. It will take time.

SHRI AJAY TYAGI: It can be provided in the rules. Actually, the Government means, it will be rules only.

SHRI P.P. CHAUDHARY: Normally, it cannot be provided in the Act. The qualifications go on changing. Every time we cannot bring the thing before the Parliament.

माननीय सभापति: एक विषय आया था कि जब भी कोई रिफोर्म मैज़र को लेकर सरकार कोई भी एक्ट लेकर आती है तो उस एक्ट के लिए कितना इन्फ्रास्ट्रक्चर होगा, क्या प्रोफेशनल

होगा, कितनी आवश्यकता होगी, कितने लोग चाहिए होंगे, कितना उसका ट्रेनिंग असपैक्ट होगा, अगर वह उसके रिफोर्म के साथ नहीं आएगा तो एक्ट आने के बाद भी वह ऑबजेक्ट को पूरा नहीं कर पाएगा। उसका खर्च कितना होगा, उसका एक्सपेंस कितना होगा, उसकी रेवेन्यू सेंक्शन कितनी होगी? अभी आपने इसमें लिखा है।

"Provided that different dates may be appointed for different provisions of this Code and any reference in such provision to the commencement of this Code shall be construed as a reference to the commencement of that provision."

हम जब कम्पलीट रिफोर्म्स की बात करते हैं, स्पीडी रिफॉर्म्स की बात जब करते हैं, ऑबजेक्ट को प्राप्त करने के लक्ष्य की हम जब बात करते हैं तो हम ही उसमें यह करते हैं।

SHRI AJAY TYAGI: Sir, what you are saying is absolutely right. Actually, NCLT is yet to be constituted and the NCLT will have its job under the Companies Act also. So this will be an addition to that job. So how many Benches are required and what is the legacy under SICA, the cases which will get transferred—all these things are there. Again, if I am right, there are 33 DRTs right now. So, DRTs need more Benches and more appellate authorities. Actually, on the personal insolvency side, it is very difficult. Those two personal laws of 1909 and 1920 are also there. What is the case law which is pending in court, how much you transfer—all these issues are there. But we fully agree and appreciate what you are saying.

SHRI AJAY TYAGI: There will be insolvency professional agencies and insolvency professionals. The idea is that there will be SRO and also regulator. So, some lighter as well as tighter regulation will be there.

SHRI B.S. SALUJA: My next point is regarding Chapter IV on fast track corporate insolvency resolution process. If you see clause 55 of the Bill, there also everything is left to notification. Where the fast track will take place, some minimum guidelines should be contained in the law. Otherwise, this is excessive delegation of power. This is with reference to clause 55.

Then, the present adjudicating authorities – company law tribunal, appellate tribunal and the other debt recovery tribunal, etc., are being given the onus of implementing this law and appeal under this law. I think that they are already overburdened. I will just add, as he has mentioned, many additional benches may have to be created for handling this workload. The recruitment process, as you know, will take a long time.

HON. CHAIRPERSON: We already have discussed it.

SHRI B.S. SALUJA: If the idea is to implement the law immediately, some spadework may have to be done. That is only my observation.

Clause 203 of the Bill empowers the insolvency and bankruptcy Board of India to make regulations for certain matters. Similarly, clause 205 of the Bill empowers every insolvency professional agency to make byelaws to provide for minimum standards of professional competence.

If we come to clause 230, which relates to delegation of powers, it says: 'the Board may by general or special order in writing delegate to any member, officer of the Board or any other person, subject to such conditions, if any, as may be specified in the order, such of its powers and functions under this code, except the powers under Section 217, as it may deem necessary. Now, this power to make regulations and bye-laws, cannot be delegated to a member of the Board or an officer of the board. These are essential legislative powers. Clause 230 may need to be re-modified to exclude these powers just as Section 217 has been excluded. The powers under Sections 203 and 205 may also be excluded.

Then, there is a creation of fund under Section 224. Normally, my past experience tells me that some sort of a corpus fund is given by the Government to create a fund and then the subsequent donations and recurring grants go to that fund. That thing has not been done here. So, at least 50 to 100 crores, according to the requirement, should be provided.

HON. CHAIRPERSON: You have already mentioned it in your statement.

DR. BALACHANDRA MUNGEKAR: I have one small clarification and one other point relating to that. Industry made a statement that the impasse of the commercial banks are largely the result of decisions which are not influenced by sound commercial principles. Is it acceptable to the banking industry?

Second, do you want to suggest that these banks are in the public sector and to some extent are under the control of the Government in one way or the other is the main reason for not following the sound commercial principles?

The third question is, taking into account the structure of your portfolio investment of the industry, really how much is going into

hardcore infrastructure industry development? The history shows that after India's economic planning 1951 onwards rarely private sector or private corporate sector has gone into the basic infrastructure facilities. They have largely entered the industries where rate of return is higher, gestation period is lower and the profitability is higher. Under these conditions, to accuse the public sector banks or to make even the observation and make a generalize statement that they are not giving loans on following sound commercial principles is slightly not acceptable.

Then, second point is in respect of clause 178 (d). We were interacting with industry and discussing it with workers. For example, clause 178 (d)(ii) provides that when the insolvency procedure completed, maximum 12 months wages could be provided to the workmen. Among all the sectors, debtors, creditors and workers, the workers are the most vulnerable sections and I think that there should be no dispute about it. Under these conditions, after the insolvency procedures completes, a particular industry subject to this insolvency and bankruptcy process has not given wages for two years or three years, you know that lockouts now have increased a lot, under these conditions giving just 12 months wages to the workers, is it justifiable even if the wages are not paid for the preceding two or three years?

SHRI P.P. CHAUDHARY: This is specifically for the Ministry of Law and Justice, Legislative Department and the Secretary, Economic Affairs. Clause 230 is with respect to delegation of powers. It says: 'The Board may, by general or special order in writing delegate to any member, officer of the Board or any other person subject to such conditions, if any, as may be specified in the order, such of its powers and functions under this Code ....' So, all the powers of the Board exercisable by it under the Code can be delegated to any other person, other than the member and officer.

Now, the powers of the Board are mentioned in Chapter-II, at page no.85, clause 196 'Powers and Functions of the Board'. If you see the nature of the powers, can these powers be delegated?

SHRI AJAY TYAGI: We have agreed to be with you. We will come with an amendment.

HON. CHAIRPERSON: Your point has been agreed to by them. They have accepted it.

SHRI P.P. CHAUDHARY: Secondly, please refer to clause 205. It has been prescribed how bye-laws have to be framed. It says: 'Subject to the provisions of this Code and any rules or regulations made thereunder

and after obtaining the approval of the Board, every insolvency professional agency shall make bye-laws to provide for....' If you are providing all these things, then you provide the model bye-laws. If everything is being provided in the Code itself, then what type of bye-laws will they frame? They cannot travel and transgress the conditions provided in the Code itself. So, it is basically a model bye-law. They have to provide that bye-law is required to be approved. The reason for it is that the professional agencies are the registered ones. They will take the model bye-law and get it registered whatever is provided in it.

HON. CHAIRPERSON: It will be like a bar council so there must be a regulatory mechanism for that.

SHRI AJAY TYAGI: That we are providing for. But the hon. Member is saying that we have given all details in the Act itself and leaving no flexibility... I think this is what the hon. MP is saying.

SHRI P.P. CHAUDHARY: What I am saying is: if different bye-laws are provided, it will create the complication. If you see the Central Cooperative Societies, not only one but all, this system has worked well all over the country. So, in cooperative societies model bye-laws have been provided. In the model bye-laws if any condition is not provided there, you incorporate it in the code itself.

SHRI ANAND SHARMA: I have just one clarification which is connected to what Chaudhary ji has said. This is not only the bye-laws or the model bye-laws, what we are leaving to the insolvency professional agencies to make bye-laws which provide for minimum standards of professional competence. So, each professional agency will have its own set of standards. I think this is something which must be changed. It cannot be accepted.

SHRI AJAY TYAGI: Sir, I agree, but the only thing is that this will be approved by the regulator.

SHRI P.P. CHAUDHARY: It should be standard one. It cannot be different for difference agencies.

SHRI ANAND SHARMA: Too much of discretion and arbitrariness will come in.

SHRI P.P. CHAUDHARY: If you provide different bye-laws for different agencies, then it will create a problem. Why are you leaving it to the discretion of the Board to provide different bye-laws for different agencies?

HON. CHAIRPERSON: Unanimity, qualification and competence should be uniform.

SHRI AJAY TYAGI: So, what you are saying is let Board have the guidelines and as per those guidelines only, all SROs should function.

HON. CHAIRPERSON: You will come with the suggestion.

SHRI AJAY TYAGI: Okay.

SHRI ANAND SHARMA: The qualifying criteria should be there in the rules at least so that the Board is bound by that. It cannot be left to the arbitrariness of the Board.

SHRI P.P. CHAUDHARY: Wherever that agency is registered, those bye-laws are required to be registered. That is why, framing of bye-laws is in the hands of the agency, but what type of bye-laws are required to be there, it is to be provided in the Code itself. So, model bye-laws may be framed.

SHRI BHARTRUHARI MAHTAB: In this meeting, is the Committee suggesting what the Government is going to do?

HON. CHAIRPERSON: No.

SHRI BHARTRUHARI MAHTAB: Or, are we asking for certain suggestions from the Government? I am unable to understand what Mr. Chaudhary is saying.

HON. CHAIRPERSON: We are only asking for their comments.

SHRI BHARTRUHARI MAHTAB: They are conceding.

HON. CHAIRPERSON: We are not forcing them.

SHRI BHARTRUHARI MAHTAB: We are having CII, FICCI and others. Our questions should be posed to them and not to the Department. So, I was a bit confused.

SHRI ANAND SHARMA: The questions are relevant because the draft is there. That is why, the officers are present to give us their response so as to cut off delays.

SHRI NARESH GUJRAL: My question to all these people is that the resolution professional is going to be the pivot in this whole scheme of things. Where will they come from? As things stand today, we have seen

that there are liquidators and bulk of them are not so successful lawyers and CAs who then become liquidators. Whatever is left in the company, they liquidate that also to prolong their tenures. Where will they come from overnight? How can they be trained? Have you people given any thought to it? If large companies are going to come under their ambit, what is the future? We do not want the situation to go from the devil to the deep sea. How do you view that?

Do you feel that before the creditors can go to the authority, there should be some kind of minimum threshold in terms of the debt *vis-à-vis* the net worth of the company so that frivolous things are not raised? If for a Rs. 100 crore company, somebody says that his debt is of Rs. 100,000 and it has not been paid, he may start the proceedings. Do you think that there should be some kind of minimum threshold to start the process?

HON. CHAIRPERSON: You note down this and give a suggestion in writing.

SHRI JAYADEV GALLA: Sir, there is a committee of creditors which is proposed in this Code. Right now, there is missing any representation from suppliers, but suppliers also go through a lot of hardship when there is bankruptcy of any of their customers. Would you recommend that suppliers should also be included to be represented in the committee of creditors?

SHRI SUNIL KANORIA: They are already there.

SHRI PIYUSH MISHRA: I think, in operational creditors, they are already there.

SHRI JAYADEV GALLA: There needs to be a balance between managing cases that are a result of mismanagement *versus* genuine cases where there is a good chance of recovery. Do you feel that this Code maintains that balance between going after mismanagement and also to support genuine cases?

In Chapter-XI of the US Bankruptcy Code, if there is an appeal by the debtor, the court can grant the appeal despite the recommendation from the creditors. I think that may be missing from our Code. Is that something that would be desirable to have in our Code also?

श्री सुभाष चन्द्र बहेड़िया: महोदय, हमें यही जानना था, जो जैदेव जी ने बोला कि कमेटी ऑन क्रेडिटर्स की जो है, उसमें आपरेशनल क्रेडिटर लेना है। लेकिन एक दूसरी चीज और है,

जो सेक्शन 53 में है कि जो आपरेशनल क्रेडिटर्स हैं, उनको लेस प्रायोरिटी है और जो फाइनेंशियल क्रेडिटर्स हैं, बहुत बार अनसिक्योर्ड हैं, लेकिन उनको प्रायोरिटी ऊपर दी हुई है। क्या यह इक्वल नहीं हो सकता, इसमें इंडस्ट्री की क्या राय है? यह इक्वल होनी चाहिए या उपर और नीचे होनी चाहिए। कोई भी जो आपरेशनल है, मान लीजिए किसी इंडस्ट्री ने किसी को सप्लाई किया है और उसका पैसा अटक गया है तो क्या वह अनसिक्योर्ड क्रेडिटर फाइनेंशियल क्रेडिटर के बराबर नहीं होना चाहिए। इसमें आपका कोई ओपिनियन नहीं दिया हुआ है, क्योंकि उन्होंने कमेटी ऑन क्रेडिटर्स तो मान लिया है, उसकी रिकमंड तो कर दी, लेकिन इसका नहीं किया है तो आप इसके बारे में बताइए।

SHRI B. VINOD KUMAR: With regard to the constitution of committee of creditors, the CII has expressed that 14 days' time is insufficient. Do you suggest some time frame? How much time should be there?

श्री गोपाल शेट्टी: महोदय, सारी बातों को सुनने के बाद मैं अपनी भावना इस तरह से प्रकट करना चाहूंगा कि 10 में से 6 केस तो विलफुल डिफाल्टर के होते हैं। जो विलफुल डिफाल्टर होते हैं, इंडस्ट्री डालने वाला पहले ही लैंड परचेज में अपना शेयर निकालकर ही एन्टर होता है। बैंकर्स जो होते हैं, बैंकर्स लोन देते समय अपना शेयर निकालकर ही लोन देते हैं। यह सब डूबने के बाद में भी ये अपना शेयर मैक्सिमम फिर एक बार निकालने की अगर कोशिश करते हैं तो मुझे नहीं लगता है कि रिफार्म्स के माध्यम से हम देश को कोई दिशा देने के लिए काम कर रहे हैं। मैं यह चाहूंगा कि इन ऑल केसेज सारा निबटारा करने के बाद में भी हमको इसमें यह निचोड़ भी लाना पड़ेगा कि यह सारा जो हुआ है, उसमें दोषी कौन है? ऐसा होने पर ही आने वाले दिनों में देश का सिस्टम सुधरेगा, ऐसा मुझे लगता है। मैं इतनी ही भावना यहां प्रकट करना चाहता हूं। बहुत सारे बुद्धिमान लोग यहां पर बैठे हैं, इसलिए मैंने इस बात को रिकॉर्ड में लाने का प्रयास किया है।

SHRI ANIL SHIROLE: The proposed bill is primarily a reactive process. It may be considered if it could be made pro-active. For example, a company procures supplies from its vendors and then performs a process and produces a product which is used by the customer. Due to certain circumstances, the company incurs huge losses and becomes bankrupt.

The action proposed in the Bill starts more or less after the bankruptcy stage is attained. However, it is very likely that the company's have not received the payments for supplies made by them over a prolonged period, say a month or more. If the regulator proposed in the Bill has been monitoring the company's affairs, the trouble would have been noticed at least a few months back and remedial action could have been taken well in time.

Similarly, users of the company's products or the company's dealers could have sensed a gradual or sudden drop in the demand for quite

some time. In both these cases the regulator's role is of crucial importance.

The regulator should be tasked with developing sets of lead indicators so that remedial action becomes possible very much in time. Needless to say, damage may not be avoided *in toto*, but could be minimized.

A proactive Management Information System (MIS), effect sets of lead indicators, study of supply chains, distribution system, crowd sourcing from customers, creditors and sophisticated analysis would help in arriving at business prospects of a firm on the brink of collapse. The action in this respect as also in pursuance of the provisions of the Bill – when it becomes a law – needs to be quick. This has rightly been stressed in the executive summary – Page 13.

It would be clear that the creation of fully-empowered regulators and equipping them with appropriate resources would help in avoiding the damage in the event of bankruptcy.

HON. CHAIRPERSON: Is there any question related to this issue?

SHRI ANIL SHIROLE: No, it is a general query.

HON. CHAIRPERSON: We will take up the general questions later on.

SHRI ANIL SHIROLE: Okay.

श्री निशिकांत दुबे: सैक्शन 65(1) में जिस तरह से अभी प्रैजैंटेशन में दिया गया कि इस तरह के भी लोग आ सकते हैं, कोई विलफुली बैंक्रप्सी में जा सकता है या कोई स्नीक आन करना पड़े, किसी का ब्लैक मनी का चक्कर हो, किसी का व्हाइट मनी का चक्कर हो, उसमें जो केवल पैनल्टी का क्लाज़ है, क्या आप समझते हैं कि उसमें जेल जाने का क्लाज़ भी जोड़ना चाहिए?

दूसरा, जो सब-सैक्शन 33 है, उसका जो क्लाज 3 है, उसमें ट्रांसैक्शन के बारे में जो दिया गया है, क्या आप उससे सैटिस्फाइड हैं कि ट्रांसैक्शन की जो डैफिनिशन है, वह सही है या गलत है या वह और कुछ होनी चाहिए? इसके बाद जो 59(3) में वालंट्रैली डिक्लेरेशन का क्लाज़ दिया हुआ है, उसमें आप कुछ ऐड करना चाहते हैं? क्योंकि आपको ही प्रैजैंटेशन के आधार पर वे चीजें आती हैं। उसमें क्या चीजें इनक्लूड होनी चाहिए या क्या एक्सक्लूड होनी चाहिए?

जो सैक्शन 17 है, उसमें जो 1-डी मैनेजमैंट कंट्रोल है, उसके बारे में आपके क्या आइडियाज हैं, क्या होना चाहिए? उसमें किस तरह की चीजें ऐड करनी चाहिए क्योंकि आपका बड़ा कंसर्न था, तो वह आप लिखित देंगे। इसके बाद जो बर्डन है कोर्ट पर, यह देश के लिए

अच्छा है या देश के लिए खराब है? चूंकि हमारे चेयरमैन साहब भी वकील हैं, तो इनके ऊपर इसका क्या इंपैक्ट होगा या आप लोगों के ऊपर क्या इंपैक्ट होगा, यह बताने की कृपा करें। फिर जो क्रैडिटर्स हैं, उसमें जो फाइनैंशियल इंस्टीट्यूशन की जो परिभाषा है, उसमें एनबीएफसी को जोड़ना चाहिए या नहीं, यह एक बड़ा सवाल है।

इसके बाद जो समय है, आपके हिसाब से जो 270 दिन है, यह उचित है या अनुचित है? यह कम होना चाहिए या ऐसा ही होना चाहिए, इन सब पर जवाब दें।

माननीय सभापतिः आज की इस बैठक में भाग लेने के लिए सीआईआई, फिक्की और अन्य दोनों संस्थाओं के सभी सदस्यों का बहुत-बहुत धन्यवाद। आपने आकर इतने अच्छे सुझाव दिये। हम चाहते हैं कि सरकार के आर्थिक रिफार्म्स को लेकर जो नया एक्ट आ रहा है, यह अच्छे तरीके से और स्थायी रूप से काम करेगा। इसको लेकर हमारे सदस्यों ने जो इनक्वायरी की है तथा और जो व्यावहारिक सुझाव आपको सुधार की दृष्टि से दिखते हैं, ज्यादा पारदर्शिता की दृष्टि से दिखते हैं, वह आप देने का प्रयत्न जल्दी से जल्दी पांच दिनों के अंदर करेंगे।

कुछ क्वैरीज़ मैम्बर्स के द्वारा डिपार्टमैंट से भी की गई हैं। आप भी जब समय आएगा तो उन सारी क्वैरीज़ का जवाब अच्छे ढंग से देंगे। मैं आप सबको बहुत-बहुत धन्यवाद देता हूं।

(THE WITNESSES THEN WITHDREW)

WITNESSES EXAMINED

3. Shri P. V. Bhatlad, President, Institute of Cost Accountants of India.

4. Ms. Mamta Binani, President, Institute of Company Secretaries of India.

(Please fill
in the rest)

HON. CHAIRPERSON: The representatives of Indian Institute of Cost Accountants; Institute of Company Secretaries and Bar Council of India:

I welcome you all to the sitting of the Joint Committee. As you are aware, the Joint Committee is examining the Bill titled 'The Insolvency and Bankruptcy Code, 2015'. The proposed legislation seeks to provide an effective legal framework for timely resolution of insolvency and bankruptcy of corporate persons, partnership firms and individuals. The Bill seeks to provide for designating the National Company Law Tribunal and Debt Recovery Tribunal as the Adjudicating Authorities for corporate persons and firms and individuals, respectively, for resolution of insolvency, liquidation and bankruptcy. The Bill seeks to provide for

establishment of the Insolvency and Bankruptcy Board of India for regulation of insolvency professionals, which have key role in the insolvency resolution process as well as insolvency professional agencies and information utilities.

The Professional Institutes of India play an important role to promote and regulate the profession of Chartered Accountants, Cost Accountants and Company Secretaries. Bar Council of India is a statutory body created by Parliament to regulate and represent the India bar.

In this background, the Committee have decided to hear your views on the Insolvency and Bankruptcy Code, 2015. The memorandum containing the written comments and suggestions in this regard have been received in the Secretariat and circulated to the Members of the Committee.

(DIRECTION 58 WAS READ OUT)

(INTRODUCTION OF WITNESSES)

Now, after your presentation, if the Members raise any queries, please note down the same and send us written replies within five days from today.

SHRI P.V. BHATLAD: Sir, we have submitted our written submissions already on the 2nd of February. Shri Goyal will further elaborate on issues.

SHRI B.B. GOYAL: Sir, we have submitted a few suggestions to the Committee. The first suggestion which we have made is that the proposed law is intending to cover certain categories of legal entities which include companies' limited-liability partnerships, partnership firms and individuals. What we have requested is that other legal entities which have a legal force to enter into any kind of a contract or borrow funds from any kind of institution like cooperative societies, trusts, societies and HUFs also should be covered under the proposed law. That is the first suggestion which we have made.

The second suggestion which we have submitted to the Committee is that Section 3 (33) says, " 'transaction' includes an agreement or arrangement in writing for the transfer of assets, or funds, goods or services, from or to the corporate debtor." In sub-section (8), "corporate debtor" has been further defined to say, "...means a corporate person who owes a debt to any person." What we have submitted is that a combined reading of all these sub-sections gives the impression that

the transaction's coverage is only 'from or to the corporate debtor'. Since the entire Code is covering other than "corporate debtors" also, which includes firms and individuals, therefore, the definition of "transaction" needs an amendment in the proposed Code so that all sorts of entities including whatever we are proposing like the cooperative societies and HUFs also stand covered under the definition of "transaction".

The next suggestion which we have made is that the definition of "auditor" has been given under subsection 2 of Section 5, which says, "...means a chartered accountant certified to practice as such by the Institute of Chartered Accountants of India." Now, Sir, when it comes to the term "auditor", what we have requested is that the Cost Accountants are also allowed to undertake the audit of various organizations, including the financial audit of cooperative societies. Therefore, the definition needs to be expanded to include Chartered Accountants as well as the Cost Accountants in the definition of "auditor".

The next suggestion is with regard to matters relating to insolvency and liquidation. Section 4 prescribes the minimum amount of default as one lakh rupees for the corporate debtors, and for the individuals and partnership firms, it is a minimum of Rs. 1,000. Though there is a provision that the Government can notify a higher amount, what we are proposing is that these amounts of one lakh rupees and one thousand rupees are too small an amount and this will lead to too much of a litigation before the authorities under the Act. Therefore, to avoid smaller litigations so that the authorities can concentrate on cases involving higher amounts of default, therefore, this minimum amount may be raised from Rs. 1.0 lakh to Rs. 10 lakh in the case of corporate debtors, and from Rs. 1,000 to Rs. 10,000 in the case of individuals and partnership firms. This is what we have proposed to the hon. Committee.

The next point is that there is a time limit prescribed for the liquidation process; 180 days prescribed is the normal time limit. There is an extension allowed up to 90 days if it cannot be resolved within 180 days. Beyond 270 days, no further extension can be granted, as proposed in the Act. Similarly, in the case of fast track corporate insolvencies, there is a time limit of 90 days extendable by another 45 days. Now, there is no time limit prescribed for the liquidation process to be completed.

SHRI GOPAL SHETTY: Do you not think that 180 days period is more in the given circumstances? Why do you want more time?

SHRI B.B. GOYAL: Sir, the process has been defined in the Act. It includes various stages of the process.

SHRI GOPAL SHETTY: Within 180 days, if the matters are not resolved, will they be resolved if we give more time?

SHRI P.V. BHATLAD: We are not talking about giving more time.

DR. J.D. SHARMA: What he is saying is that for the liquidation process, there is no time limit prescribed.

SHRI B.B. GOYAL: Insolvency is one part, Sir, for which time limit has been specified. It will be followed by liquidation for which there is no time specified. Some time limit should be prescribed for the liquidation process to be completed. At present, in case of liquidation process, it takes more than five years or seven years to complete it. The intent of the Code is to restrict the time limit so that the entire proceedings can be completed within a specified time frame. So, we have requested that there should be a time limit for the liquidation process also.

Sir, the next suggestion which we have made is that there is a penalty for any fraudulent proceeding to be started within the Act. We have suggested that in order to avoid fraudulent or malicious acts, the suggested penalty should also include imprisonment against those people who are starting these kinds of processes unnecessarily to defame the companies, persons, partnership firms and LLPs. There is a fine which is being imposed. But we are saying that in addition to fine, there should be penalty in the form of imprisonment also as it will be a deterrent against unnecessarily defaming the companies.

The next point is that there are penalties for various kinds of corporate debts which are covered in Chapter VII of Part II. The penalties are restricted in certain sections, though the defaults are of a similar nature. If you look at defaults in different sections in Chapter VII, the penalties vary from imprisonment up to one year to imprisonment up to five years. We have suggested that these penalties should be uniform under Chapter VII. Whatever type of default occurs in case of corporate debtors, it is a very serious default, therefore, we have suggested for uniform penalties. The Committee may look into that area and examine that aspect of uniform penalties.

Similarly, in Section 70(2) says, "If an insolvency professional deliberately contravenes the provisions of the Act in exercising powers under this Code, he shall be punishable with imprisonment for a term which may extend to six months and he may also be liable for payment of fine not less than one lakh rupees which may extend to five lakh rupees." Now, there is another Section, Section 185, which says, "If an

insolvency professional deliberately contravenes the provisions of the Act in exercising powers under this Part, he shall be punishable with imprisonment for a term which may extend to six months and he may also be liable for payment of fine not less than one lakh rupees which may extend to five lakh rupees." The Code has imposed a lot of responsibilities on the insolvency professional because at the first stage it is the insolvency professional who is doing all this.

Therefore, any deliberate contravention by the insolvency professionals needs to be strictly punished by enhancing the imprisonment up to three years under the same section. There is already a similar provision under Section 187 for the bankruptcy trustee. There is a much higher penalty which is proposed on them.

The next suggestion is that in Chapters III and IV of Part III deals with an insolvency resolution process and bankruptcy proceedings in respect of individuals and partnership firms. The time limit for certain action has been specified under relevant section. But there is no overall time limit fixed that in the case of individuals and partnership firms. We have requested that it should be 90 days and 45 days because they are smaller cases. But in case the Committee feels, as in the case of corporate debtors there is a time limit of 180 days extendable by 90 days and in the case of fast track insolvency, it is 90 days and extendable by 45 days. In the case of individuals and partnership firms also, there should be an overall time limit to complete the process of insolvency.

Section 179 provides for the adjudicating authority in relation to insolvency matters of individuals and firms shall be the debt recovery tribunals. So far the experience is that debt recovery tribunals have not been successful in implementing the existing provisions of the law. In many cases, they have not been able to really implement the provisions of the law. We are suggesting that since we are creating a separate system altogether, they can be a separate authority created under the proposed code to deal with such issues instead of handing over those cases to the existing debt recovery tribunals.

Sub-section 3 of Section 189 prescribes that every appointment on the Insolvency and Bankruptcy Board of India other than the *ex officio* members, there will be a Committee of three members selected by the Government. We want to avoid that independence with the Government. We want to suggest that in the code itself that the Committee shall be constituted of such and such people. We have proposed that it can be headed of Finance Secretary, composed of Law Secretary, Corporate Affairs Secretary, a nominee from the RBI not below the rank of Deputy

Governor and a nominee from the SEBI not below the rank of Members. If the Committee is known, the transparent procedure will be followed and thereafter they can select other members other than the *ex officio* members on the Insolvency and Bankruptcy Board.

Part IV and Chapter III deal with the insolvency professional agencies. We have proposed that the three professional institutes, the Institute of Cost Accountants of India, the Institute of Chartered Accountants of India and the Institute of Company Secretaries of India, be recognised as insolvency professionals agencies as their professionals are already competent to do all these kind of functions. In the Companies Act also they are allowed to be appointed as Company Administrators, Company Liquidators. All these are provided in the Companies Act. Therefore, these three Institutes can automatically be recognised as insolvency professional agencies and their members can be allowed to act as insolvency professionals under the present proposed code.

SHRI GAJENDRA SINGH SHEKHAWAT: What is your observation and comment about the Performance audit?

SHRI B.B. GOYAL: Apart from that, we have spent some more time in understanding some of the more provisions and we would like to give a few more suggestions. We want to add them before the hon. Committee to consider those comments. Presently, in the definition of charge, it only includes the present assets of the debtor. But we are requesting that the future assets of the corporate debtor which may be during the period of insolvency proceedings or in the process of that may be created so that future assets should also be included in the definition of the charge.

Similarly in the case of employees, the definition given is the workman as covered under the Industrial Disputes Act. Employees who are not covered under the Industrial Disputes Act and which are covered under the Shops and Establishment Act, they do not appear to be covered under the proposed legislation. We need to cover all types of employees of the organization which is under insolvency and liquidation for deciding the compensation to be paid if the company is wound up or liquidated.

In the case of related party, there is a separate definition given. The Committee may consider that there is already a definition given in the case of companies under the Companies Act and whether the same definition can be extended under the code as far as companies are concerned and in the case of non-companies like partnership firms or individuals, the code can define as to what would be the related parties in the case of non-company entities.

There is a provision in the proposed code that the adjudicating authority shall within two days of the receipt of application under sub-section 2 of Section 7 ascertain the existence of a default or otherwise from the record of the information utility. The entire process is that all the parties are called and proper natural justice procedure is followed. In the case of corporate debtor, the corporate debtor is not given an opportunity before an adjudicating authority passes an order within two days. We have requested that the corporate debtor also be given an opportunity to explain to the adjudicating authority whether there is an actual default or not. The creditor may file an application before the adjudicating authority and based on which the adjudicating authority may take a decision. We are requesting that the corporate debtor may also be called, given an opportunity also before the adjudicating authority before that authority passes an order.

There are small submissions. There is a provision that the adjudicating authority can extend the time limit from 180 days and by another 90 days and in the case of fast track insolvency from 90 days by another 45 days. So, there is no time limit within which the adjudicating authority itself will pass the order. Normally, the entire Act is putting a restriction of time limit on all authorities that they have to take action within five days, two days and so on. In this case, there is no time limit for the adjudicating authority to take a decision. We will give all the information in writing.

HON. CHAIRPERSON: You can give in writing about all the additional points that you are raising.

SHRI B.B. GOYAL: We will submit them before the Committee.

MS. MAMTA BINANI: A very good afternoon, Sir. At the outset, I must congratulate the masters in this show that this Code is a very very sought after code and it was much needed because we know through the workings of the Justice Eradi Committee that the insolvency process used to take almost about 25 years and it is still taking about 25 years. So, it is a great piece of legislation that would come and see the light of the day. Even the Eradi Committee worked a lot on it and now we have this Insolvency and Bankruptcy Code 2015. Being the second institute to represent, lot of issues would be overlapping for which I seek an excuse from this hon. Committee.

I straightaway come to the point 'Modification and the definition of corporate debtor'. What we want to mention here is that corporate debtor should also include corporate guaranteer because whenever there is a default, the corporate guarantee is also invoked. There, my humble submission is that corporate debtor should be including corporate guaranteer also.

Modification and definition of default is what we are suggesting and what we are asking from the hon. Committee is that the definition of default as it stands today is not very clear. It is very scanty. We want to say that let us have time line. We have proposed within 180 days from the date it becomes due or from the date of demand in the case of working capital advanced by the secured creditor or from the date of supply of goods or services in the case of unsecured creditors or for the non-payment of dues to other claimants including workmen. So, we have tried to lend clarity to the definition which may be considered.

If we go to Clause 3, Sub-clause 37, we see that all the financial Acts will be subsumed in this Bankruptcy Code. But we find there is no mention of Securitisation Act, Depository Act, Recovery of Debts due to Banks and Financial Institution Act 1993 and other such Acts. So, we propose that such Acts should also be subsumed in this major Act. The State Acts should get finished and they should get merged into the Central Act. That is one more suggestion.

The next point is 'the guiding principles for ascertainment of default by the adjudicating authority'. As my learned friend just before me from the institute was mentioning, in the same line I want to mention that some guiding principles based on the principles of natural justice, governance issues, size of organization etc. may be prescribed in ascertainment of default by NCLT.

At the outset, I also want to say that there are two laws which will be now adjudicating defaults that is Companies Act as well as this Code which will now become a law. That will also create a lot of issues because there will be two parallel laws running for the same kind of insolvency. Though there will be certain issues which are not overlapping, but I feel if we really have to have a robust Code, let only one Code deal with all insolvency provisions and let the Companies Act, 2013 which deals with insolvency be removed and be subsumed in the Insolvency Act which we are proposing.

Then there is 'notice to corporate client before rejecting application'. This is quite an important thing that before rejecting an incomplete application, there is something which is *audi alteram partem* which means we need to give them an opportunity of being heard as to why their application has been rejected. That provision may be kindly added in the draft code.

We also talk about the inclusion of definition of 'moratorium'. 'Moratorium' has been given as a word in the Code but its definition has not been given in the Code. So, we propose that the definition may

be added. There is a provision of imposing moratorium. For example, some occasion arises where lifting of moratorium is also very important. Therefore, we propose that the clause may state the circumstances for lifting of moratorium by NCLT, for example on occurrence of fraud. If the law comes to know that this has occurred due to fraud, there should be a lifting of moratorium. That may be added in the Code.

Now we come to the 'additions to contents of public announcement'. We would like to draw the attention of the Committee that Clause 15 of Chapter 2 deals with the contents of public announcements of corporate insolvency resolution process. It is very tight. There are clauses from (a) to (h). I propose that we can add a clause (g) saying that such other details as may be prescribed. Now the hon. Committee is very much aware that there are about 125 places where delegated legislation will come into place. Therefore, I feel even here some delegated legislation should be in place by writing 'such other details as may be prescribed' and it can be done by way of rules.

A lot of onus and shouldering has to be done by the interim resolution professionals. So, I propose that the duties and responsibilities of such an important person known as the interim resolution professional with respect to keeping corporate on a going concern basis should also be spelt out in the Code. It is a very very big shouldering that you have given to the professional that he has to keep the organisation in a going concern mode. So, what is it that we are expecting from the professional may also be spelt out.

Then we come to the 'inclusion of operational creditors in committee of directors'. In a lot of places, we feel in the Code there is a mention of financial creditors but there is no mention of operational creditors. Since it is given in writing, the broader point that I am trying to make is that operational creditor is equally important and you would kindly see with respect to the chair that lot of cases will actually from the operational creditor which is also known as the trade creditors because they don't have any other way or any other process to go through because civil cases take a lot of time. So, I feel that in many places the Code has only given relevant to financial creditors but not to the operational creditors. So, our humble submission is that operational creditors should also be looked after.

Now we come to the point 'approval of committee of creditors for certain actions'. In Clause 28, there is a provision that committee of creditors should be taking approval before certain actions. What I propose is another one point that 'any other matter as may be prescribed' may also be added so that it gets some tangibility and some flexibility.

Then there is 'approval by operational creditors'. Here again, in Clause 30, the Code says that it requires the approval of 75 per cent of financial creditors for a resolution plan. Again, it talks of financial creditors alone. It is not taking into cognizance the operational creditors. We propose that operational creditors may also be added. I want to mention that in the U.S. and the U.K., there is no differentiation between different creditors. So, our Code can also take view of it and can treat everybody at par.

The next one is the 'time lines for filing appeals under the Companies Act 2013'. There is Clause 61 which says that the appeal needs to be filed within 15 days. My submission is that 15 days is too less a time. We have to get hold of the lawyer and do the paperwork. In a fortnight, you lose about four working days because of Saturdays and Sundays. We propose it should be 45 or plus 45 days as given in the Companies Act. So, we have written that the time line mentioned for filing appeals to NCLAT may be please considered to be 45 or plus 45 and for Supreme Court it should be 60 and plus 60.

In proviso to Clause 66 for providing immunity, for fraudulent immunity should not be there. Obviously, we as professionals cannot propose that. But what we want to carve out a niche is that there are some Acts which happen fraudulently but they are *bona fide* in nature. So, we are saying can we carve out something where the *bona fide* act should not be punished. 'Fraudulent' is a word which I mentioned incorrectly. What I would like to say here is if it is a *bona fide* act, it should be carved out. It should not be put under the same basket. That is what I wanted to mention. The following proviso may be inserted: 'Notwithstanding anything contained in this Act, an independent director or a non-executive director not being a promoter or a KMP or any person who has acted *bona fide* in the interest of company or creditor or combination of the above shall be held liable only in such acts of omission or commission by a company which has occurred with his knowledge attributable through vote process and with his consent or connivance or where he has not acted diligently.' So, I request the hon. Committee to please consider this suggestion.

There is a very small point but it is worth mentioning. It is mentioned in the Code that the office will be situated in Mumbai. We propose before the committee that it should be in New Delhi because lot of policy decisions and lot of happenings will be from New Delhi.

Next point is with regard to representatives from insolvency professional agencies as part of the Board. In clause 189, it mentions

line after line who should be a part of the Insolvency and Bankruptcy Board of India. We propose that one representative each from all the three institutes should be made a part of it and we also included the name of Bar Council of India and any other insolvency professional agencies registered with the Board. Sir, we always feel that 1+1 is not 2, but it is 11. So, our expertise will also aid the Board. That is our humble submission.

Now we come to the regulation of statutory bodies. Each professional is guided by the code of their own professional institutes. Somewhere it is mentioned in the Code that regulatory powers lies with the hon. Board.

We completely agree with it. What I am saying is, each institute has its own disciplinary mechanism. First and foremost, let that disciplinary mechanism be put into play and only then it should probably come to the Board. That is our humble submission because we, all the three institutes plus the Bar Council of India, have got a very robust disciplinary mechanism.

Corporate debtor is obliged to submit information to the information utility. Sir, information utility is a very great concept that has been brought into the code. What we simply propose is, the corporate debtor should also be submitting the financial information under sworn affidavit because we feel and understand and we know that corporate debtor are also repository of many-many facts. Probably if they come up and put that precious repository of information I think it will add much more value.

Sir, I have two-three more additional points. I will not take more time of this Committee.

Consolidation facility for multiple bankruptcy filings really deserves a lot of attention. There should be a facility for consolidation in case of multiple bankruptcy application. Sir, hon. Board will get multiple bankruptcy applications so, there should be a facility for consolidation which would reduce the time of the regulators in the adjudicating process.

Sir, exit route for secured creditors; who are not agreeing to this resolution proposal may be given exit route. This is very important because if I want to exit that route should be available.

Sir, the upper ceiling for initiating corporate resolution may be enhanced. What we have mentioned is that the upper ceiling limit of

Rs. 1 crore for insolvency resolution process for corporate persons may be enhanced. In today's would we feel for corporate Rs. 1 crore should be made more.

The interim resolution professional; we have mentioned that duties specified in the code will have to be done. There are many silos in which the corporate professional has to work. So, if duties with respect to each silo are also mentioned I feel it will add value to the professional and to the mechanism as a whole.

One resolution professional may come in and one may go out because of appointment and dismantling. The time of coming and going is within 180 days. I feel that is quite a tough thing to handle. So, maybe the time should be excluded from 180 days.

Likelihood of default should also be considered. In this code we are saying that the default has happened and then you come to us. In the US Bankruptcy we have studied that if likelihood of default is also there the code can be taken rescue of. In that case my humble suggestion in front of this hon. Committee is, prevention is always better than cure. To put in short that is the suggestion that we are making.

SHRI NARESH GUJRAL: If there is no default and the promoter also does not want to go then who steps in for this?

MS. MAMTA BINANI: Sir, there are several mechanisms. If we recollect there is always a declaration that the auditor has to give whether 2:1 ratio be maintained in cases of loans etc. and whether you are really operating as a going concern or not. So, Sir, such kind of mechanisms can be in-built because the court cannot go to the extent of checking. Probably some responsibility on the financial auditor could be casted where he is doing that reporting in his audit report to say that this is in track. So, therefore, wherever we see a red light we get instigated and we come into the process.

Thank you very much. Thanks for a patient hearing.

SHRI BHOJ CHANDER THAKUR: Before I say anything else I must congratulate the Government for having introduced this long-awaited Bill. I have one reservation that is to say that it is very unfortunate that this Bill has been introduced as a Money Bill.

SHRI NARESH GUJRAL: I do not think we are discussing that.

SHRI BHOJ CHANDER THAKUR: But that is one facet of it.

The only thing that I would like to comment upon is Section 80 of the Act contained in Chapter 2. It deals with a new concept that is "fresh start process". Here my only suggestion is that the amount which makes one eligible to apply under this Section 80 is very meagre and minimal. This amount is only Rs. 35,000 for debt and Rs. 20,000 for and the total assets, gross annual income of the debtor has to be Rs. 60,000. My suggestion is that the scope of Section 80 should be enlarged and the ceiling at which this amount has been pegged should be increased so that the benefits of this Act can be availed of by the weaker sections of the society.

Another suggestion that I would like to make is that even the social economic factors can be introduced and socially backward people like the Scheduled Castes, Scheduled Tribes and OBCs can be added here so that they can apply and different limits can be put with respect to them. Presently under Section 80 only economic criteria has been fixed. Presently, his gross annual income has to be less than Rs. 60,000 and the debt in question has to be less than Rs. 35,000.

SHRI VINEET K. CHAUDHARY: Sir, if I may say that 'add' may be prescribed. Power may lie with the Board for the time being.

SHRI BHOJ CHANDER THAKUR: Here the Act itself is putting a ceiling.

HON. CHAIRPERSON: When the reply will come we will consider it.

SHRI JAYADEV GALLA: There is a practice in industry, and I think it was mentioned here, regarding the penalties should be higher. Generally, industry will calculate cost of compliance *vs* cost of non-compliance and go with whichever is less. So, we have to ensure that cost of non-compliance is always more than the cost of compliance.

MS. MAMTA BINANI: Sir, we are absolutely okay and in sink with what you say because 20:30 is also on the same lines and because of it really a lot of deterrence is happening and people are trying to comply with law. That is a valid point.

KUMARI SUSHMITA DEV: He talked about treating all the creditors at par. I would just like to know why. You have quoted from US and UK. But we just heard the industry say otherwise.

SHRI JAYADEV GALLA: Are you including secured and unsecured in that or you are talking only about unsecured?

MS. MAMTA BINANI: Sir, operational would mean secured and unsecured. Coming to your question directly, Madam, it is a single code for corporate, LLP, unlimited partnership and individuals.

SHRI VINEET K. CHAUDHARY: The crucial point is, the inability to pay the tax is to be decided. This will decide the jurisdiction between the two Acts. If it is only the inability to pay the tax, operational sectors may not be material to that extent. There should not be any conflict between both the legislations. Both are the Acts of the Parliament. That is what we are looking for. We have held up the Companies Act for the time being on that part. CLC has come out with the Report. We are discussing and deliberating that. At the same point of time this Code is also coming.

KUMARI SUSHMITA DEV: Do you see a new class of professionals coming up in this field because you have emphasised a lot on these three institutions? There may well be somebody who is an MBA in Finance.

SHRI VINEET K. CHAUDHARY: These are the only three institutions which are functioning under the Act of Parliament. They have different mechanisms to deal with professional misconduct. These are the defined rules and regulations having the mandate of the Parliament itself.

KUMARI SUSHMITA DEV: You must be there. We do not deny that but what I am saying is you may well see a new class of professionals coming up who are not your colleagues. I may have an MBA in Finance having studied restructuring a debt. There is a possibility that new firms may come up.

DR. J.D. SHARMA: Madam, I feel the whole thing about bankruptcy revolves around the debts. So, there should be some clause emerging from lending institutions to represent them and take care of many aspects which are related to lending.

HON. CHAIRPERSON: All right. Thank you.

(THE WITNESSES THEN WITHDREW)

WITNESSES EXAMINED

1. Shri Santhanakrishnan, Central Council Member and Chairman Corporate Laws.

HON. CHAIRPERSON: Now I welcome the representatives of the Chartered Accountants.

Before you start, 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.

Now I would request you to kindly introduce yourself and your colleagues to the Committee and then make your submission.

(INTRODUCTION OF WITNESSES)

SHRI SANTHANAKRISHNAN: I just want to address first, one of the last question which you had. The other professionals will be coming in. But the issue here is that since public is also involved, these are normally governed by people who are governed by an Act of Parliament. The reason why we have the Bar Council Act, the Chartered Accountants Act, Cost Accountants Act, Company Secretaries Act, etc. is that public service is involved. If public are affected, there must be a mechanism by which you will be able to hold them responsible. That is why, the Acts of Parliament becomes very important because each Act has given them certain rights and certain obligations. That is the reason why even though there may be other competent professionals who may be coming in, if there is no disciplinary mechanism or there is no standard learning that they have gone through and accountability cannot be established, the service levels will come down. Therefore, there is a requirement that this comes under the Act of Parliament. We welcome it. One reason is that we will shine by contrast. Secondly, we will also get the benefit of service to people. That is the reason why this is just to supplement your point.

I have summarised only a few major issues which I would like to bring in and the rest of the issues will be given to the Ministry of Corporate Affairs also.

One is, companies incorporated outside India having business have not been covered so far. I have a feeling that the Companies which are incorporated outside India but they are having a place of business, poses greater problem to the people because if they wind up and go away there is no way that we can proceed against them in the country. So, we need to bring in certain safeguards so that these companies do not go away after piling up something which has not been brought in.

Then as regards default, we have provided for the default. But at the outset, I must tell you that this is a wonderful piece of legislation. We, as professionals as also as common man, welcome this because this is going to provide a speedy redressal to the problems. So, we

wholeheartedly welcome this. We only want to suggest some improvements.

As far as default trigger is concerned, you have not put a threshold mechanism. If you do not put a threshold mechanism, companies can be saddled with insolvency provisions even for Rs. 100, Rs. 1000, Rs. 1 lakh and Rs. 10 lakh. In the earlier Act, we used to say that 50 per cent of the secured creditor, 75 per cent of the unsecured creditor and even in minority interest protection, we have said that ten per cent of the shareholders should join together to become eligible for minority protection. That is not there. So, you may have to think about that provision.

Then the presentation definition of property includes money, goods and actionable claims. I have a feeling that we should somewhere connect it to the accounting standards and the financial statements so that the properties are described properly in the financial statement. This definition of property here is completely different from what we would said else where in the Act. Since it involves financial statements, it may prudent for us to link the definition of assets to the accounting standards which might give us a better clarity and we do not have to come up with clarifications like we had to come in the other Acts.

On the transaction, since it is an insolvency provision and you need to protect yourself against fraudulent transfers, we are only saying that gift, agreement, arrangement in writing and we have not covered arrangements without being in writing. Somebody could make a oral statement or gift or some statement and go away. I have a feeling that we should bring in arrangements which are not in writing. What we are saying is that any asset which is disposed of either in writing or not in writing will have to be covered otherwise they can take an interpretation of this and say that this is not covered under the Act. This is our submission. Our detailed submission is also coming to you.

Then Partnership Act should be defined. Now we have said that partners and partnership but they are all coming under the Partnership Act. It may be prudent for us to say that partnerships covered by the Partnership Act. We have said that a limited liability partnership but we have not said partnership act.

The dispute means *bone fide* issues or arbitration. The definition should be made inclusive because a dispute will have to be very clearly specified saying what are the disputes.

As regards financial debt, we have said that lease and hire purchase contract. It will be good for us to link it to the accounting standards.

Therefore, a debt as defined in any other accounting standard will be covered. Another point is that we have somehow got this from the United States but we have never used these words – 'operational creditors and financial creditors'. These are imported from the US. They are the only ones who talk about operational creditors and financial creditors. Now even if I have to supply goods, those goods get converted into money and I have to receive only money from you and not the goods and not the services. So, it will be better for us to use one word—'a debt' rather than 'operational and financial'. I am saying this because else where operational creditors are not given any right to vote. If I have a financial creditor of Rs. 100 crore on operational creditor of Rs. 1000 crore, now Rs. 1000 crore creditor has no voting right in the creditors meeting. So, you are really making a distinction between a person who gave you money and a person who did service. For example, he erected your plant and machinery. He is probably more important than a person who gave you money. We have not made equality in this issue. Therefore, the problem arises from the operational creditor and financial creditor definition itself. Can we combine both and say creditor? It is because the moment he has supplied goods or services, all of them come under the same definition of creditor. I leave it to you to decide.

On the related party, the only place where significant influence is defined accepted across the world in the accounting standard. We believe that it should be combined together to make it.

Then the persons who may initiate corporate insolvency process, we have not defined a financial or a shareholding or a voting right threshold. We believe that we should have a threshold limit otherwise, Rs. 1 or Rs. 1 crore may also come.

Another important one is 14(1)(c). We have said in the Act, the moment you come to the insolvency process, all provisions are automatically stayed, including the SARFAESI Act. SARFAESI Act was done to protect the banks from the rising NPAs. Now that is a very special enactment. Banks are today not able to do anything. I am part of the bank, and, therefore, I will probably passionately talk about a bank. They are not able to do after having got SARFAESI Act which itself is a special enactment, which allows you to take possession. By this process, for a small one, if you say 180 days—you cannot take any action under the SARFAESI Act—will defeat the purpose of which another special enactment was made where larger public interests are involved.

SARFAESI Act does not stop your business. He enforces the security that you gave it to him. I think inadvertently in this process you are

not allowing creditors to take away the collateral security. For example, I have given my house property as a security for doing business and for manufacturing. By this process, the bank cannot enforce even the security and sell it and take its money. So, they will misuse it to avoid bank repayment. This is one of our concerns. We would request you to bear that in mind and, probably, look at what we should do. We have also said a lessor cannot take away his property. If the company gets into insolvency, you cannot get other people to help you and get rid of the insolvency and you will be creating more insolvents because where will the property owner go if I cannot repay his loan out of rentals.

Another thing is we have used the word, 'in possession'. Our opinion, he can only prevent somebody from evicting you from a place where you are doing business. Suppose I am keeping four houses for my employees, now within six months, they will say I will not pay rent and I will not move out also. So, we have to see that the place which is used for production or living only cannot be evicted but rest of it cannot come under eviction is our humble submission.

Then, we have not made a distinction between a company which is having a positive networth and negative networth. Now if the company is solvent and it has got so much of assets, can you subject them to the same responsibilities of somebody coming and taking the management, Board powers being suspended, etc.? I think a distinction will have to be made between the companies financially viable and not financially unviable. So this is not made. That is our opinion.

On the distribution of assets, the priorities under 53 and 178 are not alike. That is only a drafting error. You may have to put the same priority both under 53 and 178. Then under clause 58, we have said if the person comes and claims that he did not do it fraudulently and he has not done it with intention, he is exempt from this penal provision. In our opinion, if he had no knowledge, that is the only reason why we can give exemption because anybody can come back and say, I did not do it with intent to fraud. He was in need of money and he was suffering and starving and therefore, I gave him money. I did not do it with the intent to fraud. Sir, 68 says, intent to defraud is something which we have said. I do not think we should go by the intention. He is not aware of what is happening in the company can be the only criteria under which you can exempt people from penal provision. That is our submission.

Then, excluded assets are referred to. The language should be modified for the purpose of this part, known sources of income because

we have excluded certain assets. If these assets have come about through known sources of income, which they can establish, it could be modified.

Coming to eligibility for making an application, the debtor may apply for a fresh start under this chapter in respect of the income or the value of the debt does not exceed a particular amount. This limit is Rs. 60,000-1,00,000. I have a feeling that you should increase it substantially if you have to extend the benefit. It is such a low figure because today on a valuation of the currency, anybody would make Rs. 60,000, if he is in business and if he has to declare insolvency. So, I believe that the public interest will have to be involved. It has to be only for a larger amount.

Then, on appointment of resolution professionals, in many places we have corrected from the original Bill to today 14 days but under 82, we are still keeping two days. Two days will pose a problem because if it is a Friday, Saturday and Sunday will also consume two days. Either we should clarify it to working days or we should bring seven working days because in two days nothing will happen. So, I think it is very difficult. I thought I should bring it to your attention.

Then, in clause 95 we have said, you can proceed against all partners. If you proceed against the firm and if there are managing partners, you can only proceed against the managing partners because if somebody is not in the control of the affairs of the company, if there is no managing partner and they are all partners because the moment an action is taken, I am governed by all the negative risks that I will face because of that action. Therefore, that may have to be considered.

Regarding stay of proceedings under 96(1) also, we have said that all proceedings are automatically stayed. Instead, we will plead with you that you may have to consider with the leave of the court because there may be a Supreme Court order which would have come. I do not think we can stop a Supreme Court order or High Court order by this process. I believe that we must say that with the leave of the court, it can be stayed. The court applies its mind because while this person could be insolvent, there could be creditors and there could be many other people who could be affected by these things. After having fought the case for 20 years in various forums to make him wait for another six months may be unfair but I leave it to you to discuss.

Regarding composition of the Insolvency Board, in terms of the disciplinary proceedings, are we creating one more structure which will have to implement disciplinary proceedings? Or, should the Board refer

it to the disciplinary Committees of the respective professional bodies? They should take action. I will take my own case, Chartered Accountant. You punish me. The Institute will punish me because I brought disrepute to the profession but it is not under this clause. Nobody can be subjected to double jeopardy. There has to be clarity on this. Instead of that, can the Board say, it has to be referred back to the respective disciplinary Committee, giving them a direction as to within 60 days or within 90 days you have to take action on it? In all cases, we have also said that there should be no disciplinary proceedings pending the Board should satisfied. We believe that we should say that if there is a disciplinary proceeding pending, he is disqualified to be a professional. Why should we bring his name out? The authority should apply its mind. If there is a disciplinary proceeding, his licence is cancelled. He himself shall not accept because we believe that we should reduce the workload of the courts and the authorities from exercising their mind. This is another submission.

Regarding the Board to enter into Memorandum of Understanding with any statutory one, we have to have or whoever is going to have, we should prescribe minimum qualification. I can only share what our Institute had done. We had brought in a course on insolvency when we knew that this is coming up. We have prescribed minimum threshold courses because automatically a Cost Accountant, Chartered Accountant, Company Secretary will not be able to handle if you want to do this. Therefore, we will place before you that a minimum qualification threshold should be considered.

Coming to professional agency, confidentiality and privacy of information with information utility, information utility is again one of the imported concepts that we have brought in. The only thing is that confidentiality cannot be left to private individuals. The Act should provide that punishment and confidentiality to information utility because they are going to be warehouse of so much of data, information with them. If they leak out to public, we have no protection. That has to come as a statutory protection under this Act and not outside as private arrangement.

Then, the Bill also provides for cross border insolvency. Now I think we also need to look into cross-border insolvency like we have got some companies outside which have become insolvent. Somewhere we should provide for cross-border insolvency. The present Companies Act has provided for cross-border merger. Of course, these Sections have not been notified but we may have to look at that. I leave it to you.

I think any statutory claim which is coming in after the insolvency application, should rank only in accordance with other priority. Otherwise, statutory authorities could be in the habit of bringing in a lot of claims which they feel that it may come later. It will affect the very purpose of it. So, any claim that is subsisting, up to the date of insolvency petition is admitted, will rank in priority. But rest of it cannot claim because you have said that you cannot evict a person as his rent his due. So, so many people are there. That is our submission.

In the PPP infrastructure projects, we believe that we may have to bring in several protections because State is involved. The concession arrangements are given by the States. If you are going to stop the concession arrangements because of this provision, I think the State's interest will be adversely affected. We are not coming out to the remedy because the limited time is available. But we will produce a very detailed note on this with our suggestions as to what we should do. These are our limited observations. But again with the conclusion which has been exceedingly well, if my colleagues have anything to add, may add.

SHRI JAYADEV GALLA: I have two points. You were talking about threshold limit. My question on this is that many times the debtors will hold back a percentage. You know that is the most difficult money to collect from them and sometimes you can never collect it. So, by introducing the threshold limit, would you encourage that type of behaviour?

CA S. SANTHANAKRISHNAN: I would always say that law is made as a rule and exceptions will always be there. We need to deal with exceptions separately. You cannot provide a law for exceptions.

SHRI JAYADEV GALLA: These are not exceptions, these are common practices.

CA S. SANTHANAKRISHNAN: I will just come to it. I do agree that this is a problem. But even there, can you come to insolvency for Rs. 10000 or for Rs. 1 lakh? I am only saying to link it either to the turnover or networth of a company which is applicable. For example, if I take the name of Wipro or Reliance or Infosys, they are not small companies. Can we bring in the threshold of minimum of Rs. 1 lakh or Rs. 50000 or five per cent of the turnover or net worth? Somewhere you need to bring in protection. Otherwise, the purpose of this Act may get defeated if you get multiple cases coming in.

SHRI JAYADEV GALLA: You were talking about partners *v/s* managing partners in terms of liability. Do not the partners have a responsibility to ensure the governance of the company? If you remove the liability, why will they have that?

CA S. SANTHANAKRISHNAN: We are not saying to remove the liability. Under partnership, you have a joint and several liabilities. We are only saying that when you come to the court, you bring in 20 people, there will be a minor child also admitted to the benefits of partnerships. For example, you take a chartered accountant firm. We have hundred partners. Like in hospital, if one person dies, you do not close the hospital. If one partner has to be sued, you sue that partner and the firm. If the partner is not able to pay all other partners will be liable unlimited liability under the partnership. We are not saying to leave them. There is also one more thing. He may not know even the number of partners. Then there will be a dispute that he has not included all the partners. If there is a managing partner go after him because he is supposed to be the person who is managing it. It also helps the debtor or the creditor. He would not go round the countryside to looking for who are the partners because he gives an affidavit that these are the partners. We have not provided for compulsory registration of partnership firms under partners names. But wherefrom I draw that benefit? I do not have the benefit in that. So, this is something which is clearly mentioned.

KUMARI SUSHMITA DEV: You are asking for a threshold for the default trigger. It does make sense. But before you entered, we heard a saying likelihood of default should also be included. So, somehow the two theories are flying in the face of each other. May be I am conceptually confused because we are saying that there should be some sort of a requirement for an auditor to detect the likelihood of default. But on the other hand you are speaking about networth and other things. So, the two things do not see eye to eye. It has to be either this or that.

CA S. SANTHANAKRISHNAN: I will probably explain to you. Thank you very much for raising this. All that I am saying is that likelihood of default is already identified and here we have not defined default. Our point is, first of all, define what the default point is. For example, banks are saying that 90 days you do not pay interest you become a NPA. The banks are going to put you on 91st day. Here you are going to put on the first day itself, which is wrong. Therefore, you go with the banks definition of 90 days default. This is one issue. The second is, for coming to the court should you provide a threshold limit, otherwise every small issue will come to the court and courts will again flooded and the same problem of disposal will come up. We are saying that you put only speedy disposal cases for it. From the regular one, do not bring it on fast track. Bring regular amount, say, Rs. 1 lakh and above. Every dispute this court cannot be looking into. We are only worried that this provision should not be misused. In a private company every

shareholder will come to you saying that we want to wind up the company. So, we should not allow that also to come.

KUMARI SUSHMITA DEV: What you are saying does make sense. But how it will apply in a situation like that is what I am wondering.

SHRI SUKHENDU SEKHAR ROY: In regard to clause 3 sub-clause (33) you have put two questions, whether any oral agreement or arrangement would be covered under the definition or any other contractual understanding would be covered. Is any written suggestion forthcoming from your end? Do you have any suggestion?

CA S. SANTHANAKRISHNAN: I have given the suggestion. Even oral arrangement should be there. There should not be a condition like contractual arrangement. So, if there is no contract what, would you do with that? I think any item which involves in transfer of an asset from a company to another, whether written or not, should be covered. We are saying that it should be widened.

SHRI RAVI PRAKASH VERMA: A company is registered outside and conducting its business in this country and it lands in that situation. What is the provision available for it in our country at present?

SHRI AJAY TYAGI: There should be an insolvency provision for it. That is correct. The Viswanathan Committee looked into this. But they said that first let there be a bankruptcy law and then that provisioning will also be done. That has slight complication. A company which has its head office somewhere else and is causing insolvency problems here, that requires further study. That should be provided but for the time being it is not being provided.

MS. MAMTA BINANI: Sir, the J.J. Irani Committee has suggested that these things will be handled by UNCITRAL. So, that handles the cross border insolvency.

CA S. SANTHANAKRISHNAN: In the cross-border mergers, we have looked at one or two issues even in the Companies Act. What will happen to your labour? Suppose you shift the head office and merge it with a U.K. company, the entire labour interest will get shifted. If your labour has to file a case, they have to go there. If you do this with a U.K. company to India, the entire liability of the U.K. comes to India and Indian shareholders will suffer. While it is very good topic to discuss, it will be very difficult to implement.

In the case of foreign companies, in our view, you should have a provision. That provision going to be effect or not is another thing. You have left out a class of people. They don't have wherewithal to file a

case. There should be a provision to say (1) the company which is opening a branch should name an accountable person from that country and register it and (2) the day there is insolvency, the company shall not transfer any asset out of this country whether in terms of payment due to import or export of goods. They should come under a monitoring mechanism so that money does not go out and the small and medium level Indian people who supply goods and services may be protected.

SHRI NARESH GUJRAL: Who is going to be the favourite? How quickly do you think we will be ready with this Clause? This is the Clause which will really transform these companies?

CA S. SANTHANAKRISHNAN: I reached a level where we are patriotic citizens and we don't only belong to the institute. I will be very frank with you. If you look at the curriculum of Institute of Cost Accountants, Chartered Accountants and Company Secretaries, Bar Council lawyer would always be able to handle it because all the legal systems are known to them. So, Bar Council I am not even discussing. In terms of CAs, Cost Accountants and Company Secretaries, bulk of our curriculum already covers all the Acts which are there. Three year back, we introduced a course on insolvency. If you ask me whether should we take Company Secretaries and Costing Institutes also and train them up to see that this is done, we are willing to do it as a leader in the profession. We will probably do a course curriculum for them also and if they pass the examination, they should come. But to meet the requirements of the country, CA institutes and the Bar Council themselves would be able to give you those kinds of people. Therefore, if you ask me a firm of six or seven CAs, we have already started planning and only one person will only do insolvency, one person will do only IFRS. The number is a great advantage with our country and we are confident that we will be able to meet your requirements in six months time.

MS. MAMTA BINANI: Sir, with all due respect, the Institutes of Company Secretaries has a course on insolvency law which is five years old.

CA S. SANTHANAKRISHNAN: I think it is about all the institutes. We are all together on this.

MS. MAMTA BINANI: Please allow me to say this. We already have a course which is that old and lot of our professionals have already been trained into this. We are all partners in nation-building and we all professionals can play a very pivotal role in this. My humble request to the learned Committee is that we are all professionals. If you are including any one professional anywhere, it is a request that let all the

professional bodies get the similar kind of opportunity because CAs, Costing, CS and Bar Council are equal. Number is just a matter of a figure because the institute is age-old.

CA S. SANTHANAKRISHNAN: I support this. I think all the professionals should be able to do it. We have no disagreement at all on this.

HON. CHAIRPERSON: What about the Cost Accountants?

SHRI P.V. BHATLAD: We also support this.

SHRI JAYADEV GALLA: I have one comment. In the case of companies that have a good chance of turning around, financial management is one part but business strategy, marketing, so many other disciplines are also required to turn the company around. Would you introduce those types of courses for these professionals? Right now, your existing skill set may not be sufficient.

CA S. SANTHANAKRISHNAN: I will answer that. I thought I will do it in regular memorandum which I have not done. There should be provision in the Act to change the management of these companies which banking regulation Act has brought in and said that creditors can take over and change the management. That provision is not here. While we are only talking about insolvency and liquidation, I don't think we have given a second lease of life. I thought that is not important. But that has to be included.

SHRI AJAY TYAGI: I will just intervene. This is only for those 180 days or 270 days when creditors are in-charge. If it is not for liquidation, there is a resolution plan. That resolution plan might also contain change of management.

CA S. SANTHANAKRISHNAN: I appreciate it. My problem is lack of understanding on this. Should we provide saying that will include that also? It is because there may be a situation where 75 per cent of the creditors may not vote. The resolution says 75 per cent vote is required. What if 75 per cent do not vote? That has been provided. I think 75 per cent is too big a threshold for you to get. All that we are saying is that we can provide with an additional clause. In terms of the course curriculum, we have looked at the rehabilitation of the unit, restructuring of the unit and doing business as part of our course itself, both in CA as well as in insolvency code. I will send you our syllabus to you. It will be very helpful to you.

HON. CHAIRPERSON: Thank you very much for your suggestions and input to the Committee. I request you if you want to add something in writing, you send it to us within five days from today. All our hon. Members, all our professionals, all the Ministry personnel and all others sitting here are inviting for lunch. For the Members, our next meeting will be on 15th and 16th of this month.

(THE COMMITTEE THEN ADJOURNED)

PROCEEDINGS OF THE FIFTH SITTING OF THE JOINT COMMITTEE ON THE BANKRUPTCY AND INSOLVENCY CODE, 2015 HELD ON MONDAY, THE 15TH FEBRUARY, 2016

The Committee sat from 1100 hrs. to 1530 hrs. in Committee Room No. 074, PLB, New Delhi.

PRESENT

Shri Bhupender Yadav — *Chairperson*

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 Jagdambika Pal
8. Shri Jayadev Galla
9. Shri Chandrakant Khaire
10. Shri Chirag Paswan
11. Shri K.C. Venugopal
12. Shri Kalyan Banerjee
13. Shri Bhartruhari Mahtab
14. Shri B. Vinod Kumar

Rajya Sabha

15. Shri Naresh Gujral
16. Shri Anand Sharma
17. Shri Ravi Prakash Verma
18. Shri Satish Chandra Misra

SECRETARIAT

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

MINISTRY OF FINANCE
(DEPARTMENT OF ECONOMIC AFFAIRS)

1. Shri Ajay Tyagi	—	Additional Secretary
2. Shri C.K.G. Nair	—	Advisor
3. Ms. Sheyphali B. Sharan	—	Director
4. Shri Praveen Trivedi	—	OSD
5. Shri Revant Gupta	—	Consultant

MINISTRY OF LAW AND JUSTICE
(LEGISLATIVE DEPARTMENT)

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

Vidhi Centre for Legal Policy

(The organization has worked with Bankruptcy Law Reforms Committee)

1. Shri Debanshu Mukherjee	—	SRF and Lead (Corporate Law and Financial Regulation)
2. Ms. Shreya Garg	—	Research Fellow

Centre for Law and Policy Research

Ms. Aparna Ravi	—	Senior Researcher

PRS Legislative Research

1. Dr. M.R. Madhavan	—	President
2. Dr. Mandira Kala	—	Research Head
3. Shri Aravind Gayam	—	Analyst
4. Shri Vatsal Khullar	—	Associate Analyst

Indira Gandhi Institute of Development Research

1. Dr. Susan Thomas	—	Assistant Professor
2. Ms. Anjali Sharma	—	Research Associate
3. Dr. Rajeswari Sengupta	—	Assistant Professor

National Institute of Public Finance and Policy (NIPFP)

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

Insurance Regulatory Development Authority of India (IRDAI)

1. Shri T.S. Vijayan — Chairman
2. Ms. Mamta Suri — Head of Department (F&A)
3. Shri Mukesh Sharma — Joint Director

BDO India LLP

1. Shri Milind Kothari — Managing Partner
2. Shri Pranay Bhatia — Partner Direct Tax

Bhartiya Mazdoor Sangh

Shri K. Sashi Kumar Kedlaya — Vice President (NoBW)

Indian National Trade Union Congress

Shri Ashok Singh — Vice President

Centre for Indian Trade Unions

Shri A.K. Padmanabhan — President

Hind Mazdoor Sabha

1. Shri C.A. Rajasridhar — President
2. Shri Anand Swaroop — Director Education

Ministry of Labour & Employment

1. Shri Shankar Aggarwal — Secretary
2. Shri Heera Lal Samariya — Additional Secretary
3. Shri P.P. Mitra — Principal Labour & Employment Advisor (Secretary Rank)
4. Shri Manish Gupta — Joint Secretary
5. Shri Deepak Kumar — Director General (AS Rank)

Ministry of Heavy Industries and Public Enterprises

DEPARTMENT OF PUBLIC ENTERPRISES

1. Shri Ameising Luikham — Secretary
2. Shri S.K. Goyal — Adviser
3. Shri Anand Singh Bhal — Adviser

JOINT COMMITTEE ON INSOLVENCY AND BANKRUPTCY CODE, 2015

Verbatim Proceedings

Date : **15th February 2016**

Time : **1100 hours**

Venue : **Committee Room '074'**
Parliament Library Building
New Delhi

PRESENT

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

WITNESSES EXAMINED

1. Shri Debanshu Mukherjee
   Vidhi Centre for Legal Policy
2. Ms. Shreya Garg
   Vidhi Centre for Legal Policy

HON. CHAIRPERSON: Representatives of Vidhi Centre for Legal Policy, Centre for Law and Policy Research, PRS Legislative Research, Indira Gandhi Institute of Development Research, National Institute of Public Finance and Policy.

I welcome you all to the sitting of the Joint Committee. As you are aware, the Joint Committee is examining the Bill titled 'The Insolvency and Bankruptcy Code, 2015'. The Committee understand that the Vidhi Centre for Legal Policy was associated with the Bankruptcy Law Reforms Committee which studied the corporate bankruptcy legal framework in India and after detailed consultations submitted report to the Government. CLPR, PRS, IGIDR and NIPFP are the other reputed organisations undertaking research on various important and topical issues. Keeping in view the expertise of these research organisations on various issues, the Committee have decided to hear their views. The Memoranda containing the written comments/suggestions from these organisations on the Insolvency Code have been received in the Secretariat and circulated to the Members of the Committee. So, you may submit your points in short within seven minutes to 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 to be circulated to anyone or made public in any other media till the report is presented to the House.

Now, I request representatives of these organisations 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.

SHRI DEBANSHU MUKHERJEE: We have submitted a five-page document comparing the key features of the Code with the Companies Act. I will just take you through the document. Chapter 19 of the Companies Act deals with the rescue and rehabilitation of the companies. So, the first submission that I am talking about is the trigger event in Chapter 19 which is contained in section 253 of the Companies Act. It is important to know that only the secured creditors or the debtor company itself can initiate rescue proceedings as per the Companies Act and unsecured creditors are not allowed to initiate the proceedings. Further, only after secured creditors representing 50 of the total

outstanding debt make a claim to the company and the company is unable pay that debt can the proceedings be initiated. So, this is in stark contrast to the bankruptcy code where the trigger event is single default of a value between Rs. 1 lakh to Rs. 1 crore as may be prescribed by the Government. So, this is a huge difference and this makes the process really objective in comparison to the Companies Act. As I mentioned unsecured creditors are not allowed to initiate proceedings under the Companies Act which is highly disadvantageous for unsecured bond holders. One of the key objectives of the Code is to promote the availability of the credit which also includes promotion of bond markets in India. The Companies Act does not address that concern, which concern is specifically addressed by the Bankruptcy Code. So, that is the first submission that I had to make. That was in relation to the trigger event.

Secondly, the way the Companies Act is drafted, it provides for a lot of decision points during the rehabilitation proceedings. First decision point is the admission after a secured creditor has initiated the proceedings. Then the second decision point is the declaration of sickness. There is no definition of sickness provided in the Act. The NCLT is entrusted with making that definition. Third decision point is the study by the insolvency practitioner on whether the company is viable or not and then a vote by the creditors on deciding whether to rescue and liquidate the company and the final of the NCLT on whether to rescue and liquidate the company. So, this is the third decision point. After this happens, the creditors come together, prepare a plan and then the plan is submitted to the NCLT which approves the plan finally. This is the fourth major decision point. But in the Code one would notice that there are just two major decision points. One is the admission which is at the initiation of the proceedings and then the last decision point is the final approval of the scheme by the NCLT. So, there are just two major judicial orders as part of the Insolvency Code whereas in the Companies Act there are multiple judicial orders within the rehabilitation proceedings. Although both the Companies Act and the Code provide for certain intervening orders on moratorium, on appointment of the insolvency practitioner, etc, the Code follows a more objective process in comparison to the Companies Act. It specifies the grounds and the manner in which the appointments have to be made. Therefore, again it is a stark improvement in comparison to the Companies Act.

My third submission is in relation to displacement of management. The Companies Act does not provide for displacement of existing

management of the company during the rehabilitation proceedings. Therefore, it does not address one of the key limitations of the Sick Industrial Companies Act which allowed the management to remain in possession of the company while rehabilitation proceedings were going on. This feature of the Sick Industrial Companies Act is heavily criticised. Several Law Reform Committees have observed that this is one of the key problems that led to the failure of the SICA regime. Some authors have called it in relation to the Sick Industrial Companies Act, it is equivalent to leaving the fox in-charge of the hen house. It may not be true in all cases, but in many cases the debtors have abused this right and engaged in rampant siphoning of the assets to the detriment of the creditors. So, the Insolvency Code addresses this issue head on and provides for the displacement of the management as part of the insolvency resolution process. Therefore, it is one of the most important features of the Code and one of the key pillars of the Code and one of the key features which distinguishes it from anything that has been done in relation to the bankruptcy laws in India in the past.

श्री निशिकांत दुबे: लेकिन एसडीआर आरबीआई का डिसप्लेसमेंट ऑफ मैनेजमेंट की बात ही करता है, उसका इन सारे एक्ट से क्या लेना-देना है? एसडीआर एक्जैक्टली यही सेम है न, एसडीआर का वह सीधा अच्छा वर्जन है।

श्री देबांशु मुखर्जी: एसडीआर का प्राब्लम यह है कि एसडीआर में कोर्ट इनवाल्व नहीं होता है, इसलिए उसकी सैंक्टिटी क्या है, यह थोड़ा डाउटफुल है। एसडीआर म्यूचुअल एग्रीमेंट से होता है। Creditors and debtors have to come together and agree on a table as part of the debt-research plan, कि आप हमारी कंपनी टेक ओवर कर लीजिए।

SHRI ANAND SHARMA: What he is saying is that that has no legal mandate where this actually consolidates and gives the mandate. In your view, it is progressive and that would address the concerns which you are referring to. Just come to that point. If you are any concerns about it, we would like to know about that.

SHRI DEBANSHU MUKHERJEE: The only concern could be that for instance if it is a very complex business like the airline, and if the insolvency practitioner comes in, one has to be careful about how that person would be able to run that business. The solution to that that person has the flexibility to consult advisors and practitioners who may be able to help him to run the business. This happens in the UK where the administrator comes in and who runs the business during the administration process. One has to see how this actually plays out in Indian context and that could be the only concern.

श्री निशिकांत दुबे: सीडीआर तो दोनों के बीच का मामला है, लेकिन एसडीआर जो है, यदि कोई अपनी कंपनी स्टैब्लिश करता है और उसका मैनेजमेंट चेंज हो जाएगा, तो कोई भी जो उस वक्त का मैनेजर है, जो मैनेजमेंट वाला है, वह तो अच्छे से उसको नहीं ले जाएगा, वह तो जबरदस्ती ही है, तो लीगली यदि वह वैलिड नहीं है तो उसको प्रोमोटर्स क्यों चैलेंज नहीं कर रहे हैं?

श्री देबांशु मुखर्जी: सर, लीगली वैलिड है, लेकिन यह उससे ज्यादा अच्छा पैडस्ट्रल है।

श्री निशिकांत दुबे: आपने अभी कहा कि लीगली सस्टेनेबल नहीं है।

श्री देबांशु मुखर्जी: सर, उसमें कोर्ट की बैकिंग नहीं है। यह लीगली इससे बेटर है। SDR is like a band-aid, and this is like a ...

SHRI ANAND SHARMA: Basically what you are trying to say is that that mandate is given by the RBI to the banks. Here, you are talking of insolvency so it has the force of the statute.

SHRI DEBANSHU MUKHERJEE: Exactly. And it also comes with the final order of the court, which is a key difference.

HON. CHAIRPERSON: Apart from the comparison between the present code and the Companies Act, is there any other thing, you want to say? There are five points. Apart from that, you want to say anything.

SHRI DEBANSHU MUKHERJEE: I am happy to answer questions.

SHRI ANAND SHARMA: Do you want any reservation when it comes to the draft Bill?

SHRI DEBANSHU MUKHERJEE: Operational creditors have also been given the right of proceedings. These operational creditors include employees, creditors, etc. Given the fact that initiation of proceedings may have an adverse effect on the image and goodwill of the business, one needs to build more safeguards to ensure that operational creditors don't use this process to force the company into paying disputed debts and in a certain sense to blackmail the company in certain situations. A solution to this could be to probably think about following the UK model again where a windup petition is filed under the UK Insolvency Act, a court does not admit the petition unless all the similarly situated creditors also support the petition. A single petitioner cannot just get up and say that put the company into liquidation. It has to have the support of all the similarly situated creditors also.

श्री निशिकांत दुबे: इसमें जो अथॉरिटी है, वह तो दोनों को मौका देती है। ब्लैकमेल का समय तब आता है, जब इसकी कुछ और प्रोसिडिंग्स हो। मान लीजिए कि किसी ने चैलेंज कर

दिया कि मेरा क्रेडिट है, तो एक अथॉरिटी बनाई गई है, अथॉरिटी में उस कंपनी को पूरा का पूरा कहने का मौका है कि यह जो एलिगेशन है या ये जो चीजें आ रही हैं, ये गलत हैं। वह एक न्यूट्रल आदमी है, वह किसी के पक्ष में नहीं है। इसमें ब्लैकमेल होने का कोई सवाल मुझे नहीं दिखाई देता है और वह भी टाइम बाउंड है कि आपको 21 दिन के अंदर कर देना है, 14 दिन के अंदर कर देना है। उसकी पूरी टाइम लिमिटेशन है। उसमें ब्लैकमेलिंग का सवाल कहां है?

श्री देबांशु मुखर्जी: सर, एक पॉसिबिलिटी है, क्योंकि कई बार बहुत सारे केस लॉ हैं वाइंडिंग अप के अंडर जहां पर डिस्प्यूटेड डेट के ऊपर बहुत सारा लिटिगेशन होता है।

श्री निशिकांत दुबे: वह तब था न जब किसी कोर्ट में इस तरह का चैलेंज होता और वहां लिटिगेशन चालू रहता, फिर वह लंबा होता और मामला लीगल प्रोसिडिंग्स में चला जाता। यहां तो एक अथॉरिटी बना दी गई है, अथॉरिटी में मान लीजिए क्रेडिटर्स गए, तो जो डेब्टर्स हैं, उनको भी उतना ही मौका है। उसको एक टाइम बाउंड मैनर में उनको खत्म कर देना है कि यह सस्टेन करने लायक है या नहीं। इसमें ब्लैकमेल का मतलब इसमें नहीं है।

श्री देबांशु मुखर्जी: सर, चांसेज तो कम हैं।

DR. AJAY SHAH: It is an honour and privilege to be here. I have already given you my comments in writing. I want to very briefly say that this is a very important reform for India. I think, all of us would agree that we want to get this done. There is no real political economy where some people are against and some are for. All of us understand the problem that it is a normal part of the market economy. Some companies would not be able to repay their debt and there needs to be a harmonious procedure through which we deal with the situation. Sofaras India, we have not achieved that. We are all here to get this done. I will only focus on what does it take to get it done. We are only interested in getting the things done.

The promoter is not going to let go of his company that easily. We have to understand that. There will be war. For some years, people will litigate and ferociously litigate against the working of this Code. I was part of the Ministry of Finance when SARFAESI Act was implemented; this was subject to vigorous legal challenge. As you may know, there was a Mardia Chemicals ruling at the Supreme Court which significantly removed the potency of the original SARFAESI. That is an example of what we face. The Code is 50 times bigger than the SARFAESI, which was one small simple question. I have given a factory as collateral to the bank, can the bank take the factory when I fail to pay. This is a far more complex law as there are many subtleties and provisions; which will be vigorously litigated. We have to go into this with a razor

sharp legal mind expecting are going to challenge 'comma', every word in the law. That brings to my first area of concern.

My concern is that the present state of the draft has the broad economic principles in place but the drafting is not of the level of quality that will stand up to that level of vigorous scrutiny. We will all work very hard on this. We will be very proud when it went in Parliament. I fear that we may be disappointed; one or two or three year away; when things don't happen in the court like we wanted them to. As an example, I wish to bring the Companies Act, 2013—all of us agreed on the objectives that companies are important and they need regulations; there need to be better corporate governance, protection of minority shareholders, the Companies Act, 1956 needed to be modernised. We are all disappointed at the outcome that when we go back and look at the Companies Act, 2013, we realised there were many blemishes, flaws, a little more thought and care and very thorough staff work of a technical nature would have protected us from some of the problems.

SHRI ANAND SHARMA: You have reservations. Have those been addressed particularly when it comes to insolvency procedure in the draft Bill? We will be amending those sections or provisions of the Companies Act not in sync. with the spirit of the new Bill.

DR. AJAY SHAH: My proposition is somewhat more general – after we finish the Companies Act, 2013 and it was taken to Parliament, when people started reading it, we got little disappointed.

SHRI ANAND SHARMA: We will get it amended. We keep note of what you have said.

SHRI SHIVKUMAR UDASI: The Companies Act, 2013 is being amended once again. 75 clauses of 2013 Act are getting amended once again with 100 amendments. Have you gone through that?

DR. AJAY SHAH: My thought is, could we have avoided this in 2013?

SHRI SHIVKUMAR UDASI: That is different. Right now, they have already stated where it says that they are going to amend 75 clauses of the Companies Act, 2013 whereby there are 100 amendments which are going to be taken up in Parliament. Have you gone through the Insolvency and Bankruptcy Code, what Mr. Sharma was talking to us, which are going to be in sync. with this Code? If you have done that study, if you can explain it to us, it will be useful.

DR. AJAY SHAH: We have not studied these amendments in the narrow sense. This is my first point that this is a law that is going to be vigorously litigated and it requires a very high level of perfection.

Sir, the Ministry of Finance ran a process for the Financial Sector Legislative Reforms Commission where there is a law, the draft Indian Financial Code where there is an extreme level of perfection of the drafting. That is the kind of quality of the drafts.

SHRI ANAND SHARMA: I think that is for the Legislative Department to take note of these observations. If you have specific suggestions, I think, Mr. Chairman, he can give it to the Committee and to the Legislative Department about the drafting suggestions.

DR. AJAY SHAH: My second group of comments is about the institutional infrastructure that is required to enforce this law. The law rests on four pillars. There is supposed to be a private comparative industry of information utilities who are like NSDL and CDSL, the stock depositories. There is supposed to be a private comparative industry of insolvency professional agencies who are like stock exchanges. There is supposed to be a regulator who has certain functions envisaged in the law. Finally, there is supposed to be an adjudication infrastructure where there will be proceedings that will happen in a judicial forum which is essential for the working of this Code. The results will not be obtained until all these four pieces are working.

Again, to make an analogy with the Companies Act, 2013, even after the Supreme Court cleared the way for the NCLT, we are still in this grey zone where the NCLT is not up and running. Certain parts of the Companies Act are not working. My thought is that the Legislature should enjoin upon the Executive to prepare for these things ahead of time. You have to plan for these things ahead of time. You cannot wait for Parliament to pass the law and then you start a multi-year process of constructing this institutional infrastructure. This kind of work should happen in parallel that while Parliament is considering the law and going through the legislative process, in parallel, it is important to also construct the institutional infrastructure. Otherwise, again, this will get delayed for years and years. There will be a messy transition. Some sections will be notified; some sections will not be notified. Things will not get done that we are all aspiring to get done. Thank you; this is my thought.

DR. SUSAN THOMAS: Sir, thank you for inviting us to comment on the Insolvency and Bankruptcy Code. We came at it from the point of view of economists who look at the broad economy. One of the missing pieces, as we all know, is the absence of good bond markets, absence of good credit markets. We think that this is a very important Bill to help clarify to a lot more creditors than who we are usually used to

thinking about, which are the banks. So, today the debate about where the credit will come from, where enterprises will borrow from is only banks. Whereas, when we look at very large economies who are like us but who are many years away in terms of building enterprises, those economies have got bond markets and they have got very many sources of borrowing money as compared with just banks. So, one of the central focus, when we thought about reading this Bill and thinking about its impact upon the economy, was that if this Bill is put in place as it is and with better provisions as Dr. Shah was just referring to, then all kinds of creditors not just the banks, not just the pension funds or the insurance companies but people like you and me will have much more faith to lend to an enterprise may be in our locality, may be from a national market. We will be able to happily give them money because we will have faith that if there is a problem that comes up, the law is there to give us clarity on how much we will bear as losses and how much other people will bear as losses and what we will finally get.

So, when we read the Bill, the one thing that strikes us which I do not know came out in our comments is that this is one Bill for all manner of enterprises not just for India of today but also India of tomorrow. So, one of the questions that we ask ourselves is this. Are all enterprises, all manner of businesses covered under the Bill? There the Bill has got some lacunae that what happens when a public sector enterprise will fail, when it runs into distress on default, that resolution process is not completely clear in this Bill. What happens when a financial firm, like a brokerage house or an asset management company, when they run into distress on making their payments what is the kind of procedure that they need to follow, that is a lacuna. Of course, this Bill is quite overarching in its approach because, for the first time, I think that we are including individual insolvency resolution and corporate and enterprise resolution under one common umbrella. So, one of the concerns that was raised during the deliberations of the Committee was what happens to personal guarantees. I think that if we get this Bill right in its provisions, we will not have to worry about promoters, who have given personal guarantees to creditors, getting away scotfree as we have seen in the past. But ultimately our concern is this. Is the provision clear enough that anyone who is making a loan to an enterprise, do they have hundred per cent clarity that if there is a default, this is what I will stand to lose and this is what I will stand to earn? From that perspective, we think that the law needs to be a little tightened because what is it that I can use to prove that I am a debtor to this company or I am a creditor to this company is not very in the law. Whereas we have other laws in the country which have evidentiary proof which is more clear. So, if am an employee of a

company and the company owes me about two months of pay, I want to be able to trigger insolvency on the firm, it is my birthright. They have not paid me for two months, then I want all the creditors to gather around the table and question: "Is this business to be run forward or should it be shut down and I should start looking for a different job?" As Debanshu pointed out, in this law, for the first time, we have all manner of creditors. Whether it is an operational creditor or it is a financial creditor like a bank, they are able to call a question mark upon the management of the company and ask them to be governed and assessed as to whether they can be going forward as a going concern or whether they should be shut down and I as an employee should be able to walk away and get a new job. Of course, the dues that are to be given to me by this company should come to me. So, we fear that when we read the Bill, some of the proofs that we have to show that we are actually creditors will take a long time. So, as Dr. Shah pointed out, there are institutions that this Bill provides for. One of the biggest institutions is the creation of, what we call, information utility. This information utility will be a repository of every single credit note that has been written between the firm and the creditor. Once it is there in the information utility, the court will say 'no dispute'. We will not spend months and days litigating on whether this proof is true or not. It will actually be used to be taking this firm into a question of whether this firm is a going concern or this firm has to be shut down. That was one big change that we saw in this Bill. One of the worries is, if this Bill which has been tabled in Parliament, goes through and becomes a law of the land, then do we have the institutions that will be standing in force on day one so that the new procedures that we are visualising can actually be implemented. So, that is one concern that we see when we read this Bill. Other than that, there are some other comments that have submitted to you. Within that space, we are happy to take on any questions.

श्री निशिकांत दुबे: आप 178 में किस तरह का फ्रेज प्वाइंट करना चाहती हैं। आप वाटरफॉल की बात कर रही हैं। आपने तो अपना कंसर्न भेज दिया है, इस बिल में भी वाटरफॉल दिया हुआ है, आपके हिसाब से क्या होना चाहिए? आप बांड मार्केट की बात कर रही हैं, बैंक्स सिक्योर्ड क्रेडिटर्स माने जाते हैं, उसमें एक इंवेस्टर या डिपॉजिटर के नाते हमें पता है कि मैं इस एकाउंट में इतना पैसा डाल रहा हूं, मुझे इतना प्रतिशत इंटरेस्ट मिलेगा, मैं उससे खुश हूं, लेकिन जो बांड मार्केट है, उसमें आप रिस्क ले रही हैं। बांड मार्किट में कितना पैसा आएगा और कितना जाएगा। जब आप रिस्क लेने की स्थिति में होते हैं तो आप उसे सिक्योर्ड क्रैडिटर्स कैसे मान सकते हैं। बांड का हमें पता है कि हमने बैंक में इतना पैसा जमा किया। आपका अभी जो पूरा आरग्यूमैंट था, वह वाटरफॉल पर 178 पर था, खासकर बांड मार्किट पर जो आपने कहा और इससे पहले लोगों ने जो कहा। बांड मार्किट को आप कैसे सिक्योर्ड क्रैडिटर मान सकते हैं।

DR. SUSAN THOMAS: What we call a bond is that the bond is money given and some money that is promised to be given back with interest. Equity market is exactly like you described.

HON. CHAIRPERSON: Whenever our hon. Members raise any query, you just note it down and reply it at the end.

DR. M.R. MADHAVAN: Thank you, Sir. It is an honour to be invited here to present our views. I will just straightaway, without any preliminaries for the sake of time, point out a few issues that we noticed when we are looking at the Bill.

There are seven points that I want to point out. The first one is with regard to the creditors. In the insolvency process for corporate debtors a creditors committee is formed. This committee consists of all financial creditors including secured and unsecured creditors. Each creditor has a vote in accordance with his share of financial debt. The creditors committee makes its decisions with 75 votes. An important decision that it makes is whether it approves a resolution plan or decides to go in for liquidation. The issue here is that the creditors committee treat secured and unsecured creditors equally. That is all financial creditors whether they have given secured loans or unsecured loans are treated equally within the creditors committee and vote according to their share of debt at that stage not at the stage of waterfall but at the initial stage. This structure may provide an opportunity for an unscrupulous debtor to pack the committee with unsecured creditors by taking large unsecured loans from friends. So, he increases the vote share of unsecured creditors and you do not need to provide any security to do that. As no collateral security is needed to do this, it is relatively easy to take such loans from willing counterparties. As the committee decides whether to go in for a resolution or liquidation, the debtor may be able to manipulate the process towards a resolution. Given that this Bill places a moratorium on this SARFAESI process, secured creditors will not be able to take possession of the assets and liquidate them at that stage.

Clause 50 provides for identification of exorbitant payments in the preceding two years and set aside such debts. But it does not specify identification and setting aside of any transactions that will make to manipulate the insolvency process in the manner discussed above. That might be a way to resolve this. This treatment of secured and unsecured creditors differs from the current mechanism and other laws. For example, SARFAESI provides relief only to secured creditors. The Companies Act lays down process for liquidating but it requires consent

of 75 per cent of secured and 25 per cent of unsecured separately. They have separate vote shares. So, that is the first issue that I wanted to highlight.

The second issue is regarding the key person in the whole process, the insolvency professional. This person is appointed to manage the affairs of the company once an application for initiating insolvency proceedings is admitted. He will convene the creditors committee to help in determining whether resolution can be done. In case of liquidation, he carries out the process. He is also the personnel carries out individual insolvency resolution and acts as the bankruptcy trustee. So, this is in a way one of the most important rules that this Bill creates. But this does not specify the qualifications of who will be an IP. It states that the Board will determine the minimum curriculum and IPAs will determine eligibility through examinations and enroll information professional as a member. The IPA will also set ethical standards for IPs and they will take disciplinary action against the violators. This raises a few questions. First, there will be multiple IPAs. Each determining the standards for IPs subject to minimum curriculum set by the Board. Thus there can be difference in the minimum standards, of course, subject to the further minimum set by the different IPAs and, therefore, there may be non-uniformity in the quality of IPAs. Second, the disciplinary action is taken by the IPA and not by the Board. This will bear the risk of an IPA not taking disciplinary action against its own member IPs as such publicity could harm its reputation of IPAs. Third, the IP takes an examination conducted by an IPA and enrolls with it. It is not clear whether an IPA has qualified with a particular IPA is eligible to enroll with a different IPA. If he cannot, then the lack of such movement could actually impede some competition among IPs. So, the qualification should be more uniform. Just to give an example, we have chartered accountants, company secretaries, etc. For example, if you look at the ICAI, the most important part is the code of conduct is determined by the ICAI and not delegated down. Not just the exam but after.

A related point in this is that the IPAs provide performance bonds equal to the value of assets of the defaulting debtor. Given that this amount could be tens of thousands of crores as we have seen, nobody would be able to do that.

श्री निशिकांत दुबे: जिस कम्पनी का मैनेजमेंट वे ले रहे हैं, उनके प्रमोटर डायरैक्टर की क्या क्वालीफिकेशन है। पहले वे ठीक से चला रहे थे। वे किसी क्वालीफिकेशन या ऐग्जाम से किसी कम्पनी के मालिक नहीं बन रहे हैं। जब वे नहीं बन रहे हैं तो इसके लिए क्या क्राइटेरिया है। यदि आप ऐसे कहेंगे तो फिर बिल गेट्स, धीरूभाई अम्बनी आदि जिंदगी में कभी कम्पनी नहीं चला सकते थे।

DR. M.R. MADHAVAN: Sir, they are not appointed by an external authority. Shareholders decide who they are and as a shareholder I can sell the shares. They are not appointed by an external authority. They are appointed by the owners which are shareholders. That is the difference.

SHRI SHIVKUMAR UDASI: The point here was not on the professional point but the equal amount of money what they have to render. It cannot happen.

SHRI ANAND SHARMA: That is with the uniformity of qualification that once they are registered then they are in a position to take forward their responsibilities as mandated under the law. At the same time being just professionals will not have the resources to give that kind of undertaking or a bond. That is what you are saying.

DR. M.R. MADHAVAN: That is exactly.

DR. SUSAN THOMAS: Just to add to this point. When we look at other countries, the regulator prescribes brackets as a fraction of the size of the estates. If it is a Rs. 10,000 crore of estate the IP must put a performance bond which is say one-tenth of that or 50,000 pounds. There is a prescribed limit that is given but not the same size as company's assets.

HON. CHAIRPERSON: Can you suggest the name of the countries?

DR. SUSAN THOMAS: Sir, UK has this.

SHRI ANAND SHARMA: Can you make suggestion as to how it should be drafted and give it to the Committee?

DR. SUSAN THOMAS: We will look at the international experience and we will submit a suggestive provision as to how it can be done.

DR. M.R. MADHAVAN: Sir, a second related point in this IPA-IP relationship is that according to Section 206 (II)(a), all members of an IPA will be jointly and severally liable for the fraudulent behaviour of a member.

So, this is treating them like an LLP. However, each IP is taking up assignments on its own and makes its own business decisions without prior clearance from IPA. That is, IP runs an independent business and not a partner in IPA. So, holding all the members of IPA jointly and severally responsible for fraudulent behaviour by a member may be unreasonable. IP is accountable and not IPA.

Sir, the third issue that I wanted to raise is regarding the insolvency of individuals and partnerships. Here, the Debt Recovery Tribunals are the adjudicating authority. They have to take a time bound decision in the number of matters. I am not going to list them. The issue is, whether these Tribunals have the capacity to really up the additional load imposed by the Bill. We have looked at the numbers. As of December 2014, over 61,000 cases were pending before these tribunals. The pendency has been increasing every. It was 36,000 in March 2012, and in December 2014 for which we have latest data, which was 61,000. At the current rate of disposal, even with no new fresh cases if we assume coming before them, they will take about four and a half years to clear them. If DRTs have to take on this additional load, we need to make sure that we increase the capacity and augment the capacity of DRTs. Otherwise, this mechanism will not work.

The fourth issue is regarding the information utilities. Here, I just wanted to point out two issues. One is that the Bill makes it mandatory for financial creditors and operational creditors to update the information utility with financial information and information on assets in which any security interest is created. The issue is whether the operational creditors will be able to update all financial relations regarding to the transactions. Will every supplier, every contractor and every employee be updating that? So, one could argue that this requirement, making it mandatory should be mandatory for financial creditors and could be optional for operational creditors.

The other issue here is that there will be multiple information utilities. So, we need to ensure that the information is not disbursed across these utilities. So, the Bill should ensure that the rules and regulations are there, they are actually talking to each other and we have a common system through which the information can be accessed in one query.

SHRI ANAND SHARMA: There should be a central data.

DR. M.R. MADHAVAN: It should either be a central data pool or multiple utilities. It could be either, a central data pool or multiple utilities but with one query I can get the information across them. It could be either model. There should be seamless availability of information, and that has to be specified.

DR. AJAY SHAH: On an analogy, the depositories on the equity market. The law envisages comparative industry with multiple depositories but the law creates the framework for interoperability so that it works seamlessly.

DR. SUSAN THOMAS: In the country, today we have multiple depositories. I can have some records in one depository and another in the other. So, it is very easy for me to access on it.

SHRI ANAND SHARMA: Do you think that this Bill addresses this issue?

DR. M.R. MADHAVAN: The Bill does not do that.

DR. AJAY SHAH: The Depositories legislation 1995 solved this problem. That know-how needs to be brought into this Bill. This Bill does not do that.

SHRI ANAND SHARMA: Shri Tyagi, do you want to make any comment?

SHRI AJAY TYAGI: We agree with that. We just wanted to have more utilities instead of having one but interoperability should be there. So, we agree with that.

DR. M.R. MADHAVAN: Sir, the fifth issue that I wanted to bring up is regarding the Insolvency and Bankruptcy Fund, which is Clause 224. This Bill allows any person to withdraw an amount equal to that contributed by him in case of insolvency proceedings initiated against him. Given that the person can only withdraw the amount of contribution and not even the accrued interest and that too, only in case of insolvency proceedings. It is not clear why anyone would make a voluntary contribution to this Fund. That person is better off by just investing the money elsewhere. The Bill does not specify any other use of the Fund. So, we could not understand this particular provision at all. So, that is Clause 224.

The sixth issue is that the Bill permits any financial sector regulator to be designated to carry out the functions of the Insolvency and Bankruptcy Board until the Board is established. That is Clause 195. There is no time limit for this interim arrangement. In most other cases, when a statute creates a regulator, the statute comes into effect after the regulator is appointed. It is not clear why this Bill permits an interim regulator than require the Central Government to constitute the regulator as early as possible.

Sir, the last point that I want to raise is regarding the fresh start to an individual, which is Clause 80. The eligibility is that a person should have an annual income below Rs. 60,000, assets below Rs. 20,000 and should not own a house. Such a person may be given a debt waiver up to Rs. 35,000. The eligibility limits appear to be

unreasonable as I cannot visualize any such person get anyone lending organized debt to a person with that sort of financial background.

So, these are the seven points which we wanted to highlight. Thank you.

SHRI AJAY TYAGI: It is a concept. Though it provides a fresh start, the argument on the other side is that there could be a moral hazard issue, from the banking side especially. I do not know whether the RBI gave their comments. They say that if you enhance it and give more flexibility, it may be misused as a moral hazard and create problems by MFIs in the States, and you know they may say that all their debts have been allowed to rest. So, that may lead to such problems. Nothing is sacrosanct; why Rs. 60,000 or Rs. 35,000? It is a sort of balance.

SHRI ANAND SHARMA: What should be the threshold? I think, that needs to be put.

DR. M.R. MADHAVAN: Sir, one will also need to look at how these numbers are regularly updated for inflation, etc., which is also not there in the Bill.

SHRI ANAND SHARMA: You just look at it from that aspect of the micro finance entities, and whether they will take undue advantage in case you raise the threshold. When you give a response, you educate us about it.

MS. APARNA RAVI: Sir, thank you very much for inviting me here today. I think, I have sent a memorandum giving some of our comments, and some of those comments have already been made. So, I will just stick to the remaining comments that I had on the Bill.

On the whole, as, I think, the other people here agreed, it is definitely a much needed piece of reform. I just wanted to bring to your attention some research that I have done on the existing insolvency law framework. I have analyzed in detail about 45 cases in the High Courts as well as in the Debt Recovery Tribunals. Today, I looked at the way that the system works because there is not one law but there are multiple laws. Most cases of insolvency do not involve a single legal proceeding. They tend to involve multiple parallel proceedings and conflicts between lots of laws. For example, we had one creditor filing a winding up petition and another enforcing under SARFAESI, and the debtor itself making a reference to BIFR. That is something I think this new law definitely tries to consolidate. So, that is a very good thing about this law and also it tries to provide for a time bound process.

In terms of the reservations or areas where the Bill can be strengthened, I think, one thing that is really important to focus on is the institutional architecture because the Bill does create a number of new institutions and it does not, in my opinion, gives enough details on how these institutions should function. Just to give a few examples. First of all, it does not have any transitional provisions. It does not provide a date because this regulator will need to come up and then also make regulations for all these other institutions such as the information utilities or the insolvency professionals. It does not have any sort of time period within which these institutions should be established. Before there is an information utility that is established, how does the Bill function? Of the four, you know, there is an examination for these insolvency professionals. So, I think, there needs to be a lot of thought into that implementation and the transitional provisions. That is one point.

The second point is on the regulator. I am a little concerned, specially on Section 196 of the Bill on powers and functions of the Board. It gives very wide-ranging powers to the regulator, and functions without sufficient detail as to what kinds of regulations a regulator should be making. I almost think that in some cases, it could be challenges – excessive delegation of legislation. Just to give an example, Section 196(s) actually says that the regulator should specify the mechanism for issuing regulations, which I think, should definitely be in this law rather than that the regulators specify the mechanism by which they issue regulations.

SHRI ANAND SHARMA: So, it should be under the rules framed and notified.

MS. APARNA RAVI: Yes, at least in the primary law.

SHRI ANAND SHARMA: You say that it should be in the main body of the law.

MS. APARNA RAVI: Yes, that is what I would suggest.

Similarly, on the information utility, the law is not very clear on what is the legal effect of the information utility saying there is a default. If that is going to be a definitive proof that there has been a default, I think, it has to also specify as to what kind of authentication and due diligence that the information utility has to do in order for people to be able to completely take it at face value, yes, this information is here on the information utility, and therefore, it is a default. I think those provisions in the Bill on information utility really need to be developed a little further.

The only other point I have is that this law is completely missing anything on cross-border insolvency.

SHRI ANAND SHARMA: You are right. We have, in fact, been saying it from day one that this has been a concern. We asked this question to the CII, FICCI, RBI and them also because even the fact that the ECBs are on the rise, and the same entities who have outstanding loans here, or who have gone in for CDR or SDR, have been allowed by default – that is a default in our system – to borrow from abroad. How would that be addressed?

HON. CHAIRPERSON: You have given the details in your submission also about the insolvency.

MS. APARNA RAVI: Yes. I have done a little bit research. I have talked about the UNCITRAL Model Law, which does not really touch on the substantive insolvency provisions but allows for a procedural framework for cooperation. I think, the issue of cross-border insolvency comes up when a debtor has assets and business operations in other countries. So, how would a court here be able to access those assets? There needs to be some kind of coordination on the jurisdictional issues.

The other issues are, of course, when there are foreign creditors. So, can they have access to proceedings?

SHRI ANAND SHARMA: That is a problem with the trans-national and multi-national entities and the kind of finances, because it is a consortium; it is not one entity or one bank.

MS. APARNA RAVI: Yes, absolutely.

SHRI ANAND SHARMA: It is not parked in your own country. They have parked in multiple countries. We need to be educated more on it.

SHRI AJAY TYAGI: Sir, the other day, this was actually discussed but then it was decided by the Committee under Vishwanathan that it would be done in the second stage. There are a lot of complications. You may need to have some sorts of agreement with those countries also on mutually doing it.

SHRI ANAND SHARMA: These are jurisdictional issues.

SHRI AJAY TYAGI: Like under PMLA, there is a chapter on reciprocal arrangements. But there we do, where there is a clarity as to how we will do with it.

HON. CHAIRPERSON: In their policy research, they have inserted Appendix A.

MS. APARNA RAVI: Yes, I have put in a little bit on what the UNCITRAL Model Law is.

HON. CHAIRPERSON: I would request you all to lease note down the queries of our hon. Members. You please send your replies within five days.

श्री निशिकांत दुबे: सैक्शन 65(1), जिसके बारे में आपने कहा कि जो फ्रॉडलेंट इन्साल्वेंसी करना चाहेगा या जिसे आप ब्लैकमेल कर रहे हैं, तो उसमें पैनल्टी के बारे में आप क्या यह समझते हैं कि हमें उसे जेल के लिए रिकमंड करना चाहिए?

दूसरा, सब सैक्शन 33 में ट्रांजेक्शन की डेफीनेशन है, उसके बारे में आपमें से किसी ने कहा कि इज इट राइट ऑर रांग या क्या होना चाहिए? सैक्शन 179, जो डीआरटी और अथॉरिटी के बीच रिलेशन के बारे में कह रहा है, तो उसके बारे में क्लैरिटी नहीं है। उसके बारे में प्रैजेंटेशन क्या होना चाहिए? इसके बाद इन लोगों ने बातचीत में कहा कि इंडीविजुअल और पार्टनरशिप की जो क्लॉज है, चैप्टर थ्री-फोर में पार्ट थ्री है, उसकी क्लैरिटी क्या होनी चाहिए? सेक्शन 187, 185 और 72 ऐट पार नहीं है, तो इन तीनों के बीच कैसी क्लैरिटी होनी चाहिए? उसके बाद क्रेडिट देने वाले और डेट देने वालों के बीच, इसमें जिस तरह कहा गया कि कोई भी प्रमोटर नहीं चाहेगा, क्योंकि कई चीजें लिटीगेशन में हो जाती हैं, इस बिल में उसके बीच में क्लैरिटी है या नहीं? इन सारी चीजों से उठकर सबसे बड़ा सवाल यह है कि इसका मेन मकसद है कि एक तरफ सिक्योर्ड क्रेडिटर्स को हम सारा दे दें। लेकिन जो डेट लेने वाले लोग हैं, उनके साथ जो समस्या है, वह दूसरी है। समस्या यह है कि मान लीजिए हम एक करोड़ रुपये की कार लेते हैं। एक करोड़ रुपये की कार जैसे ही शोरूम से बाहर निकली, वैसे ही उसकी कास्ट अपने आप 50 परसेंट या 70 परसेंट हो गयी। हम जब उसे क्रेडिटर्स के प्वाइंट ऑफ व्यू से देखते हैं तो लगता है कि हमने आपको एक करोड़ रुपये का लोन दिया हुआ है। एक करोड़ रुपये का उसने सामान भी खरीदा हुआ है, कम्पनी भी बनायी हुई है तो जो मार्केट ऊपर-नीचे होती है, उसमें जो डिस्प्यूट है, उस डिस्प्यूट के बारे में यह बैंकरप्सी कोड कितना एलिजिबल है, क्योंकि सब कुछ उन्हीं के ऊपर ब्लेम देना कि चीजों के कारण न हो कर आपकी गलती के कारण हो गया, तो उसका क्या मैकेनिज्म होना चाहिए?

SHRI SHIVKUMAR UDASI: Are the amendments which are there in the Companies Act, 2013, going to be taken into account in this law also? Have you made any study in this regard? I am asking it because 75 clauses are being amended and the part of Companies Act also is concerning insolvency and bankruptcy.

Most of the time, you would be talking about the implementation about the law. *De jure* is not important. In this country, we all know

that *de facto* is very important. We are all concerned about implementation. As one gentleman was saying, it would be litigated in the court. About subsuming 13 laws and making into one Code, don't you think that the *de jure* and *de facto* will be an issue? Once the Act is enacted, when it is a rule of law, the law of the land, and we do not have the institutions, which are going to be taking care of these then, how to go about it?

For example, Mr. Nishikant Dubey and Mr. Anand Sharma were talking about the SDR. The CDR is not a legal proceeding. It is not technically affected by moratorium and could, in theory, proceed in parallel with an insolvency resolution proceeding under the Code. This could cause much of a confusion here, particularly, if the insolvency resolution process has been initiated by a different group of creditors than those who are involved in the CDR. So, these types of gaps are there. How to fill these gaps?

I am not quite sure because one Member was telling that a transnational provisions and information utilities were not addressed in this Bill. According to me, we are doing it for the sake of World Bank. The World Bank wants to know where our position is. It can be done by enacting Acts and the Ease of Doing Business will go up but in reality, when you are implementing the law, it is not happening. We are showing it is in the public domain and the 'Ease of Doing Business' have been done by enacting the Acts or by Amendments whereas it is not happening in the ground reality. How do you see this? The Ministry has to answer this.

DR. AJAY TYAGI: Sir, the suggestions are well taken by the hon. Member. In Companies Act, whatever those amendments 75 or 100, they do not relate to those two chapters which are being repealed here. So, that is a separate thing. So, there are no suggestions on amendments of those provisions which are being repealed through this code.

SHRI SHIVKUMAR UDASI: In the first meeting, Mr. Dubey had raised this question. How do you come to know that the lapses in the previous Act are being amended in this Bill? You do not know how it has been implemented. What are the pros and cons? How did you arrive at that?

DR. AJAY TYAGI: The law itself actually was sufficient to say that it is deficient. It is right. Let us admit it. Earlier, liquidation was in the Companies Act, 1956 and Rehabilitation was with SICA. Chapters 19 and 20 of companies Act, 2013 did a better job by bringing everything in one forum but it was not completely addressing all comprehensively

bankruptcy issues which are admitted by everyone. So, Companies Act actually is a huge legislation. It has 500 plus sections. It addresses many things. So, chapters 19 and 20 not getting implemented was because of the NCLT issue in the Supreme Court. So, for implementation, how it turns out is not seen but it was not comprehensively addressing many issues. That was agreed even by Ministry of Corporate Affairs that it needs to be comprehensively dealt with. So, those provisions are not being amended in those 75 amendments.

SHRI SHIVKUMAR UDASI: When you have not implemented that Act, how did you come to know the pros and cons of those Acts?

DR. AJAY TYAGI: That did not address all the issues. Implementation is one part.

SHRI SHIVKUMAR UDASI: The *de jure* and *de facto* are not two things here.

श्री निशिकांत दुबे: यह कहा गया है कि इसमें यह मर्ज हो रहा है। कंपनी को रजिस्टर करने या उसे रेगुलेट करने की पावर तो अभी कारपोरेट अफेयर्स मंत्रालय के पास ही है। क्या उस पावर को वित्त मंत्रालय ले रहा है? कृपया इसकी जानकारी भी आप दें।

श्री सुभाष चन्द्र बहेड़िया: अभी कहा गया है कि जो बैंकरप्सी कोड लाया जा रहा है, वह आर्थिक सुधारों के क्षेत्र में एक नया कदम है। मुझे केवल इतनी जानकारी चाहिए कि क्या इस कोड का मिसयूज भी हो सकता है? मैं आपको एक उदाहरण देता हूं। कोई व्यक्ति इंडस्ट्री चला रहा है, यदि उसे इंडस्ट्री क्लोज करनी है, तो उसे बहुत ही लंबे प्रोसेस में जाना पड़ता है। इसमें सरकार की परमिशन लेनी होती है, वह मिले या न मिले या किसी सटेइन कंडिशंस पर परमिशन मिले। तो, क्या इस कोड के माध्यम से वह खुद मैनेज करके इंडस्ट्री को बंद कर सकेगा?

श्री गोपाल शेट्टी: मैं जानना चाहूंगा कि जब किसी भी फैक्ट्री का दिवाला निकलता है, तो बड़े पैमाने पर यह देखा गया है कि हाइयर परचेज उसका एक मुख्य कारण होता है। तो, क्या इसके बारे में भी हमें रि-चेकिंग की कोई व्यवस्था करनी चाहिए? कुछ लोग पहले से ही इसकी व्यवस्था करते हैं, ज्यादा बिल बनाकर ज्यादा परचेज दिखाते हैं, एकाउंटेंसी सिस्टम से इसे मैनेज करते हैं, तो, यदि ऐसे समय पर इन सारी चीजों के लिए एक रि-चेकिंग की व्यवस्था रखते हैं, तो ऐसा करने वाले को भी डर होगा और इंवेस्ट करने वाले की भी इससे सेफ्टी होगी, ऐसा मुझे लगता है। क्या इसकी आवश्यकता है?

SHRI BHARTRUHARI MAHTAB: Most of the professionals have been called here who have been deliberating on this code. I would like to understand certain elementary questions. Either of you can answer that. Determination of default is the crux of the issue. Is there any

clarity satisfaction of default because that is what is mentioned in the Code? Is that clarity there? Are you satisfied with that? Disqualification while under-going CIRP, do you think that it should be done away with? Section 14 says about moratorium. Has that been explained? These are certain issues which will lead to litigation as Mr. Shah said because nothing is final after a law is made. It can only become final or it is dynamic as per our process that is prevalent today. Ingenuity of Indians has no parallel. So, it goes on and on. Takeover of the management by the interim resolution professional, do you not think that it should be made public by the order of adjudicating authority? When voluntary liquidation is done, I am yet to understand how seamless it can become?

There is a mention of financial creditor. We also heard about operational creditor. Is it mentioned in the code? As has been said, you have referred to UK and US, there they have difference of operational creditor and financial creditor. Have we clubbed it together here? Is there any necessity to separate as it has been defined there?

Madam, Aparna Ravi has given a detailed view on this Bill. She has also expressed her concern about certain points. In one section, she has said that it should be deleted. Section 196(s) should be deleted. And this section 196(s), I would like to understand. Specify mechanism for issuing regulations including the conduct of public consultation process before notification of any regulation. While saying this, it is in line with excessive delegated legislation. How specific the regulation be made in the Act? You have also mentioned about insolvency professionals and insolvency professional agencies.

They should be subject to close monitoring and regulation. But why should they be regulated by the Board? Why should the Board specify principal regulatory requirements for insolvency professionals? While mentioning about the Board, the IGIDR has expressed a point of concern that the draft law is mostly silent about the objectives of these institutions and their accountability, when they fail. We would like to understand this. I think the Chairman has already said about it. You have to factor that as to how we can bring that issue into the Code.

श्री रवि प्रकाश वर्मा: क्रॉस बॉर्डर इन्सॉलवेंसी का जो इश्यू है, दूसरे देशों में इसका अनुभव कैसा है, इसके बारे में बताइए।

SHRI JAYADEV GALLA: I have one question. There was a reference made to personal guarantees. I want to ask the panel. When it is a start-up company and the individual entrepreneur is first starting up, it is not much of a problem. But as the business grows and we want

to enter into new areas and do things in an entrepreneurial manner, many times, if we even enter joint venture, the joint venture partners are not willing to provide personal guarantees to the banks. So, it falls on the shoulders of the local promoters. So, what should be the balance maintained in this respect to ensure that there is an incentive to continue to invest and do things that are good for the country without exposing your entire personal assets. I think that is becoming more and more a problem today, which is why I am asking.

Second thing, there was a lot of discussion on the informational professionals, agencies, Insolvency Board and displacement of management and so on and so forth. Again, I would also like to look at creating a balance where we are able to go after wilful defaulters and people who are mismanaging and doing financial mismanagement. But at the same time there should be a way that assets that can be recovered by recovering the business in genuine cases whether by the promoters or with the help of other professionals, do not all go towards one direction and we are letting him go? How do we ensure that? Otherwise, a lot of business could be saved by ensuring that these Boards, agencies and professionals have the skills required to be able to recover the operation of the company, not just to liquidate and resolve the financial disputes.

SHRI BHARTRUHARI MAHTAB: I was mentioning about the private liquidators. The Company Act, 1956 allowed private liquidators for the first time in 1956. Here the voluntary mode remains a badly delayed process. That is the experience that we have got. Therefore, it was expected that the Government must have done some studies to ascertain causes for the delay. Have any of you done any study on this aspect? If any study has been done or if you have an opinion on that, that can be shared with us as to why this delay. Does Section 59 of the Code provide solution?

SHRI JAYADEV GALLA: Sir, I have one last question. A lot was discussed regarding the penalties as well, for various things. My view is that they are not sufficient, and I think I am not sure if you would agree with that. But businesses tend to evaluate cost of compliance versus cost of non-compliance. So, we have to ensure cost of non-compliance is always more than the cost of compliance. Otherwise, it will only be non-compliance. So, what would your recommendations in terms of increasing these penalties under various headings?

SHRI ANAND SHARMA: I would like to ask the Indira Gandhi Institute of Development Research regarding Sections 6 and 7. If you are saying

it should not be just a record but a proof, did you not think that waiting for the proof will delay? It is because you said that it must be revised. A person triggering an IRP must be required to furnish proof of the default. Could you send it to us as to how it will make it better and not lead to more delays than desired?

Also, you were saying about rejection of an application for an IRP, if there is a disciplinary proceeding pending. Now only on the basis of a disciplinary proceeding, there should not be a rejection unless and until there is adjudication and it is established that the professionals concerned should be disqualified. So, it should not be during the pendency.

Last one is on exemption Section 14(3). "The Central Government may exempt from the moratorium transactions notified by it in consultation with the financial sector regulator." Do you think that it brings arbitrariness? Can we know from you as to why exemptions because it is open-ended.

SHRI AJAY TYAGI: Sir, if you recall, the presentation made by SEBI Chairman brought out that there may be some transactions which have taken place in the Stock Exchange and they are pending for clearing in Clearing Corporation. So, that should not be jeopardized through the liquidation estate. There could be some such financial requirements. So, it will be done only in consultation with the financial sector regulator. It is to limit it to that purpose. All of them may not be possible to be elucidated in the law. That is how this has been kept.

SHRI ANAND SHARMA: Do you think the wording should be more specific here? It is not vague or open for any misinterpretation. I think that is the purpose of asking.

SHRI AJAY TYAGI: That is what the RBI and SEBI said because it does not apply.

SHRI ANAND SHARMA: It is a question of language.

SHRI AJAY TYAGI: The word is 'in consultation'.

HON. CHAIRPERSON: Dr. Ajay Shah, you give your replies in writing. What our Secretariat will do is we will prepare a questionnaire on the basis of queries raised by our Members, and we will circulate this questionnaire to all of you. We need your reply within five days from today.

We will send you the proceedings within one or two days, and after receiving that, you send us your reply within five days.

SHRI ANAND SHARMA: It will be important to know even if he is not able to address the Chairman. But on cross-border insolvency we would need something so that we can deliberate upon it and see how it can be put in the recommendations. It may not be put in this particular Bill.

DR. AJAY SHAH: I wish to make a strategic comment. Cross border insolvency is a complex problem. It requires a full scale drafting effort. In this respect, I agree with Mr. Ajay Tyagi's views.

SHRI ANAND SHARMA: It is for the Committee to make its observations. It would be futuristic. It is not going to happen now. We are very clear about that.

HON. CHAIRPERSON: In my last submission, I want to add one more thing. The Ministry of Legislature and their researchers are also present here. You are contributing for the preparation of this Code. Mr. Mishra ji is here. He is the former Advocate General. Every Chapter of this Code is having a separate definition. I want to know whether it is really needed. There are so many different types of definitions. It has been raised by our hon. colleagues, Shri Mahtab ji in respect of 'default'. Default means no payment of debt. Debt means liability obligation in respect of claim. In the light of the above definition, can it be said that the early intervention of the operational creditor or unsecured is justified in the context of Indian Small Scale Industries ? Then, that problem will come. So, every chapter has its own definition. Can we synchronize all these things into a short and clear definition ? We synchronize it with the other Acts also, which are relevant for that purpose. So, you put your efforts for research in that context also. That is what we need. It is a query which we raised. Legislative Department is also working on that. That is the main thing for simplification and effectiveness of that Act.

DR. SUSAN THOMAS: Sir, if I may just raise a point which is in tuned with what you said just now. One of the missing chapters, I believe, in this Code, when all of us look at it and review it, is that 'the Repeals and Savings' chapter needs to be substantially strengthened because several laws will be working in tandem with this new proposed Insolvency Act. There needs to be clarity on all kinds of Acts and how they will dovetail with the new Act.

HON. CHAIRPERSON: You do research in that context also and send us concrete suggestions in this regard.

DR. SUSAN THOMAS: We will be happy in doing that.

SHRI ANAND SHARMA: You prepare a list of laws which will come in for either repeal or amendment.

DR. SUSAN THOMAS: There will be both laws as well as secondary legislations in the form of regulations like SDR, which will definitely have implications when this new Insolvency and Bankruptcy Code comes into force.

HON. CHAIRPERSON: Thank you very much to all of you for your good input. We hope that we would receive your inputs in writing also. Thank you very much.

(THE WITNESSES THEN WITHDREW)

WITNESSES EXAMINED

1. Shri T.S. Vijayan, Chairman, IRDAI
2. Ms. Mamta Suri, Head of the Department (F&A), IRDAI

HON. CHAIRPERSON: Shri T.S. Vijayan, Chairman, IRDAI and other colleagues, I welcome you to the sitting of the Joint Committee. As you are aware, the Joint Committee is examining the Bill titled 'The Insolvency and Bankruptcy Code, 2015'. Insurance Regulatory and Development Authority (IRDAI) is an autonomous statutory body constituted for the regulation and development of insurance companies, reinsurer companies, branch office of foreign reinsurer as well as intermediaries. In this background, the Committee have decided to hear your views on the IB Code, 2015.

The memorandum containing the written comments/suggestions in this regard has been received in the Secretariat and circulated to the Members of the Committee. You have mentioned in your memorandum that insolvency and bankruptcy of the insurance companies will be covered by the provisions of the Insurance Act, 1938 as per Clause 2(b) of the IB Code, 2015. However, the insurance intermediary shall be subject to the provisions of the aforesaid Code. The Committee would like to understand from you the interface between the provisions made in the Code and the Insurance Act. 1938.

I would like to draw your attention to the Directions by the Speaker, whereby the written views submitted to the Committee as well as 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.

Now, I request you to present your views before the Committee. It will be appreciated if you confine your suggestions to various clauses of the Bill particularly concerning your mandate. The Members may be raising certain queries during the course of deliberations, which you may kindly respond to.

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

(INTRODUCTION OF WITNESSES)

SHRI T.S. VIJAYAN: I will present you the brief of what the insurance sector looks in today. IRDAI is in charge of the insurance sector, regulating licensing and controlling the insurance companies. It came into being in 2000 when the Act came. Before that India had only public sector insurance companies. Today, in life insurance apart from one public sector life insurance company, that is, Life Insurance Company of India, there are 23 private players – a total of 21 players are there in non-life; standalone health insurance companies are 5; re-insurance is one; two in respect of special insurance like agri insurance and ECGC. A number of total 53 insurance companies are regulated by IRDAI.

Since opening up of the sector growth has been quite good. As far as the premium is concerned, today the total assets under management of insurance companies are: – in respect of life insurance companies it is 22.47 lakh crore and non-life companies is 1.30 crore. These are controlled by the provisions of the Act. In so far as investment is concerned, nearly 50 per cent goes to Government securities, Central Government as well as State Governments, then approved and other investments. This is the pattern of investment.

This Code primarily belongs to default and bankruptcy. I will divide it into two parts. One is bankruptcy problems in the sector itself, the insurance companies, which is controlled by the Insurance Act where the IRDA is empowered to give directions to the companies if they are defaulting on any of their payments to the customers or if there is any other problem. There are various conditions and we are allowed to ask to put further Directors in their boards or to take over or to amalgamate companies etc. This is the position so far as insurance companies are concerned. So, there is a well laid down procedure for the bankruptcy or any other problem of the insurance companies.

So far there has been no fear because as per the regulations, we have asked them to maintain 150 per cent of solvency margins. Liabilities and assets are managed. Apart from it, 150 per cent of the required

solvency margin is put there as a requirement. After the amendment of the Act also, we are continuing that percentage so that we need not have to fear.

The second part is about the default. Since insurance companies are major investors in many of the companies, the Code envisages certain procedure as to what is to be done in case a company defaults on payment to the investors. Insurance companies basically come as investors in other companies and default, if any, by the company to the investors is covered. It is most welcome. This step is, of course, available. While looking at it as insurance companies' regulator, we welcome this. This is over due and this has to come for speedy reconciliation or settlement of default.

Today, the NPAs are very small in the sector. Gross NPA is only 0.68 per cent, but still I consider that Rs. 9,000 crore is a substantial amount. The gross NPA is Rs. 16,820 crore and most of it — Rs. 16,200 crore — is from the Life Insurance Corporation itself. Even though the NPA as a percentage of the total amount of Rs. 24 lakh crore is small, this step will strengthen the insurance companies to take speedy possession of it and to resolve the issues.

SHRI SHIVKUMAR UDASI: Clause 15 of the Code reads:

"financial product" means securities, contracts of insurance, deposits, credit arrangements including loans and advances by banks and financial institutions, retirement benefit plans, small savings instruments, foreign currency contracts other than contracts to exchange one currency (whether Indian or not) for another which are to be settled immediately, or any other instrument as may be prescribed;

How do you, as an insurance company, view this provision because we do not have cross-border insolvency in our Code? Is it not going to affect you?

SHRI T.S. VIJAYAN: Today as per the Act, the insurance asset has to be invested within India. The companies are not allowed to take any money to invest outside India. However, what is emerging with the changes made in the Act is that we are allowing the branches of foreign re-insurers to be opened there. We have already received six applications and we will be processing them shortly. They can take 50 per cent of the liabilities abroad and 50 per cent have to be retained within India. Still the provision in the Act itself is that this investment has to be covered by a trust. The companies are not free to invest somewhere.

A trusteeship company has to be there if the holding in an insurance company is more than 50 per cent. Ofcourse, the branches are 100 per cent foreign, but it will be covered under the trust. The investment within India will be covered by the Trust Act. That will be coming here. So, I do not envisage problems as far as investment by insurance companies are concerned.

The problem will be in case the recipient of the investment is going to default in any of these payments. This Code empowers the insurance companies to initiate the action and all that. That is a positive feature.

SHRI SHIVKUMAR UDASI: So, you feel that this Code is good for insurance companies. You do not want any changes.

SHRI T.S. VIJAYAN: Yes, it is very good for the sector. There is no need for any change. It is fixing a time-frame. Time-frame has to be there.

SHRI ANAND SHARMA: Last year only, the insurance law was amended. You do not see that the present Code, in any manner, impinges upon the progressive changes that were made and you also do not foresee any difficulty when it comes to the Insurance Act as well as the Insolvency Code.

SHRI T.S. VIJAYAN: Yes, I do not see any problem because the defaults of the insurance company's payment to the customer are covered under the Act itself. But this is about investment in other companies. This is what I understand. It is about investment of assets by the insurance companies. Liabilities are already covered.

SHRI SHIVKUMAR UDASI: What about surplus in insurance companies which they are going to invest in other companies?

SHRI T.S. VIJAYAN: Sir, investment by an insurance company in other companies is covered by Section 27A of the Act. It says that 25 per cent has to be invested in Central Government Securities, 25 per cent has to be invested in State Government Securities and Central Government Securities, 35 per cent has to be invested in approved securities and 15 per cent can be invested in other securities, including equity. If, at all, there is a problem with regard to investment of insurance company in other company, it will be coming under that 15 per cent investment. If the company is given loan and is defaulting, this provision empowers the insurance company to start action against the defaulting company. Today, it has to go through the entire route of all those things.

SHRI SHIVKUMAR UDASI: In the Insolvency Code, a priority has been set and priority has been accorded to five things. Where does IRDA or an insurance company stand?

SHRI T.S. VIJAYAN: Sir, we have put out investment regulations as per Section 27A of Insurance Act which prescribes where an insurance company can invest. The insurance company is giving a guarantee to the customers that their claims will be settled. They can not play with the game. Even though the returns are small, they have to invest there only. If at all any company is defaulting, we will be interested to see that it is resolved as early as possible and get the money back.

As I said, NPAs are about Rs. 9,000 crore. If this Code should be able to help, at default stage only, the insurance company is able to take action and it may not become an NPA.

SHRI SATISH CHANDRA MISRA: You said that the LIC has the biggest chunk of NPAs.

SHRI T.S. VIJAYAN: Today, they have got NPAs of abut Rs. 16,200 crore. I do agree that it is a big amount, but if you look at the percentage, it does not stand anywhere near the percentage of NPAs the banks have.

श्री निशिकांत दुबे: आज ही एक न्यूज है कि बैंक के जो एनपीए हो रहे हैं, उसमें इंश्योरेंस कंपनियों को नुकसान हो रहा है। बैंक में जो उनके स्टेक हैं, वे कहीं न कहीं डाउन जा रहे हैं। आपने सेक्शन 37(ए) 1939 की बात की और मि. शर्मा ने एक बड़ा वैलिड प्वाइंट उठाया कि 26 से 49 हो गया और कल को गवर्नमेन्ट इसे 49 से 74 कर दे। जो क्रास बार्डर इंसोलवेन्सी है या डिफाल्ट है, उसके बारे में आप कितने कंसर्न हैं, क्योंकि आपका जो मामला है, वह एकदम डिफरेंट है। आप यह कह रहे हैं कि आप पहले रेगुलेटर हैं, जो इस कोर्ट से कम्पलीट हैं, क्योंकि इसके पहले जितने रेगुलेटर्स आए, उन्हें कहीं न कहीं लगता था कि उनकी पावर कर्टेल हो रही है। लेकिन आपको लगता है कि ऐसा नहीं है। लेकिन जब वह 74 हो जायेगा या मान लीजिए 100 परसेन्ट हो जायेगा, जैसे टेलिकॉम में एक जमाना आ गया कि 100 परसेन्ट हो जायेगा। इस सिचुएशन के आधार पर आप इस एक्ट से कितने कंफर्टेबल हैं। क्योंकि क्रास बार्डर और अदर कंटीज के रिलेशन का या उनकी इनसोलवेंसी का कोई भी चैप्टर इस इनसोलवेंसी और बैंकरप्सी एक्ट में नहीं है।

SHRI T. S. VIJAYAN: Sir, are you talking about the capital of 74 per cent and 100 per cent, etc.?

श्री निशिकांत दुबे: बाहर के लोग पैसा लगायेंगे तो असैट्स भी तो बाहर रखेंगे।

श्री टी.एस. विजयन: जी नहीं, उसकी परमीशन नहीं है, इसलिए हम बोल रहे हैं कि इंश्योरेंस कंपनी में पॉलिसी होल्डर्स और शेयर होल्डर्स फंड अलग-अलग गिना जाता है और अलग-अलग रखा जाता है। दोनों का पैसा has to be invested in India. They cannot take it outside. So, even if we bring 100 per cent company in future ...

श्री निशिकांत दुबे: वे प्रोफिट भी ले जायेंगे, वे डिविडेंड ले जायेंगे। यह कंपनी तब आयेगी, जब कंपनी कम्पलीट नुकसान में चली जायेगी। बैंकरप्सी और इनसोलवेंसी तो तब लागू होगा, उसके बाद वह उस असैट को डिविडेंड को धीरे-धीरे बाहर ले जा रहे हैं या नहीं ले जा रहे हैं, क्योंकि कंपनी जब डाउन होगी तो उसका क्या मैकेनिज्म है, मैं उसकी बात कर रहा हूं?

श्री टी.एस. विजयन: आप इंश्योरेंस कंपनी के बारे में बात कर रहे हैं।

श्री निशिकांत दुबे: इंश्योरेंस कंपनी के बारे में ही कह रहे हैं, मान लीजिए किसी ने 100 परसैन्ट अपना पैसा लगा रखा है, यहां फॉरेन मनी है। फॉरेन मनी यहां लागू हुआ है तो डिविडेंड के तौर पर आप कह रहे हैं कि वे पैसा ले जायेंगे तो वे साल, दो साल चार या पांच साल ले जायेंगे। लेकिन एक समय ऐसा आयेगा, ऐसी संभावना होगी कि यह कंपनी डूब गई, यदि डूब गई तो उसकी रिकवरी के लिए आपके पास क्या है?

SHRI T. S. VIJAYAN: I will try to answer it like this. The shareholders fund and policyholders fund is different. The company has to maintain 150 per cent of solvency margin within India. The declared profit only is taken as dividend.

SHRI BHARTRUHARI MAHTAB: The question is different.

श्री निशिकांत दुबे: तब तो इंश्योरेंस कंपनी डिफॉल्ट ही नहीं होंगी।

SHRI AJAY TYAGI: If you recall that during last week when representation from RBI and SEBI was there, we said that financial sector resolution actually requires a different legislation. So, we are working on a different legislation to deal with the financial sector. As hon. Members have rightly said that financial sector is a different issue. Banks having money of a lot of people and foreign banks could be there. They cannot be allowed to deteriorate to the extent that you have to depend on their parents aboard. So, financial sector is being dealt with separately.

There are some limited powers with RBI to take over banks. IRDAI also has powers over insurance companies. In case they want to take further action, this only provides in consultation with those regulators

those activities will be allowed with limited purpose till that Act comes. So, that will be taken care of hopefully in that legislation and that is also under preparation. It will be a separate legislation.

SHRI BHARTRUHARI MAHTAB: IRDAI regulates intermediaries; you regulate the agents; corporate agents; brokers; surveyors; loss assessors; insurance marketing firms; common service centers and web aggregators. Web aggregators are not confined to our boundaries alone. So, in that respect, you are an autonomous statutory body and you have enormous power to go into the functioning of an insurance company. You even have the power to remove the office bearers of the Board and the Chairman of the Board. You have that power. So, this Code does not impinge any of your powers.

You are more comfortable with that. But we have to go through the material that is before us also. We are not talking something out of context. In this written submission you have mentioned somewhere about the 'calm period'. You have also very rightly said that speed is the essence. The moment something happens the more quickly you act and protect the investment/asset so that it does not further go down. But with this calm period, my question is on this. You have two specific ways of proceeding. Therefore, on an earlier occasion, when we were deliberating with RBI and SEBI, I had put that question and you have rightly mentioned that calm period allows the owner to control and significant decisions though cannot be taken independently or unilaterally. But, ultimately, if it gets delayed and no decision is taken because I am not sure whether there is a specific provision or time limit that this much will be the calm period. As you have mentioned, without effective leadership the basic purpose for which this calm period has been provided the asset gets depleted and the longer the delay the liquidation value also diminishes. It has not happened in the insurance sector to a very great extent, but you have also mentioned that there is some point/percentage of amount that has become NPA. I would like to get that detail.

Do you think that this will be a cause of concern in future? We want you to continue for more time, but always you will not be there. There may be someone else who will not be quite that alert to act. So, in this respect, a situation may arise where there is a possibility that it may slip out of your hand.

SHRI T. S. VIJAYAN : Sir, I will try to answer in two ways. You asked about intermediaries also. We have got large number of intermediaries. Fortunately, in India, as per the Insurance Act Section 64 VB says that

intermediaries cannot keep the policyholders money at all. He has to remit to the insurance company. In some other countries, the intermediary themselves keep the money, but in India it is not permitted. The entire liability for settling the claim and looking after the money is transferred to them and that is one big feature of the Indian Insurance Act. So, intermediary is not usually fiduciary responsible for the policyholders money. The entire investment takes place in insurance company. So, it isolates us from that.

Secondly, every quarter – or if necessary even for more period also – we look into the finances of the insurance company. The main purpose is to see whether they have enough assets to meet the claim that could arise. Actually, we will calculate the claim possible and whether solvency margin is there. So, in essence, what we are looking at is whether the company is able to meet the policyholders' claims at all.

If it deteriorates, we will not wait for the 'calm' period. I assure you the Authority will not wait for the 'calm' period. If at all it deteriorates, we will immediately take action, and the law allows us all those freedoms to take action against the insurance company. I look at it this way.

If it is investment by the insurance company in outside companies, organizations or institutions, if it deteriorates, the insurance company will be interested in getting back the money fastest and this is helping them in that.

HON. CHAIRPERSON: Thank you very much for your inputs. Earlier, you took exemption from appearing before the Committee, but now you are here.

SHRI T.S. VIJAYAN: Last week, I could not come, Sir.

HON. CHAIRPERSON: I thank all our hon. Members. I now invite all our hon. Members, the Chairman of IRDAI and all the officers for lunch. We will sit again at 2 p.m.

(LUNCH BREAK)

(AFTER LUNCH BREAK)

WITNESS EXAMINED

1. Shri Milan Kothari, Managing Partner, BDO India
2. Shri Pranay Bhatia, Partner

HON. CHAIRPERSON: Shri Milan Kothari, Managing Partner, BDO India LLP and colleagues:

I welcome you to the sitting of the Joint Committee. As you are aware, the Joint Committee is examining the Bill titled 'The Insolvency and Bankruptcy Code, 2015'. Being a firm with the mandate to develop innovative, business oriented solutions, the Committee have decided to hear your views on the IB Code, 2015.

I would like to draw your attention to the Directions by the Speaker, whereby the memorandum 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.

Now, I request you to present your views before the Committee. The members may be raising certain queries during the course of deliberations, which you may kindly respond to.

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

(INTRODUCTION OF WITNESSES)

SHRI PRANAY BHATIA: What we have done is that we have made two principal points on the Code itself. What we understand, even based on some of the practices outside of India, is that the intention of the Code of this nature is to see to it that if an organization is having financial difficulty, it can be revived.

But as we read this Code, we believe that what we see is either the Creditors' Committee come to a conclusion as to the settlement of the payments or it comes to a situation if there is no agreement there is liquidation; there is no mid way in between. So, the request was that in some manner it could be worked out where a revival plan could be set out. I think, that was one of the key recommendations we had made as a firm.

Another one, a principal point was that the micro, small and medium enterprises should be kept out of this Code.

श्री निशिकांत दुबे: समय-समय पर गवर्नमेंट की जो पी.डी.आर. पॉलिसी है, वह तो वही बातें कह रहा है न, उसके लिए तो जो बैंकिंग रैगुलेशन है, उसमें तो वे चीजें फ्री हैं। सीधा बैंकरप्सी और इन्सोल्वेंसी एक्ट में तो आएगा नहीं, तो आप जिन बातों को कह रहे हैं कि उनको

रिवाइवल के लिए, चीजों के लिए, बैठने के लिए तो बैंक जो सिक्योर्ड क्रेडिटर्स हैं, वह तो समय-समय पर उनकी परेशानी है, जैसा कि मैं आपको बताऊं, गवर्नमेंट की पॉलिसी अभी आई, स्टील सैक्टर को बचाने के लिए एम.आई.टी. (मिनिमम इम्पोर्ट पॉलिसी) पॉलिसी उन्होंने लागू की, तो समय-समय पर तो गवर्नमेंट और क्रेडिटर्स बैठते ही हैं न, उनके बीच डिस्कशन तो होता ही है न।

SHRI PRANAY BHATIA: I agree with you. The only difference in this case was in addition to financial creditors there are also operational creditors who have the ability to request under this Code. So, that is where we thought that – of course the financial creditors are having the wherewithal to do everything that is required – if you start giving an ability even to an operational creditor, कोई गुड्स या सर्विसेज बेचता है, अगर हम उसे भी यही पावर देते हैं तो कुछेक बीच में रिवाइवल प्लान की अगर कुछ गुंजाइश हो सके, ऐसी एक रिक्वैस्ट थी।

SHRI NARESH GUJRAL: As you said, it can always be given to a revival committee which could be accepted or rejected.

SHRI PRANAY BHATIA: That is correct. In the Creditors' Committee, the operational creditors do not have any role. They can only issue a request. They can seek protection under this Code but they do not have any say in the Creditors' Committee.

SHRI SHIV KUMAR UDASI: You said they do not have a role. What kind of a role do you want them to play?

SHRI PRANAY BHATIA: In my view, there should be some room for discussion or negotiation before the matter directly goes into insolvency.

When we are on this one point, I am drawing on a very related point. If you look at the hierarchy of payouts also, the creditors are much below in the sequence, not at par with the financial ones. Of course, secure creditors have much more priority but financial creditors and operational creditors should be put at par. That was the point.

SHRI BHARTRUHARI MAHTAB: You have categorically mentioned, your suggestion is adjudicating authority or independent professionals be empowered to nurse the entity or business back to good health and regular functioning. Be specific. This is a general point. That is your idea. It will help us to understand. In the Code, which clause in which section do you want this to be incorporated and what would be the words like? That is your suggestion. You have written it. But in which clause in which section do you need this to be incorporated?

SHRI PRANAY BHATIA: We have drawn this as a principal point.

श्री निशिकांत दुबे: ये बेसीकली क्लाज 8 (1, 2, 3), की बात कर रहे हैं, ऑपरेशनल क्रेडिटर्स की बात कर रहे हैं। ऑपरेशनल क्रेडिटर्स वह हैं, जो कि कम्पनी एपाइंट करती है, जिनके साथ उनको ट्रक का एग्रीमेंट करना है, किनके साथ उनको रॉ-मैटीरियल लाना है, किनको उनको एम्पलाई बनाना है तो यह तो रिलेशन उनके खुद के हैं न, जो डेटर हैं, उनके साथ तो उनका संबंध है न, जो कम्पनी चला रहे हैं, उनके साथ उनका अपना है, कोई उनको बाध्य तो कर नहीं रहा है कि आप किससे सामान खरीदिये, किसका ट्रक लगाइये, कौन सा एम्पलाई आपके यहां काम करेगा तो वर्किंग रिलेशन तो उसके साथ ऑलरेडी एग्जिस्ट करता है, उसके बिना तो कोई कम्पनी चल ही नहीं सकती, इसलिए जो आपका पूरा यह है और जो सैक्शन 8 (1, 2, 3) है, उसमें पूरी की पूरी क्लैरिटी है। मुझे नहीं लगता कि इसमें ऑपरेशनल क्रेडिटर्स की कोई डिस्कशन की आवश्यकता है या चीजों की आवश्यकता है। यदि 8 (1, 2, 3) को पढ़ लेंगे तो आपको क्लैरिटी समझ में आ जायेगी।

SHRI MILAN KOTHARI: I would like to draw your attention. Of course, we take note of the suggestion you have made. I have got a suggestion to make with regard to the duties of the resolution professionals in clause 25 of the Code in which it is outlined what are the number of things the resolution professional has to be mindful of. This puts him in the same position as the debtor itself to manage the assets of the liquidating company or the entity. The worry is that whatever limitation was there for the debtor he would inherit the same limitation in managing the affairs of the company. Although the Code does not reach out to say how he should perform his duties except what is defined here, it says anything that is enabling beyond this particular scope to say how he manages labour, how he manages issues where the promoter himself was unable to get relief in the allied laws which are affecting its operations. In other words, if he has to control his operations and make it profitable he cannot have those liberties that were available under law. Does the resolution professional get any better power than the promoter in this situation to bring to life the assets so that the monies of the creditors could be realised? That was the suggestion we thought of.

श्री निशिकांत दुबे: उसमें 25(आई) को यदि आप देखिये तो आई में तो यह कह रहा है कि 'all resolution plans at the meeting of the committee of creditors'. तो रैजोल्यूशन प्लान में यदि उसको लगता है कि हम इसका सामान नहीं लेंगे, ऑपरेशनल क्रेडिटर का या उसको लगता है कि हमें इतने लेबर को हटाना सबसे ज्यादा जरूरी है तो यह तो उसमें डाला ही गया है न।

SHRI MILAN KOTHARI: I appreciate that. My only worry is that he inherits the same situation as the promoter. Whatever difficulties

promoters had in managing labour, for example, if there is an excess number of employees in the company, how does he bring it down to a level that makes it commercially viable? He has to go back to that law essentially as much as the promoter would have gone to. So, is there something that could empower him to go and extend beyond what the promoter would do to bring life to the assets that the promoter could not do because otherwise he inherits the same liabilities and challenges the promoter had? So, how would he do better than the promoter in a situation as that? That was the concern that we had.

श्री जगदम्बिका पाल: लेबर लॉज के अलग प्रोवीजंस नहीं हैं, उसमें कहां डिफीकल्टी आ जायेगी? Things would not have ended up in such difficulty if there are already separate laws for that on how you would negotiate and how you would do it.

SHRI MILAN KOTHARI: I am not on that point. The objective of the law is to enable revival.

SHRI KALYAN BANERJEE: The law is very clear that you may take or you may not take. If you do not take, you have to pay compensation. Only your viability would be looked into; the other part, the interests of the workers has to be saved. If you feel you do not need 50 workers, industrial law already empowers you but in that case you have to pay compensation for that.

SHRI BHARTRUHARI MAHTAB: The issue here was as I understood your note, you wanted to empower the adjudicating authority; not the company or the person who holds that company should be empowered. It is the adjudicating authority or the independent professional who is supposed to take charge.

SHRI MILAN KOTHARI: I might put that it is beyond the regulation that is in front of us but if you look at the objective from a business perspective, it is different.

SHRI BHARTRUHARI MAHTAB: That is the later part.

SHRI PRANAY BHATIA: The next point was that the micro, small and medium enterprises could be kept out of the Code because there could be various other operational creditors' issues which could lead them into this law.

The next one was in relation to section 5 (24) where various definitions are provided for 'a related party'. Our only suggestion was that so far as the other creditors were concerned, the threshold of two

per cent was very low. Our suggestion was if you could look at thresholds in some other laws, for example, we have outlined income tax law where also there are various thresholds and related party transactions are under scanner. So, that threshold could be adopted. That was our suggestion.

The next one was in relation to section 9 (1) where again the issue is similar. If there is a creditors' committee which has come to the conclusion then it is great and there is a way forward. If the creditors' committee, for some reason, cannot come to a conclusion, it is only straightway liquidation. It was therefore our recommendation that additional consideration should be brought into record. For example, sometimes, because of the income tax or sales tax default a company's assets get attached because of which they are not able to make payment of dues and in such cases it becomes difficult for the revival of the company; that should be brought into the law.

The next one was in relation to Section 11. We thought there was a little ambiguity. The entity which is going through the process apparently cannot make an application under this Code against other receivable. That is the language which is coming out but I do not know whether that is the intention. For example if entity 'x' is under the process of this Code and if it has to receive money from someone else it should have the ability to file a similar petition against another entity. That was the clarification if it can be brought into the Code.

The next one was in relation to Section 17 (1) where he had said that the powers of the promoters and directors will be suspended and the IRP will take over. There was only one suggestion more from the business perspective. Instead of completely suspending their power can they be made subservient to help the IRP? It will be good if that clarity can be brought in.

SHRI KALYAN BANERJEE: The experience is different. In case of a company winding up these promoters are creating the trouble. Where the supervision will be made? Ultimately if you allow the promoters to run the company they will fight on the ownership. It is better to keep everybody outside the jurisdiction. This will be better for the achievement of the company and not personal achievement. It is better that the company's achievement is there. In company winding up petition how many persons are going for fighting? Today I am taking and tomorrow another one is coming and fighting. This fight will go on. The whole object of the Bill is to speed up and finish all these disputes.

SHRI MILIND KOTHARI: One suggestion here is, in every situation what we are trying to say is that the promoter is a guilty person and he does not want to cooperate to liquidate the value of the asset. In some case it might be that he is a help to liquidate the assets but for whatever wrong or right reasons he is unable to pay to the creditors. So, would you say that in every situation we should ignore the contribution of promoter?

SHRI KALYAN BANERJEE: With your kind permission, Chairman, Sir, I am giving you an example. I am dealing with a matter from 1993 and am appearing for the Union. A promoter has come. After three years I have to make an application saying that this promoter is not doing, have another promoter. Up to 2016 ten promoters have gone and ten promoters could not do. Therefore, it is better that no promoter should be there. Under the adjudication of a completely independent body it would be decided. The moment promoter comes into the picture then proprietorship rights come in. Law and order trouble comes. Nothing will be there if an independent body runs the thing and ultimately decide. The Bill has to seek its objective. The objective is not to help the promoter but to help the company for revival.

HON. CHAIRPERSON: We have received your latest submission regarding Sections 28, 45, 21, 53 and you have some suggestions in Section 8, 2, 5 sub-Section 21 also. I would request hon. Members that we have their written submission with us. If Members wish to have any clarification they can raise it. We have five minutes and then we will call the five Trade Unions. We want to give them sufficient time.

श्री निशिकांत दुबे: इन्होंने एमएसएमई सेक्टर के बारे में कहा। कोई भी बड़ी कंपनी आ रही है तो उसमें ऑफसेट क्लॉज है कि थर्टी परसेंट भारत की कंपनियों का होगा। स्वाभाविक है कि बड़ी कंपनियों के साथ छोटी-छोटी कंपनियां एंसिलरी बैठाती हैं, ये चीजें होती हैं। जो यह सेक्शन 3 है, जो इसमें डेफिनिशन है, क्लेम की, क्रेडिटर्स की, डेट की, डिफॉल्ट की, वह एमएसएमई एक्ट जो 2006 का है, वह अलग है, मतलब उसकी डेफिनिशन अलग है, इसकी डेफिनिशन अलग है, तो आपका क्या सजेशन है कि इन चीजों में डेफिनिशन में एमएसएमई एक्ट, 2006 को इन्क्लूड करना चाहिए?

दूसरा, जो सेक्शन 53 में सिक्योर्ड क्रेडिटर्स की बात है, तो सिक्योर्ड क्रेडिटर्स में जैसा मैंने कहा कि बड़ी कंपनियां हैं, उसके साथ छोटी-छोटी कंपनियां जुड़ी हुई हैं। जैसे कोई कार बना रहा है तो कार बनाने में कोई बेल्ट बना रहा है, कोई बॉल बेयरिंग बना रहा है, कोई टॉयर बना रहा है तो क्या सिक्योर्ड क्रेडिटर्स में एमएसएमई सेक्टर को भी डालना चाहिए? इस पर आपका क्या सजेशन है? मंत्रालय से भी कहना है कि कल जब आएंगे तो बताएंगे कि एमएसएमई एक्ट, 2006 किस तरह से इसके खिलाफ है?

SHRI ANAND SHARMA: We want the operational debt and financial debt to be at par.

SHRI AJAY TYAGI: The operational creditors are not recognized in Companies Act. In this Code they are recognized. The other issue was whether secured and unsecured should be differentiated, if you recall. The argument was only secured why not unsecured. So, we included unsecured and secured both to be part of the Creditors Committee and not operational creditors. We have given them some flexibility. One is that they can initiate for bankruptcy. For them 14 days notice has been given for the reason in between that they can reconcile. We have tried to empower them but not given them the same level otherwise the issue would be the secured creditor and small supplier should be at the same level. That is the complication.

SHRI KALYAN BANERJEE: The question is can there by same status also? Nationalised bank is a property of the people. Therefore, status is not equal.

SHRI BHARTRUHARI MAHTAB: I have two clarifications we need to understand. In your Note you have mentioned that micro, small and medium enterprises as corporate debtors be kept out of the application of the Insolvency and Bankruptcy Code. You have explained that they are likely to have intermitted financial hardships sometimes due to reasons beyond their control. Can you expand this, specific-wise or example-wise why this should not be part of this Code because there is a reason why it should be there? Your suggestion is that it should be kept out. Looking at the amount of money that is involved in small, micro and medium scale companies, I hold a different view but I would like you to convince me that why it should not be the part of the Code.

Second is, regarding Section 45 on avoidance of undervalued transactions. You have said that the term undervalued transaction has not been defined or elaborated upon and this could lead to subjective interpretation with respect to quantification. I would like to understand what specific definition you want to be incorporated in the Code. How one can avoid the subjective interpretation? It is not only by definition subjective interpretation can be avoided. What more needs to be done. This should not lead to further litigation. That also should be kept in mind.

श्री जगदम्बिका पाल: आपने कहा है कि जो आपरेशनल डेब्ट है, उसको भी फाइनेंशियल डेब्ट की तरह ट्रीट किया जाए। ये जो आपके आपरेशनल क्रेडिटर्स हैं, उनकी भी एकाउंटिबिलिटी बनती है, तो उनको आप फाइनेंशियल डेब्ट के साथ कैसे ट्रीट करना चाहते हैं? आप इसे

एक्सप्लेन करिए। जो कमेटी ऑफ क्रेडिटर्स है, क्या कमेटी ऑफ क्रेडिटर्स के पार्ट नहीं हैं आपरेशनल क्रेडिटर्स? इसको आप थोड़ा एक्सप्लेन करें कि आप फाइनेंशियल डेब्ट को कैसे ट्रीट करना चाहते हैं आपरेशनल डेब्ट के साथ?

HON. CHAIRPERSON: Thank you very much Shri Milind Kothari and his colleague. Some queries have been raised by hon. Members. I hope that you will send us in writing with the explanation note. You will send your written submission to this Committee within five days from today. Thank you very much.

(THE WITNESSES THEN WITHDREW)

WITNESSES EXAMINED

1. Shri A.K. Padmanabhan – National President, Centre for Indian Trade Union
2. Shri Govind Narayan Sinha – All India Trade Union Congress

(Pl. fill in the rest)

माननीय सभापतिः हम आप सभी का इस समिति में स्वागत करते हैं। जैसा कि आपको पता है कि इनसॉल्वेन्सी और बैंकरप्सी कोड, 2015 के बारे में संसद की यह संयुक्त समिति विचार कर रही है। इसका उद्देश्य है कि देश में जो कंपनियां दिवालियेपन की ओर जा रही हैं, उनके संबंध में उचित समाधान करना है। हमने मजदूर संघ के नाते आप सभी को इसलिए आमंत्रित किया है कि इस सारी प्रक्रिया के अंतर्गत जो हमारे मजदूरों के हित और उनके अधिकार हैं, इस सारी प्रक्रिया में उनकी जो भागीदारी होनी चाहिए, जिसका प्रावधान इस कोड के अंतर्गत किया गया है, उसके संबंध में आपके विचार कमेटी को पता लगे। आप लोगों ने अपना विषय लिखित रूप में हमें दिया है, हमने सभी माननीय सदस्यों को उन्हें वितरित करा दिया है। हम एक विषय आपकी जानकारी के लिए कहना चाहते हैं कि लोक सभा के माननीय अध्यक्ष के आदेश के द्वारा इस समिति में आपके द्वारा प्रस्तुत किये गये विचार, आपके द्वारा जो रिटन सब्मिशन दिये गये हैं या आपके द्वारा जो विचार प्रस्तुत किये जायेंगे, वे गोपनीय माने जायेंगे, उनको किसी भी तरह से मीडिया के संबंध में और किसी अन्य व्यक्ति के द्वारा तब तक प्रकाशित न किया जाये, जब तक इसके संबंध में रिपोर्ट सदन में प्रस्तुत न हो जाये।

प्रत्येक मजदूर संघ के जो सदस्य हैं, जिन्होंने अपने-अपने पक्ष लिखित रूप में दिये हैं, उनके संबंध में पांच मिनट में अपना विचार समिति के सामने रखें, उसके बाद समिति के माननीय सदस्य जो प्रश्न करेंगे, उन्हें आप नोट कर लें एवं उनका लिखित उत्तर समिति को भेज दीजिएगा।

मैं आपसे निवेदन करूंगा कि पहले आप अपना परिचय समिति को करायें और फिर अपना विषय प्रारंभ करें।

(INTRODUCTION OF WITNESSES)

SHRI A.K. PADMANABHAN: Respected Chairman and hon. Members of the Committee. On behalf of the Centre for Indian Trade Unions, I have already given a memorandum to the Committee. I would only confine myself to 3-4 points.

On the whole, what we find in this Bill is that the interest of the workers who will be affected in case of insolvency or bankruptcy or liquidation, the interest of the workers have to be further strengthened. As it is today, it needs more changes.

Secondly, the whole Bill talks about safeguarding the interest of creditors as I understand, the aim of this Bill is the resolution process. In that process the interest of workers and employees have not been taken care of. So, here the participation of representatives of the workers and employees with equal rights as that of creditors and others who are affected have to be there including voting rights which we have demanded. As far as the resolution plan is concerned, the interest of workers and employees have to be safeguarded by giving equal status and representation in the Committee with voting rights.

Coming to the next point, clause 53 which talks about distribution of assets in the liquidation process and the next clause on which we were asked to give our opinion specifically, clause 178 with the priority of payments of debts under the administration and distribution, here also the workmen and employees are treated differently in these clauses. There is no reason that the worker and the employee have to be treated differently. They are contributing equally. There is no necessity of treating them separately. So here the payments that are due to the workers and employee have to be given priority. The dues which are there have to be ensured and the priority is given to the interest or the dues of the workers and employees.

The second point on which we have a serious objection is that why it should be limited to 12 months. It says that restricted to the period of 12 months preceding the liquidation date. As far as workers and employees are concerned, their total dues should be taken care of. Actually I am told and I may be wrong also because I am not a legal person. The Companies Act has a provision to take care of the total dues to the workers. Here we are not able to accept why it should be 12 months preceding the date. That has to be changed. I would request the hon. Committee to recommend that this has to be changed.

Thirdly, I have brought in an issue based on our experience today. Fourteen years ago the employers of one multinational Company, Daewoo Motors, which was situated in Gautam Budh Nagar left. It was fly-by-night. Just leaving the factory as it is, they left.

Now, for the last 14 years the workers are struggling. They are not getting their dues. Around 1400 workers, some of them died, and many of them are affected very seriously. Here two operations are going on. Delhi High Court has ordered liquidation. The DRT in Mumbai is operating. The official liquidator is saying that nothing has come to his hands. It is all under the control of the DRT, Mumbai. They are doing something. Even the dues that were to be given to the workers has been kept pending. All the details are there. I have not given all the details to the Committee because this is a Committee which can get into all those details whatever is required. The creditors are taken by the DRT. As far as I understand, all the other laws are in existence.

SHRI KALYAN BANERJEE: There is BIFR order and against the order of the BIFR you cannot go to the court.

SHRI A.K. PADMANABHAN: The BIFR order is there and this company which I am referring to has gone to BIFR. It was a fly by night operation.

SHRI KALYAN BANERJEE: That is all right.

SHRI A.K. PADMANABHAN: I would like to request the hon. Chairman and also the hon. Members to find out as to how many benches of the BIFR are working and for how many months it has not been working.

SHRI KALYAN BANERJEE: That we agree. BIFR never works. They come at 12 o'clock.

SHRI A.K. PADMANABHAN: There is no authority there. There is no appointment. There is nobody appointed. We can take them separately. I do not know the time limit of my presentation. I can go with it for hours. I can put before the troubles of the workers for before the Committee for hours. I have put this experience before the Committee because it has happened in Delhi. My submission is with regard to the 12 months and you should be given the first charge.

SHRI C.A. RAJASRIDHAR: Hon. Chairman Sir and the hon. Members of the Committee, first of all I would like to thank you all, on behalf of the Hind Mazdoor Sabha, for inviting us to place before you our considered comments on the draft Bill. At the cost of repetition about what my friends said here, our concern is that the workmen used to

paid for a period of 12 months preceding the liquidation should not be there. The 12 months period should be deleted and all the dues to the workmen should be given. Secondly, as has been mentioned, the priority of payment of dues, the first charge for the workers because he is one of the stakeholders. With regard to definition of workmen dues, it should not only be his wages, it should be all his dues with regard to holiday and whatever the company has agreed upon in the collective bargaining. So, whatever is due to the workmen everything should be paid and it should be the first charge.

SHRI ANAND SHARMA: You should above the secured creditors and not at par. How does an enterprise start without making investment? Can a business, big and small, start without investment?

SHRI C.A. RAJASRIDHAR: Sir, it cannot start.

SHRI ANAND SHARMA: Where would be the secured creditors then? That is why I asked this question. Under the draft Code what you find is not fair and it should not be 12 months.

SHRI C.A. RAJASRIDHAR: Sir, I am talking of priority because I had been a stakeholder.

SHRI ANAND SHARMA: What is secured creditor and not a stakeholder?

SHRI KALYAN BANERJEE: The secured creditors have invested their money and you have invested your entire life. That is the basic distinction. Secured creditors have come for doing their business, for having profit and everything. But you have given your life for that purpose. Apart from that, the thing is that so far your case is concerned, secured creditors BIFR etc. or whatever it may be, you are also protected by another law which protection is not there in any other case and that is the Industrial Disputes Act. Assume a case where closure has been declared, then you are entitled to have the benefit of the closure for your entire service life on the basis of your strength of your service career. Therefore, you must ask for a priority before anyone else because others have not put their entire life for the service of the company. They have merely invested and they have come for doing business. But workers come there for making the industry what it is but if for the failure of the management if the industry could not work and so that cannot be the fault of the workmen.

SHRI C.A. RAJASRIDHAR: Sir, there must also be a separate fund set apart to retrain the workers so that they get better employment elsewhere.

SHRI ASHOK SINGH: Thank you hon. Chairman Sir and the hon. Members of the Committee. I, on behalf of the INTUC, would like to pay my thanks for having invited us for expressing our feelings and experiences and also express our views before this Committee.

Sir, on behalf of INTUC, I am pleased to represent the voice of the workforce on the Insolvency and Bankruptcy Code 2015. INTUC, since inception has been involved with promoting and safeguarding the human asset of this country as its human capital.

SHRI ANAND SHARMA: You have already given a note on this.

****	****	****	****
****	****	****	****
****	****	****	****
****	****	****	****

HON. CHAIRPERSON: Please make your submissions. The four points which you said you wanted to raise, please make your submissions on those points.

SHRI ASHOK SINGH: Sir, on behalf of INTUC I will make my submissions and I will take only five minutes. I will not even go to the sixth minute.

At the outset, while going through the provisions of the Code, I see the following intentions of the Government:-

1. Single legislation which will repeal all existing similar legislation like SICA Act, Companies Act, Solvency Act amongst others.
2. Framework through which the Government can contribute towards ease of doing business.
3. Not only a framework but timelines specifying revival and solvency.
4. Setting up of Insolvency and Bankruptcy Board of India to oversee insolvency resolution in the country.
5. Creation of Insolvency and Bankruptcy Fund and proposal for bankruptcy and insolvency adjudicators, etc.

****Expunged as ordered by the Chairperson, Joint Committee on the Insolvency and Bankruptcy Code, 2015.

Only time will tell whether this framework will suffice in fulfilling the objectives of this Code. I wish to share my apprehensions so as to ensure that all the stakeholders involved with the ease of doing business may consider the following points also at appropriate levels and time:

1. The interest of the workers/employees are protected in case of bankruptcy and insolvency of companies/corporate/ partnership firms.
2. Provision of a safety net to ensure that those who are rendered out of work are adequately compensated through appropriate and suitable negotiations in consultation with the representative trade unions/associations/representative bodies, etc.
3. Creation of an environment where cases of insolvency and bankruptcy can be minimised.
4. Such companies/corporate/partnership firms should be subject to yearly mid-term reviews so as to detect early warning symptoms.
5. Due diligence should be exercised in verifying the past antecedents of the debtors involved when a new entity is created.
6. The Committee may share the best practices from other countries which have adopted similar measures/provisions.

**** **** **** ****

SHRI SASHI KUMAR KEDLAYA: We have already sent through e-mail the viewpoints of the Bharatiya Mazdoor Sangh. However, we want to make one point very clear that any Act proposed to be introduced or brought before this society, the viewpoints of each one may kindly be taken into account. Here we are concerned with reorganisation, restructure and winding up of the organisations. When that being the case, where we can and how far we can take care of the interest of the workers. That is one point. Another point is that we have a role for insolvency registrar and insolvency adjudication authority. We would like to submit that this authority has got certain powers, whether it is quasi-judicial or legally entitled power. Thereafter, do we have any limitation over their powers and responsibilities? Added to that, whether such authority has kind of delegated power because we have a time stipulation of 190 days. But I believe this 190 days – maybe I am wrong

****Expunged as ordered by the Chairperson, Joint Committee on the Insolvency and Bankruptcy Code, 2015.

but having the practical experience and legal jurisprudence – may not be sufficient to come to a conclusion for the reason that even if it is 190 days plus 90 days whatever you are going to give, in that situation suppose nothing has happened ultimately it leads to liquidation. Then, can it not be questioned before a higher court? That is a point we have to consider.

The additional point is this. While we have a broad approach on the functional set up of insolvency and bankruptcy code, what we are sincerely submitting is that since the provision is incorporated for the individuals, limited partnership with limited liability and companies, now in the functional set up of the organisation, whenever we come across this kind of broad areas either to arrive at a consensus or a kind of difficult to arrive at consensus, did we not have a role for a representative workman in the functional set up of this insolvency code of 2015? That we are suggesting.

There is a reference to DRT and DRAT. This is a very difficult situation. The DRTs have been established with good objective. But the practical experience is that DRTs and DRATs are understaffed. Added to this, today if you collect data from the banks or the financial institutions, the number of decrees to be executed are pending. Even after the decree is passed in favour of the banker or the either party, the execution of the decree is pending because the advocates are not coming forward to settle the execution of the decree. On the whole what we say is that workers interests should be taken care of. As a representative of the workmen I would like to say that insolvency is a social death and insolvent is incapacitated to contract. This is the present situation. After the full resolution an insolvent can start his activity afresh. Starting an activity afresh is absolutely good. It is acceptable. But what about the status of the workers in that company? We have had experience in our life in this situation because the Government, the nation have enough resources to become an entrepreneur. But one fine morning, maybe either due to diversion of funds or due to loss of the institution or due to other reasons, the unit will go. But if he becomes bankrupt or insolvent, once he comes to a certain kind of conclusion, as per these suggested methods, he can start it afresh. But what is the fate of the workers in such organisations? That is another point I request the Committee to consider.

That is another point. I would request the Committee to make an application. Moreover, you have made 23 points on the proposed Bill. In the Canadian Government, there is a rule called trade union bargaining in this kind of activity. There is a definite established law that trade

union is also a party to have a say when it go for liquidation. In that event, what kind of protection you want to give to the workers of the company and how their interests are protected. We had an instance in Bangalore in HMT where the workers are given compensation on 10 years back salary, even it is not settled. An organization with an investment of Rs. 50 crore or more, how can it suddenly becomes a failure over a period of three years? In a petition to this Committee, we submit that the project report, internal auditors, bankers and all the consulting parties who have framed this organization should also be held responsible, liable while evolving the theory of liquidation of the organization. The reason is that the bankers have given the loan on certain set of balance sheet and guidelines of Chartered Accountants and the opinions. The question here is as to how it has gone down. It is the Government of India fund. That has to be seen. Otherwise, everybody does things that tomorrow if the organization go, the workers would be left out. At least the hard and service man should be heard and protected by certain kind of legal adherence that it should be prioritized because in the suggested amendment, there is a pointed reference that the statutory dues presented in the primary area is shifted to the secondary area. That is one concern we are submitted. Moreover, the parameters evolved in this Act – individuals, partnerships, limited and unlimited...

श्री निशिकांत दुबे: आप जो कह रहे हैं, उसे यदि डाल दिया जाये, तो क्या उसका मिसयूज नहीं होगा? जैसे मान लीजिए कि गैस बेस्ड पावर प्लांट लोगों ने लगा लिया। अब गैस आयी ही नहीं। कोयले के आधार पर लोगों ने अपना इन्वेस्टमेंट कर लिया। सुप्रीम कोर्ट का आदेश आ गया कि कोयला खत्म हो गया है। आज स्टील इंडस्ट्री चाइना से कम्पीट कर रही है लेकिन आज सारी इंडस्ट्री डाउन हो रही है। आप जो कह रहे हैं, उसे हम उसमें डाल देंगे, तो हम सही फैसला करने के बदले गलत लोगों को पकड़ने लगेंगे। क्या आपने इन चीजों को कभी कंसीडर किया है? एक तरफा सोचने से कुछ नहीं होगा। यदि आप दोनों तरफ सोचेंगे, तो फिर आपको लगेगा कि कई एक चीजें ऐसी हैं, जो अपने आप हो जाती हैं। इस बारे में आपकी क्या सोच है?

SHRI SASHI KUMAR KEDLAYA: What exactly I wish to submit that likewise in coal industry, Agra leather industry, we understand. But what I expect that the variable factors, contributors for the failure of the unit and the proposed Act gives an opportunity if he settles the liability and he can have a better industry in the later part, the workers can kindly be taken into account how they come up in the society.

HON. CHAIRPERSON: What is your other point?

SHRI SASHI KUMAR KEDLAYA: I would thank the Members for giving us the opportunity.

HON. CHAIRPERSON: I would request the hon. Members to put queries to you. If necessary, kindly note down. You may respond to them in the written replies also.

SHRI KALYAN BANERJEE: Under Section 61 against the adjudicating authority you can go to the National Company Law Tribunal; against the CPLT order, you can go to the Supreme Court. Therefore, remedy is there if you are aggrieved. There is no problem regarding remedy. I would say this to the trade unions also that your main concern as I understand is that workers dues have to be settled first because they have done their job. If a proposition is, if I do my work, I must get return of my money, which is called wages – no work, no pay, etc. Therefore, which have been paid and worked, I have done that. If a company all of a sudden has closed down or made retrenchment without paying the dues under the Act itself, that should get the priority.

Therefore, you want to say that regarding all your dues, whether it is the wages or whatever name you call it, substantive thing is that, the dues which are there should be given a priority. Why should it be restricted to 12 months only? For five years, it has not been given but so far as security creditor is concerned, there is no limitation. Why should there be discrimination between workman and employees are concerned and other security creditors? If you want to say this – whether you want to say this or not – is the question. In that case, what should be your suggestion? You should give suggestion like an amendment – what you want us to do, or which part. Mr. Ashok Singh, you have given four suggestions – first is interest of the workers are protected in case of transfer. In which manner and what is your suggestion? I know and we understand that these are the salient features, and we have to do it. We have heard you. You are agitating that you have not been heard. I am a friend of workers. First I am first friend of the workers, then, anything else. What is your suggestion? You have not given any suggestion. You want to ensure protection to those who are rendered out of work and adequately compensated but what is your suggestion for that. You have given some theoretical thing. हमें अच्छी हिन्दी नहीं आती। आप थोड़ा सजैशन दे दीजिए कि हम कैसे करें? आप हमें थोड़ा रास्ता दिखा दीजिए कि हम कहां-कहां अमेंडमैंट करें, जिससे आपको फायदा हो, क्योंकि आपको यूनियन के बारे में देखना है।

Under this Act, for the first time, you are being recognised. Under the Companies Act, there was no recognition. In 1984, Justice Chinnappa Reddy gave you power to go and file an application for winding up petition. Under the Companies Act or SICA, no Act, this provision was not there but here in this Act, this opportunity is given to you by the statute itself. Therefore, you should be aware of it. And your priority

must be there. But I just request you, before the BIFR, you are right that BIFR don't work, and I agree with you on that. What is the fate of the workers? I have that experience. My request or suggestion is, whatever you may tell, since we are meeting, before the adjudicating authority, all the Unions should not fight against each other. Try to be one and get your dues first.

श्री रवि प्रकाश वर्मा: जैसा कि अभी श्री बनर्जी साहब ने कहा कि श्री अशोक सिंह जी ने कुछ प्वाइंट्स रेज किये थे। इनका एक प्वाइंट था कि the complete corporate part of it should be subject to mid-term review so as to detect early warning system. आपने कोड देखा होगा, इसके अन्दर वह कौन-सा मैकेनिज्म किया जा सकता है ताकि अर्ली वार्निंग सिस्टम आपको इंटीमेट करे। इस पर कुछ जानकारी दें।

श्री जगदम्बिका पाल: आपने डिमांड किया है कि एक सिंगल लेजिस्लेशन बने। सीका ऐक्ट, कंपनीज ऐक्ट आदि जो एग्जिस्टिंग लॉज हैं, What anomalies are there? I would like to know whether you feel that because of these anomalies these Acts should be repealed. You should clarify this point. You talked about ease of doing business. Everybody is concerned about it. There should be an atmosphere of ease of doing business. आपने इज ऑफ डूइंग बिजनेस के बारे में कहा और यह सत्य है कि सभी इसके बारे में कंसर्ड हैं कि इज ऑफ डूइंग बिजनेस के लिए एटमोसफेयर होना चाहिए। कंपनीज और इम्प्लाई के रिलेशंस में किस तरह से इम्प्लायज का भी कंट्रीब्यूशन हो सकता है। इस संबंध में भी आप कुछ सजेशन दें क्योंकि निश्चित रूप में एम्प्लाई, मजदूर आदि के इंट्रेस्ट को वाच करना हम सबका फर्ज है और हम ऐसा करते हैं। लेकिन सवाल यह है कि कोई कंपनी क्यों सरवाइव नहीं कर रही है, जैसा कि अभी श्री निशिकांत जी ने कहा कि चाइना की जो भी पॉलिसी हो, आज वह स्टील इंडस्ट्री से खो गयी आदि तो जो बड़ी-बड़ी कंपनीज हैं, जिनका देश के जीडीपी में योगदान होता है, उसमें वह सिक हो रही हैं। इसलिए यदि आप कोई रेस्पांसिबिलिटी कंपनीज और कॉर्पोरेट हाउसेज़ पर डालते हैं या सरकार पर, तो उसमें मजदूर की भी कोई रेस्पांसिबिलिटी हो सकती है। इस संबंध में भी आप लोगों के कुछ सजेशन हो सकते हैं?

हम यहां इसलिए बैठे हैं कि यदि कोई कंपनी इंसोल्वेंसी की ओर जा रही है, तो मजदूरों के हितों की चिन्ता होनी चाहिए। जैसा कि आपने डेवू मोटर्स की बात कही। There are plenty of companies where labourers are running from pillar to post and they could not get their dues.

SHRI SHIVKUMAR UDASI: Whatever you want to say, you should be very specific before this Committee as to which are the amendments where your interest should be taken care of. I am afraid nobody from your side clarified this. When insolvency takes place, you are all concerned about the dues. But once the insolvency professionals take

over the mechanism, nobody asks the first preference of workers who are working in the same industry. They are never worried about them. First you should be worried about your salary. But once the insolvency professionals take over the company and run it afresh, the priority should be given to the workers who are working in that company. Please clarify this aspect.

SHRI ANAND SWAROOP: HMS has given this suggestion. The hon. Member is saying that you talk about your total dues, but you are not talking about redeployment or re-employment of the workers in the same unit. We have already suggested that in our Memorandum. We want to stress this aspect. Dues are different. But unless the unemployed workers are adjusted either in the same factor or the other one which he establishes, what will happen to those workers who were there and have crossed 40 years? So, this concern, we have shown it in our Memorandum.

श्री निशिकांत दुबे: आप लोगों ने अलग-अलग रिप्रजेंटेशंस में पेंशन, ईपीएफओ, ग्रेच्यूटी आदि के बारे में बैंकरप्सी कोट के संबंध में बातें कही। इस देश में उन चीजों के लिए ऑलरेडी अलग-अलग कानून मौजूद हैं। उसके ऊपर यह मजदूर यूनियन है, जिसको आप रिप्रजेंट कर रहे हैं। यदि कोई कंपनी एक साल से वर्कर्स को पैसा नहीं दे रही है, तो उसका एक अलग डिस्प्यूट मैकेनिज्म है, ग्रेच्यूटी जमा नहीं हो रही है, इसके लिए अलग डिस्प्यूट मैकेनिज्म है। इसमें ये चीजें कहां आड़े आ रही हैं, यह कहां कह रहा है कि इसके लिए उस प्रकार की चीजें नहीं हैं। इसका जो मेन कंसर्न है, वह यह नहीं है कि इसे रद्दी के भाव में बेच लेना है। इस कोड का पहला टारगेट है कि यदि कंपनी प्रोफेशनली मैनेज्ड नहीं हो रही है, तो हम इसे कैसे चलाएं? यदि उसे चलाएंगे तो उसमें क्या-क्या चीजें हो सकती हैं? बेचने की बात तो बाद में आएगी, तो उन चीजों के बारे में आप लोगों में क्लीयरिटी नहीं है, उसे बताना चाहिए।

आपने कहा कि ऑपरेशनल क्रेडिटर्स के तौर पर लेबर फोर्सेज हैं। क्लॉज 30 और 43(2) में फाइनैंशियल क्रेडिटर्स की बात कही गयी है और आपरेशनल क्रेडिटर्स की बात कही गयी है। उसका सेक्शन 30 में काफी इलेबोरेशन है, काफी क्लीयरिटी है, उसमें से क्या हो सकता है? उसके बाद एक और क्रेडिटर है, जो टॉट क्रेडिटर हैं, वे न ऑपरेशनल हैं और न ही फाइनैंशियल हैं। इसलिए जो 43 और 43(2) क्लॉज को बहुत ही अच्छे ढंग से इलेबोरेट किया गया है। इसके बाद भी आपका क्या सजेशन हो सकता है। सेक्शन 30 को, सेक्शन 43 और 43(2) को देखने के बाद आपका क्या सजेशन है? यदि आप वह बताएंगे तो वर्क-मैन के लिए क्या किया जा सकता है, इसकी जानकारी मिलेगी।

श्री उदासि जी जो बात कह रहे थे कि जो वाटर फॉल मैकेनिज्म है 178 का और उसमें जो सुप्रीम कोर्ट का जजमेंट है कि सब कुछ के ऊपर वर्क-मैन को रखा जाए। इसलिए आप लोग यह कहते हैं कि सिक्योर्ड क्रेडिटर्स के ऊपर वर्क-मैन होते हैं, उसे आप लोगों में से किसी ने कोट नहीं किया है। इसके बारे में किसी ने अपने रिप्रजेंटेशन में नहीं कहा है। उसके बारे में मजदूर संघ के लोगों का क्या मानना है, यह बताना चाहिए।

SHRI ANAND SHARMA: You educate us on one thing. When you are talking about provident fund, the PFO has adequate powers. If the dues are not being paid, they can act. They have punitive powers and also on pension and gratuity. Do you think, by experience as trade union leaders, that you will have in general a situation where for years the salaries are not being paid, gratuity has not been deposited or provident fund has not been deposited and all these authorities are not doing their job? Can you generalise?

SHRI A.K. PADMANABHAN: For provident fund, there are legislation. Pension is different. Other systems are there. Some public sector undertakings have their own system. But considering the provident fund dues, there are companies where lakhs and crores of rupees comes as due from the employers. Petitions are filed. It is an endless litigation. Hon. Members of Parliament can get the details from the EPF authority as to how many petitions are pending in tribunals and appellate tribunals. There are provisions and there is not a single case except one or two big companies in Mumbai are pulled up, and others are not even fined. Other than that, in every legislation, from employees side, they say why are saying about imprisonment, that should not be there, that will be against the interest of the employees. But nobody is put in jail. But it is a continuous process of litigation and these poor workers and trade unions do that. Unless some senior lawyers come to help us, there is no solution. Otherwise, what is the rate for one appearance in the court? The DAEWOO workers are fighting for 14 years for their dues.

SHRI BHARTRUHARI MAHTAB: BMS have made it very specific that the Insolvency and Bankruptcy Code, 2015 is silent on the role of trade union. That is a specific point which is being said.

They have also quoted that the status as bargaining agent, as has been done by Canada Government, they should protect the interest of the workers. You have also elaborated 5 per cent membership and all that. We would like to understand, in which section, where that this bargaining agent is to be incorporated if you need this and the logic behind it. Quoting the Canada legislation, it must be a federal law. I am not aware; we can get that provision that is there and your opinion on that. But let us understand, on this, because you want to be a partner. As usual, the workers are partner in the total process. It is not only the investor, the creditor and the management, the workers are also a partner of that company. They are important stakeholders. So, in the sinking of that company, workers are also equal partner. We cannot say it is only the Chartered Accountant or the financier or the

creditor. In a way, once you become a partner in the profit, you also become partner of the loss. There are logics on both sides. I am just putting a point across to you so that you explain your point of view. Here, whatever in this Committee, you should understand, the viewpoint that is expressed is not actually the viewpoint of the person who is saying it. He is trying to understand your point of view. So, in that respect, you explain your point of view to the questions that are being posed. Thank you.

HON. CHAIRPERSON: Now the Ministry.

SHRI AJAY TYAGI: I want to very briefly say as to how we are trying to, in this Code, address some of the issues. One is, as rightly said by the hon. Members also, as operational creditors, workers could also trigger insolvency which is not part of the Companies Act. Secondly, under SICA where it was that the net worth be eroded, then only it would become admissible and then promoter obtain a moratorium for four years, five years and promoters siphoning off the assets, and nothing at the end of it remaining: that is being addressed through this code. So, it is the question of first default. In the morning actually there was discussion what is default. So, not paying of even a single due amount is also a default. So it is a threat on the debtor that anyone can initiate it. So I am telling from the workers point of view. After 180 days, if there is no resolution, it will go for liquidation. It is for early exit and more investment. The idea is that there is more investment coming, giving more opportunities in terms of growth and employment. But any further suggestions for improvement are welcome. But I must say that what are the reasons for this is being suggested here. Thank you.

SHRI KALYAN BANERJEE: You see, there is no dearth of Acts in our country, Provident Fund Act, ESI Act. etc. Ministry is also there. But, unfortunately, not a single Act is being implemented in our country. These poor workers' provident fund authorities sleep together. Therefore, what Mahtab *ji* has said is very interesting. Really very nice points have been given by him. As a bargaining agent also, how can you participate in the process? What are your dues? Today you can go and make an application; you can be added as a party and you can be heard. Court is liberal. For you, every one is liberal so that your voice can be heard. Under the Act itself, if you want it to be statutory right like a Canadian legislation, what should be your recommendation that should be given first.

SHRI NARESH GUJRAL: What was the logic that you have said that it will be restricted to 12 months?

SHRI AJAY TYAGI: The logic was that initiation of resolution will start very quickly and it will also finish very quickly to give a message that there are timelines for early resolution. As the hon. MP said, it should not be the case that under other Acts, if those are being violated, that baggage comes on this Act. If someone is not being paid salaries for years, the other remedies should have been addressed there. So, to have unlimited thing will not be appropriate.

SHRI NARESH GUJRAL: It is not unlimited; it is a workers' due.

SHRI AJAY TYAGI: No, workers' due should have been resolved much earlier under other laws.

SHRI NARESH GUJRAL: That, we know, does not get done in this country.

SHRI BHARTRUHARI MAHTAB: The question here is this. Does it get diluted? The dues only are confined to 12 months and not beyond. Does he lose that power?

SHRI NARESH GUJRAL: The balance gets washed out.

SHRI AJAY TYAGI: The point is that any of the trigger mechanisms should come in place and people should come for a quick resolution or liquidation. It cannot be that a company for four-five years is not paying salaries and then it comes for liquidation or adjudication. That is not the intention. The intention is you should come immediately. In that sense, there has to be some limit. Other Acts are expected to take care of EPF or salary or minimum wages. So, those things should be complied with.

SHRI NARESH GUJRAL: This is not overriding the other Acts.

SHRI AJAY TYAGI: It is presumed that those things have been addressed under other covered laws.

SHRI KALYAN BANERJEE: It may not be overriding but after the implementation of that, everything would be useless. It may not be overriding but the salary, the dues which were there under the Provident Fund Act, the Payment of Wages Act or any other Act, the moment you are implementing it, 12 months are there, indirectly you are making it nugatory.

SHRI AJAY TYAGI: Even the Companies Act, I must say, differentiates in workmen and employees. The Companies Act, I must admit, says two

years for workmen. For employees it is four months. If it is unlimited in one Act, if other Acts are not working, and you have unlimited here, theoretically this should not be jeopardized because of inefficiency of those Acts.

SHRI KALYAN BANERJEE: Therefore, you are making discrimination. So far as secured creditors are concerned, his unlimited claim would be taken into consideration and proportionately you will give it. If it is Rs. 5 crore, Rs. 10 crore, Rs. 20 crore, Rs. 100 crore, that will be taken into consideration by you. But, so far as the workman is concerned, you are confining it only to one year; that may be Rs. 1 crore. Is it not discrimination?

HON. CHAIRPERSON: Tyagi ji, we will find out something later on, tomorrow. I thank all of you. You represent the trade unions. Whatever the queries were raised by our Members, you will send your written replies also.

Lastly, one thing I want to mention that some unnecessary remarks were made by Mr. Ashok Singh. Those remarks are unnecessary in relation to the procedure of the Committee. We will expunge those remarks. Thank you very much.

(THE WITNESSES THEN WITHDREW)

WITNESSES EXAMINED

1. Shri Shankar Aggarwal
   Secretary, Ministry of Labour and Employment.
2. Shri Heeralal Samariya
   Additional Secretary, Ministry of Labour and Employment.

HON. CHAIRPERSON: Representatives of the Ministry of Labour and Employment and Department of Public Enterprises, I welcome you all to the sitting of the Joint Committee. As you are aware, the Joint Committee is examining the Bill titled 'The Insolvency and Bankruptcy Code, 2015', which seeks to consolidate and amend the laws relating to insolvency and bankruptcy of corporate persons, partnership firms and individuals in a time bound manner. Workmen or employees of an organisation are one of the category of persons affected by insolvency and liquidation of a company. Clause 2(a) of the Code provides that the provisions of the Code shall apply to any company incorporated under

the Companies Act, 2013 or under any previous company law which mean that the insolvency and liquidation of Public Sector Undertakings will be covered by the new Code. In this background, the Committee have decided to hear your views on the provisions made in the Insolvency and Bankruptcy Code, 2015.

Now, I request the representatives of the Ministry of Labour & Employment to present their views or observations on the provisions contained in the Code followed by presentation by the Secretary, Department of Public Enterprises.

I would like to draw your attention to the Directions by the hon. Speaker, whereby the deliberations held at the sitting of the Committee are treated as 'confidential' till the report on the subject is presented to the House.

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

(INTRODUCTION OF WITNESSES)

SHRI SHANKAR AGGARWAL: Hon. Chairman and the members of the Committee, it gives me great pleasure to extend my gratitude to the hon. Committee for giving us an opportunity to put forth our stand and our views on the proposed Insolvency and Bankruptcy Code, 2015.

At the outset, I would say that I am extremely hopeful that the proposed Bill would provide an effective legal framework for timely resolution of insolvency and bankruptcy and encourage entrepreneurship.

I am also sure that the proposed Code would facilitate a big step in easing out the doing business environment in the country. Having said so and being a representative of the Ministry of Labour and Employment, it is my utmost duty to apprise some of the crucial facts to the hon. Committee.

Sir, I would like to bring to the kind notice of the Committee that EPF and MP Act of 1952, which governs the provident fund, is a piece of social legislation to provide the PF, pension and insurance benefits to the employees. The contributions are made by the employees as well as by the employers. The employees get a lumpsum amount as provident fund as well as pension when he retires and in case of death the employee and his family gets PF, pension and insurance benefits.

HON. CHAIRPERSON: Do not read it. Please come on to the point as to what amendments you want or what concrete suggestions you have as the Ministry of Labour regarding the present Bill.

SHRI SHANKAR AGGARWAL: Sir, our contention is very simple. All the dues of PF as well as for ESIC, are of the nature of statutory dues. These are nothing but some kind of deferred payments. We feel, being statutory dues, we must get the priority in case of solvency. This is our contention.

SHRI ANAND SHARMA: In the light of the recent Supreme Court Judgment, just equated all these dues, payment of these dues with the payments due to the Government in the form of taxes.

श्री निशिकांत दुबे: उस दिन सामरिया जी आए थे, जब कोई कम्पनी डिफाल्ट करने लगती है, इनका जो रोल है, ये पूरा नहीं कर पाते हैं, उसके लिए आपके पास क्या मेकेनिज्म है? यह जो आप कह रहे हैं, यह तब है जब कम्पनी डूब जाती है। इसके पहले कोई कम्पनी पैसा जमा नहीं कर पा रही तो इन्हें जो अथोरिटी दे रखी है संसद ने, उसके बारे में क्या एक्शन लेंगे? अभी यहां लेबर यूनियन वाले आए थे। उन्होंने कहा कि कुछ नहीं हो रहा है, एक-दो कम्पनीज को छोड़कर कभी कोई कार्रवाई नहीं की, तो न करने की स्थिति के बारे में बताएं?

SHRI SHANKAR AGGARWAL: Sir, I have not brought the facts and figures with me. I will request DG, ESIC as well as the CPFC to give the details. But I would like to tell you जो भी कानून में प्रावधान है, we take the advantage of all the provisions. जितनी भी डिफाल्टिंग यूनिट्स हैं।

SHRI K.C. VENUGOPAL: His argument is this that provision is there but its implementation is not there. Entire trade unions were there. They said the same thing that laws are there but their implementation is not taking place as far as labour interest is concerned.

SHRI KALYAN BANERJEE: Here under Section 14 of the Employees Provident Fund Act, I am telling you as to how you are functioning and at what point of time you are invoking Section 14. Every employer has to pay the PF within 14 days. In how many cases have you detected that within 15 or 16 days employers have not paid the PF? What action have you taken in these cases? In fact, the experience speaks that your Employees Provident Fund authorities do not rise to the occasion at all. They rise after three, four or five years. Just because of your inaction and because of your lackadaisical attitude, the workers are suffering. Either it is DRT or BIFR, these authorities are there. Tell us, in how many cases you have taken panel action? How many persons in this country, in the last one year, have sentenced to prison for the default of Employees Provident Fund Act?

SHRI SHANKAR AGGARWAL: Sir, I do not have the data.

SHRI KALYAN BANERJEE: Our saying is this that had you been acted at an appropriate time, the workers of this country would not have faced the trouble what they are facing. That is the gist.

SHRI SHANKAR AGGARWAL: Sir, I do not have the data as far as the number of action taken against such defaulters.

HON. CHAIRPERSON: You just send it to us.

SHRI SHANKAR AGGARWAL: Sir, I will send it to you.

However, I would like to mention that today we have computerized all our operations. We have allocated the Universal Access Number to all subscribers and with the help of that it is now possible for every subscriber to look into the record and account at any point of time, 24x7 and also to find out how much money is available in his account. Not only that, whenever his money is credited in his account, he can look into the record, and he will get SMS on his mobile that so much money has been credited in his account on such and such date. So, everything is transparent.

HON. CHAIRPERSON: Do you have any other suggestion related with this Code?

SHRI SHANKAR AGGARWAL: Sir, we have allocated the Universal Access Number to about five crore people.

HON. CHAIRPERSON: Do you want to add anything to this Insolvency and Bankruptcy Code?

SHRI SHANKAR AGGARWAL: We just want to say that ours should be given the priority.

श्री गोपाल शेट्टी: अग्रवाल जी ने जो कहा है वह उस फैक्ट्री के लिए है, जो स्मूथली चल रही है। प्रोविडेंट फण्ड के पैसे जो मालिक जमा नहीं करते हैं उसका कारण आप नहीं बताते हैं। कम्पनी का दीवालिया निकल गया, उसके पास पैसे ही नहीं हैं। वह कम्पनी को चलाने की कोशिश करता है और उनको पगार दे देता है। It is very much necessary. यदि उसके पास प्रोविडेंट फंड का पैसा होता है तो वह सर्वाइव करने की कोशिश करता है। सर्वाइव करेगा तो भरेगा। कोर्ट में जाने पर भी इसका निपटारा नहीं होता है। आखिर में लिक्विडेशन में जाने के बाद असैट बेचने के बाद वर्कर को उसका पैसा मिल जाता है। This is the fact. मैं यह जानना चाहता हूं कि आने वाले समय में आप ऐसा कोई नया सुझाव इस बिल के संदर्भ में दे सकते हैं?

श्री शंकर अग्रवाल: अभी तक यह होता था कि जिस भी सबस्क्राइबर का पैसा भी कटता था तो उसको पता नहीं चलता था कि उसका कितना पैसा कटा और कितना पैसा उसके अकाउंट

में क्रेडिट हुआ? Secondly, when we used to migrate from one employer to another employer, it was a very tedious task. Today, at any point of time, 24x7, in real time basis, उसको यह मालूम है कि उसका इतना पैसा कटा और मेरे अकाउंट में इतना आ गया है। अगर उसको यह लगता है कि मेरा इतना पैसा तो कट गया, लेकिन मेरे अकाउंट में नहीं आया, He can raise his voice. इसके पीछे जो आधारभूत कारण था, उसको हम खत्म करने जा रहे हैं।

माननीय सभापतिः आप बहुत स्मार्टली जवाब दे रहे हैं। उनका प्रश्न है कि आप कार्रवाई क्यों नहीं करते हैं? आप यह कह रहे हैं कि हमने ऑनलाइन डाल दिया, वर्कर उसको चैक कर ले। लेकिन आप क्या करेंगे, यह आप नहीं बता रहे हैं?

SHRI KALYAN BANERJEE: क्या आपने चैक किया है कि कम्पनी ने वर्कर को पैसा दे दिया है? Is there any SMS system? I want to know whether you have introduced this system or not.

श्री शंकर अग्रवालः अभी मेरे पास डेटा नहीं है, मैं आपको उपलब्ध करवा दूंगा।

SHRI SHIVKUMAR UDASI: You are talking about all your IT products which you are using. Still you say that you do not have any data. Over the mobile, you can get your data, if you are so through. So, Sir, it is nonsense.

SHRI ANAND SHARMA: For your benefit, let me say this. Would you appreciate whatever measures you have taken to ensure that the workers get access to check their accounts and whether the contributions have been made, what has been credited or debited?

The issue here which is agitating all of us is why we have a situation where the Trade Unions, in their submissions, have said that no action has been taken. The best way is that you should give the information for the last three years regarding the number of cases which were dealt with, the number of cases where satisfactory resolution took place and also the number of cases where you have invoked the penal powers to ensure that the workers' dues are secured.

HON. CHAIRPERSON: Now, I would request the Department of Public Enterprises to give their views.

SHRI AMEISING LUIKHAM: Sir, as you are aware, the Department of Public Enterprises is just a coordinating Department. We do not have any CPSU under our administrative control.

Sir, we support whatever initiative that has been taken and we welcome it.

HON. CHAIRPERSON: Do you have any suggestion?

SHRI AMEISING LUIKHAM: Sir, we welcome this Code because it puts the other Acts which impinges on the CPSUs falling sick and the methodology. This is a good initiative. This is a welcome step. We have no other suggestion.

श्री रवि प्रकाश वर्मा: अभी हमने ट्रेड यूनियन के लोगों से बात की तो उन्होंने बताया कि ईपीएफ से रिलेटिड केसिज की तादाद बहुत ज्यादा है। इस तरह के केसों में बहुत समय लग रहा है। मैं यह जानना चाहता हूं कि ईपीएफ से संबंधित कितने केसिस कोर्ट्स में चल रहे हैं और उनको अब तक कितना समय हो गया है? इस बारे में आप क्या कर सकते हैं जिससे इस तरह की समस्या से बचा जा सके?

श्री चन्द्रकांत खैरे: हमारा जो लेबर डिपार्टमेंट है, वह कम्पनियों को कंट्रोल करते हैं। ऐसी कई कम्पनियां हैं जो दीवालिया हो गयीं, लेकिन कर्मचारियों को उनका पैसा नहीं दिया गया। दिल्ली हाई कोर्ट में भी एक केस चल रहा है। हमारे जो लेबर कमिश्नर होते हैं, वह इम्प्लायीज की साइड नहीं लेते हैं। उसमें 600-700 इम्प्लायीज काम करते थे। लेकिन दो सौ इम्प्लायीज अपने पैसे मांगते-मांगते थक गए। उनमें से मर भी गए। उनके लिए मैंने कई बार वकील करके उनकी मदद की लेकिन केन्द्र या राज्य सरकार की तरफ से उनको कोई मदद नहीं मिली। आखिर में उनको 70 हजार के लगभग ड्यूज मिला, जबकि उनको 5 से 7 लाख रुपये तक मिलना चाहिए। कानून चाहे कोई भी हो लेकिन इम्प्लायीज को उनका ड्यूज पहले दिया जाना चाहिए। लेकिन यह आज तक नहीं हो रहा है। यदि आप चाहेंगे तो मैं आपको उस कम्पनी का नाम वगैराह सब बता दूंगा। आपको उस बारे में कार्रवाई करनी चाहिए और हमें कर्मचारियों को पहले प्रायोरिटी देनी चाहिए। मैं आपको कम्पनी की पूरी हिस्ट्री दे दूंगा आपको उसकी इनक्वायरी करनी चाहिए। दो सौ इनक्वायरी अपना पैसा मांगते-मांगते मर गए, लेकिन उनको पैसा नहीं मिला। इस एक्ट के माध्यम से हमको उनकी कुछ न कुछ हेल्प करनी चाहिए। यही मेरा कहना है।

श्री शंकर अग्रवाल: आपने पूछा है कि कितने केसिस हैं और कब से चल रहे हैं, इस बारे में मैं आपको जानकारी लिखित में उपलब्ध करवा दूंगा।

SHRI K.C. VENUGOPAL: I have a question regarding insurance. You are having the Bima Yojana Scheme. A lot of complaints are coming from the workers every day that they are not getting insurance. Especially, the private insurance companies are not cooperating. Being a Member of Parliament, we have our own experience.

Therefore, I would like to know the exact statistics of health insurance, specially, which have been paid for the last two-three years.

SHRI SHANKAR AGGARWAL: Sir, we do not look after this. We used to run a scheme called Rashtriya Swasthya Bima Yojana. It has been,

now, transferred to the Ministry of Health. This happened about a year back. However, we are running a scheme under the ESIC, Employees State Insurance Corporation. Under that, it is a contributory kind of a scheme. We take 4.75 per cent of the wages from the employer and 1.75 per cent from the employee. Then, all kinds of services – primary, secondary and tertiary – are provided to the ensured person. As on date, about two crore insured persons and their family members as well are getting benefited. So, almost eight crore people are getting benefited. Now, are planning to enhance it to almost 30 crore by including all the construction workers, by including all the skill workers like ASHA, Anganwadi, Mid-Day Meals workers. We are also trying to take care of the domestic help as well. But all these schemes are being examined and finalised. Once they get finalised and approved by the competent authority, we will get them implemented.

SHRI BHARTRUHARI MAHTAB: Mr. Chairman, Sir, Secretary, Labour has actually provoked me to put a question to him.

I would put this question in a different way. The Ministry is Ministry of Labour and Employment. Definitely, employment will be generated if the management is strong and they bring in finance. So, credit facility is provided so that it will generate workforce and also employment. From the law that is in place for the last 50 years and the pronouncements that have been made by the courts, it seems as if the Labour and Employment is only for the labour; it has no interest to look into the interests of the management or the persons, who is setting up industries. All the questions that you are putting-forth here, are only to protect the interest of the labour. Who will look into the interests of the management? Does this Code, in your opinion, look into the interests of management alone? We need your answer.

The second point is this. The Canadian Government, to protect the interests of workers in Bankruptcy and Insolvency Law, have incorporated a provision that the trade unions also become bargaining agent. If you are looking into the interests of labours only, you have not put-forth the point they should also become bargaining agent in this Code. That would help the labour to a greater extent. What is your reaction to it, keeping the Canadian Law in view?

These were the two points, which I wanted to ask. These are certain legal perspectives on which we have to think afresh. You take your time and send them, in writing.

श्री निशिकांत दुबे: सभापति जी, 36-4 के बाद आपको किस तरह का प्रोटैक्शन चाहिए, इस बी में जो 36-4 है, मोर और लैस आपकी कंसर्न को वह पूरा करता है। 36-4 के बाद आप और कौन सी चीजें चाहते हैं।

दूसरा सैक्शन 53(1) जो कि लेबर डिपार्टमेन्ट का है, यह सैक्शन 11 ऑफ ईपीएफ को किस तरह का वायलेट कर रहा है और सैक्शन 327, 2013 ऑफ कॉरपोरेट बिल्स इसके बीच में यदि कम्पैरिजन करके आप बतायेंगे कि 53(1) कैसे इस चीज को वायलेट कर रहा है।

मेरा थर्ड पाइंट यह है कि जो फाइनेन्शियल रेगुलेटर की डेफिनिशन 318 है, जिसके बारे में आपने कहा कि डेफिनिशन से वह दूर है। वह 318 में आप ईपीएफओ को किस तरह से डालना चाहते हैं और इसमें कल जब मंत्रालय भी जवाब देने के लिए आयेगा कि आपने 318 में काफी रेगुलेटर्स की बात कही है, यह ईपीएफओ उसमें कैसे इनक्लूड नहीं हो सकता है, क्योंकि वह भी एक रेगुलेटर है और उन चीजों को रेगुलेट कर रहा है और कई एक उदाहरण इन्होंने अपने सबमिशन में दिये हैं कि इस एक्ट के हिसाब से यह था और इस एक्ट के हिसाब से यह था और यह कह रहे हैं कि फाइनेन्शियल रेगुलेटर की कैटेगरी में इसके बारे में बताना चाहिए और आपको भी एक्सपैक्ट करना चाहिए।

माननीय सभापतिः आप सबको बहुत-बहुत धन्यवाद। मैं भारत सरकार के श्रम और रोजगार मंत्रालय से उम्मीद करता हूं कि वह संबंधित डाटा हमें उपलब्ध करायेंगे और जो प्रश्न हमारे माननीय सदस्यों ने उठाये हैं, उनके भी विस्तृत जवाब हमें भेजेंगे, ताकि इनसोलवेंसी और बैंकरप्टसी लॉ में जो वर्कमैन के हित हैं, उनके विषयों में अपनी व्यापक संस्तुति दे सकें। डिपार्टमेंट ऑफ पब्लिक एंटरप्राइसेज ने सिक इंडस्ट्रीज की लिस्ट दी है, लेकिन आपके इस संबंध में भारत सरकार के पब्लिक एंटरप्राइसेज के सिक होने के जो व्यावहारिक कारण हैं और उसमें जो समस्याएं उत्पन्न होती हैं, सारे विषयों को निपटाने की दृष्टि से आप एक कोआर्डिनेटिंग एजेंसी हैं, चूंकि भारत सरकार की कंपनीज इसके अंतर्गत हैं और भारत सरकार का बहुत पैसा इसमें लगा हुआ है। इस संबंध में जो व्यावहारिक सुझाव हो, इस कोट को पढ़कर आप उन व्यावहारिक सुझाव को इस समिति को तीन दिनों के अंदर भेज दें, ताकि हम सही समय पर उनका संज्ञान ले सकें।

मैं वित्त मंत्रालय और विधि मंत्रालय के जो सभी अधिकारी यहां उपस्थित हैं, उन्हें तथा हमारे सभी माननीय सदस्यों को आज की इस मैराथन बैठक में भाग लेने के लिए और सहभागी बनने के लिए बहुत-बहुत धन्यवाद देता हूं। कल 11 बजे हम सब लोग फिर से मिलेंगे।

श्री शंकर अग्रवालः सर, मैं अपने मंत्रालय को ओर और अपनी ओर से माननीय सभापति महोदय और माननीय सदस्यों का आभार प्रकट करना चाहूंगा कि उन्होंने हमें यहां आने का एक अवसर प्रदान किया और जितना भी विचार-विमर्श और आपकी गाइडेंस रही, निश्चित रूप से हम एक प्रगति की तरफ बढ़ेंगे एक ऐसा लेजिस्लेशन हम लोग सजैस्ट कर पायेंगे जो बैलेंस होगा, जैसा कि अभी आपने कहा कि इम्पलायी इम्पलायर्स और दोनों के लिए एक अच्छा लेजिस्लेशन बन सकेगा। धन्यवाद।

(तत्पश्चात् समिति की बैठक स्थगित हुई।)

PROCEEDINGS OF THE SIXTH SITTING OF THE JOINT COMMITTEE ON THE BANKRUPTCY AND INSOLVENCY CODE, 2015 HELD ON TUESDAY, THE 16TH FEBRUARY, 2016

The Committee sat from 1100 hrs. to 1425 hrs. in Committee Room No. 074, PLB, 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 Nishikant Dubey
6. Shri Shivkumar C. Udasi
7. Shri Anil Shirole
8. Dr. Sanjay Jaiswal
9. Shri Jagdambika Pal
10. Shri Jayadev Galla
11. Shri Chandrakant Khaire
12. Shri Kalyan Banerjee
13. Shri Bhartruhari Mahtab

Rajya Sabha

14. Shri Ajay Sancheti
15. Shri Naresh Gujral
16. Shri Anand Sharma
17. Shri Ravi Prakash Verma
18. Shri Satish Chandra Misra

SECRETARIAT

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

WITNESSES

MINISTRY OF FINANCE
(DEPARTMENT OF FINANCIAL SERVICES)

1.	Ms. Anjuly Chib Duggal	—	Secretary
2.	Ms. Snehlata Shrivastava	—	Special Secretary
3.	Shri R.N. Dubey	—	Economic Adviser
4.	Shri Rajesh Aggarwal	—	Joint Secretary
5.	Shri Mohammad Mustafa	—	Joint Secretary
6.	Dr. Shashank Saksena	—	Economic Adviser

MINISTRY OF FINANCE
(DEPARTMENT OF ECONOMIC AFFAIRS)

1.	Shri Shaktikanta Das	—	Secretary
2.	Shri Ajay Tyagi	—	Additional Secretary
3.	Dr. C.K.G. Nair	—	Advisor

MINISTRY OF LAW AND JUSTICE
(LEGISLATIVE DEPARTMENT)

1.	Dr. G. Narayanan Raju	—	Secretary
2.	Dr. Mukulita Vijayawargiya	—	Additional Secretary

MINISTRY OF CORPORATE AFFAIRS

1.	Shri Tapan Ray	—	Secretary
2.	Shri Pritam Singh	—	Additional Secretary
3.	Shri Amardeep Singh Bhatia	—	Joint Secretary

JOINT COMMITTEE ON INSOLVENCY AND BANKRUPTCY CODE, 2015

Verbatim Proceedings

Date : 16th February 2016

Time : 1100 hours

Venue : Committee Room '074'
Parliament Library Building
New Delhi

PRESENT

1. Shri Bhupender Yadav — Chairperson
2. Shri Jagdambika Pal — Member

WITNESSES EXAMINED

1. Shri Shaktikanta Das
Secretary, Department of Economic Affairs, Ministry of Finance.

2. Ms. Snehlata Shrivastava
Special Secretary, Department of Financial Services.

HON. CHAIRPERSON: I welcome you all to the sitting of the Joint Committee. As you are aware, the Committee is examining 'The Insolvency and Bankruptcy Code, 2015', which seeks to consolidate and amend the laws relating to the reorganisation and insolvency resolution of corporate persons, partnership firms and individuals in a time bound manner. Subsequent to presentation made by the nodal Department, that is, the Department of Economic Affairs, Ministry of Corporate Affairs and Department of Financial Services, the Committee have heard the views of 26 Regulatory/Government bodies, organisations representing industry and professional bodies, research bodies and Trade Unions and two concerned Ministries *viz*. Ministry of Labour and Employment and Department of Public Enterprises. The Committee have also heard the expert views given by Shri Viswanathan, Chairman of the Bankruptcy and Law Reform Committee. Various suggestions have been made and concerns expressed by the witnesses on the provisions contained in the Code. The representatives of Department of Economic Affairs and Legislative Department were present at all the sittings of the Committee and heard the witnesses.

The Members of the Committee may be raising certain queries related to the provisions made in the Code, based on the inputs received from various sources and the oral evidences held so far, which the representatives of the concerned Ministries may kindly respond to.

As all of you are aware, whatever deliberations we have at the sitting of the Committee are to be treated as confidential. Now you may kindly introduce yourself and your colleagues to the Committee and give the presentation.

(INTRODUCTION OF WITNESSES)

MS. ANJULY CHIB DUGGAL: Sir, I am going to request Ms. Snehlata Shrivastava, Special Secretary to make the presentation. Before that I want to make a very quick introductory point.

The problem of Non-Performing Assets (NPAs) in banks is currently being talked about. On a previous occasion between late 1990s and 2000s, the problem had also come up. One of the responses to solving that problem was to enact the SARFAESI Act. This is an Act which permits settlement out of court for secured credits that have been given. Our main point is that that particular dispensation should continue to remain because it is the quickest way to resolve the outstanding issues.

Considering that the entire Bankruptcy Code has been put together from the point of view of ensuring timely resolution, SARFAESI is something which permits absolutely timely resolution. Currently also under the Act which covers the setting up of debt recovery tribunals there is a provision for withdrawal of an application so that action may be taken under SARFAESI Act. This is the broad thrust of our presentation. One or two consequential matters are also there. We have also put in for information purposes the three resolution mechanisms which have been enabled by the Reserve Bank of India under the Banking Regulation Act. That is only to set the context so that there is a clearer picture of the resolution mechanisms as obtaining right now.

HON. CHAIRPERSON: There is one clarification. As you suggest, this Act would not overrule the SARFAESI Act. There is already a policy ensured by the RBI which is called CDR and SDR, which is not covered by any law. That is completely out of court settlement, between the banks and the borrowers. What is the experience of that? We have heard many statements given by various experts and organisations that it is in the benefit of those persons who are actually the habitual defaulters to favour a powerful person. What is your official view about that?

MS. ANJULY CHIB DUGGAL: May we begin with the presentation and then discuss it.

HON. CHAIRPERSON: All right.

(SLIDE PRESENTATION)

श्री निशिकांत दुबे: सभापति जी, यह कोड कंट्री के लिए बन रहा है, यह केवल बैंक की बात कर रहे हैं। इसमें ऑपरेशनल क्रेडिटर्स भी हैं, सिक्योर्ड क्रेडिटर्स भी हैं और जो आपरेशनल और सिक्योर्ड कुछ नहीं हैं, वे टोर्ट क्रेडिटर्स हैं। यह जो बैंकरप्सी कोड है, वह इन तीनों को यह कह रहा है। आप यह समझिये कि जो मीडियम स्माल स्केल इंडस्ट्रीज वाले हैं, वे मरे जा रहे हैं। कोई सप्लायर है, किसी ने मान लीजिए रॉ मैटिरियल दिया हुआ है, कोई लेबर फोर्स दिया हुआ है, फिर आप इसे बैंक की दृष्टि से देखने का प्रयास क्यों कर रहे हैं। मैं यह कह रहा हूं कि यदि आप किसी कोड को देखेंगे तो उस कोड का जो सर्फेसी एक्ट है, सर्फेसी एक्ट में बैंक को इतनी पावर दी हुई है और अन्य चीजें दी हुई हैं, आप अपने हिसाब से देखें। आप अपना पैसा ले रहे हैं। लेकिन इसमें जो सप्लायर ग्रुप है, जो इसमें वर्कमैन हैं, जो इसमें फोर्सेज हैं, जो टोर्ट क्रेडिटर्स हैं, उसके लिए क्या है। यदि आप उसके बारे में बतायेंगे तो मुझे लगता है कि आपकी यह प्राब्लम सोल्व नजर आयेगी।

सुश्री अंजली चिब दुग्गल: सर, इसमें बात यह है कि काफी यह बड़ा मुद्दा है, समन्वय बिठाने की बात है कि जो काम होना चाहिए, वह सही होता रहे और जो भी लीगल प्रोसेसिस

हैं, उनको powerful interests should not be able to derail them. हम लोग बैंक की तरफ से आपको बता रहे हैं, जो कि हमने नोटिस किया है। आप जब उसमें समन्वय बिठाएंगे, आप और भी बहुत सारे इनपुट्स को साथ ले कर चलेंगे। जहां तक सिक्योर्ड लोंस की बात है, एक सिस्टम अगर हमारा चला हुआ है, जिसमें it has not been a bad way of doing things. उसके मिसयूज के बारे में इतना ज्यादा कोई हमारी नोटिस में पॉइंट्स नहीं आए हैं और उसमें भी अगर इंफोर्समेंट ऑफ सिक्योरिटीज़ में अगर किसी को तकलीफ हो तो there is a legal recourse that is available.

श्री निशिकांत दुबे: वॉटरफॉल में सिक्योर्ड क्रेडिटर्स को नंबर वन ऐसे भी डाला हुआ है, मतलब आपका मामला केवल सिक्योर्ड क्रेडिटर्स और टाइम का है। एक तो टाइम भी दिया हुआ है कि हम 270 दिन के अंदर इस सारे प्रोसेस को खत्म कर देंगे। क्यों सर्फेसी एक्ट में अभी जो कोर्ट है, वह आपको इमिडिएटली 270 दिन में चीजें नहीं होने दे रहा है, वह तो अलग सवाल है। लेकिन 270 दिन का टाइम बाउंड लिमिटेशन है। दूसरा, वॉटरफॉल में, उन्होंने सिक्योर्ड क्रेडिटर्स को नंबर वन डाला ही हुआ है कि सबसे पहला पैसा उसको ही जाएगा, जो कि बाद में हम इनसे बात करेंगे कि सन् 2011 का जो सुप्रीम कोर्ट का जजमेंट है, उसके हिसाब से वह नंबर वन वर्कमैन होना चाहिए कि नहीं होना चाहिए, वह दूसरी बात है, लेकिन अभी का जो बैंकरप्सी कोड है, वह तो सिक्योर्ड क्रेडिटर्स को नंबर वन कह ही रहा है, उसको तो प्रोटेक्ट कर ही रहा है। मुझे नहीं लगता कि इस पर कुछ होना चाहिए।

श्री जगदंबिका पाल: एक डिफॉल्टर है जो मार्केट ड्रिवन है, जैसे आज स्टील इंडस्ट्री हो, कोल इंडस्ट्री हो, तो वे किसी कारण से पे नहीं कर पा रहे हैं तो उसको भी आप इसी तरीके से अलग-अलग करेंगी?

सुश्री अंजली चिब दुग्गल: सर, जहां तक कानून की बात है, मेरे हिसाब से वह तो बहुत डिफरेंशिएट करने की पॉसिबिलिटी नहीं है, परंतु अगर किसी डेब्टर का पैसा वापस आता नजर ही न आता हो, क्योंकि उसकी कंपनी इतनी फेल कर गई है तो एक बात है और जहां पर रिवाइवल की जरूरत है तो बैंक्स खुद ही सर्फेसी की तरफ जाने की जगह, दूसरी तरफ के रेजोल्यूशन के अंदर जाना पसंद करेंगे। This is an enabling set of provisions in the proposed IBC. उसमें दोनों तरफ से चल सकते हैं, लेकिन जहां पर कहीं कोई विलफुल डिफॉल्टर हो तो हमारा यही बिंदु है।

श्री जगदंबिका पाल: कई मामलों में देखा होगा कि वर्किंग कैपिटल नहीं मिला, कुछ और कारण थे।

सुश्री अंजली चिब दुग्गल: सर, आप इजाजत दें तो जब प्रेजेंटेशन में एसडीआर का मैकेनिज्म देखेंगे तो उसमें सारी जानकारी है।

HON. CHAIRPERSON: Let them complete their presentation first.

(SLIDE PRESENTATION)

SHRI SHIVKUMAR UDASI: Hon. Chairman had raised a question in the beginning. This enactment will affect out of court mechanisms for restructuring, including the mechanisms developed by the RBI. In particular, CDR is a mechanism that the RBI has introduced for banks to negotiate a restructured debt package with the corporate outside of the purview of any legal forum or proceedings. The Code is silent on what effect of commencing an insolvency resolution proceeding would be on an ongoing CDR process. As CDR is not a legal proceeding, it is not technically affected by the moratorium and could, in theory, proceed in parallel with an insolvency resolution proceeding under the Code. However, the effect of this could cause much confusion, particularly if the insolvency resolution process has been initiated by a different group of creditors than those who are involved in the CDR. What is your opinion? How do you resolve this? How would an out of court mechanism, such as CDR, fit in with the corporate insolvency resolution process under the Code? In particular, it should address the questions such as: Can an insolvency resolution application be commenced when CDR process is ongoing? Can CDR be commenced while an insolvency resolution process is ongoing? What is the effect on an ongoing insolvency resolution proceeding if a debt restructuring package under CDR is agreed with a select group of creditors?

These questions can be resolved in different ways. What is your view in this regard?

MS. ANJULY CHIB DUGGAL: Sir, this is a very valid point.

In all fairness, we should do a deeper study of the CDR mechanism and how it has fared before we give this hon. Committee a reliable answer.

श्री निशिकांत दुबे: पहले आप यह बता दीजिए कि अभी जो एनपीए है, उसमें से सीडीआर का क्या प्रतिशत है? हमने सीडीआर कितनी कंपनियों का किया और वह एनपीए हो गया?

MS. ANJULY CHIB DUGGAL: We will check and tell you.

श्री निशिकांत दुबे: उसके आधार पर जब आप अपना व्यू बनाएंगी तो पता चलेगा कि यह मैकेनिज्म अच्छा था, खराब था, चला या फेल हुआ, इससे हमें सुविधा होगी।

सुश्री अंजनी चिब दुग्गल: सर, यह बड़ा ही वैलिड पॉइंट है। मैं सिर्फ एक पॉइंट मैंशन करना चाहती हूं कि जब हम पेंडेंसी ऑफ ज्युडिशियल केसिस वगैराह को देखते हैं तो एक ऑल्टरनेटिव डिस्प्युट रेजोल्यूशन मैकेनिज्म एडीआर की हमेशा बात होती है।

To my understanding, the Corporate Debt Restructuring (CDR), Joint Lending Forum (JLF) and Strategic Debt Restructuring (SDR) are in the nature of Alternative Dispute Resolution (ADR). If they work, it is very good and if they do not work, then there should be another provision.

Now, the point is this कि टाइम का इश्यू है एंड जो अगर मैं सही अनुमान लगा सकती हूं, कमेटी के माइन्ड में यह है कि Can anyone misuse these mechanisms to escape the rigors of a legal code? This is a valid point, which we will study, but my suggestion would be that कहीं पर ऑल्टरनेटिव डिस्प्यूट रेजोल्यूशन का भी मैकेनिज्म रखें। Wherever there is some scope कि आपस में बात करके व्यावहारिक तौर के ऊपर और अच्छा रेजोल्यूशन हो जाए, there should be space for that as well in whatever code we come out with.

SHRI SHIVKUMAR UDASI: Can CDR go on if insolvency is in progress because it has been directed by the RBI?

MS. ANJULY CHIB DUGGAL: The RBI has the power to provide instructions. So, these are three enabling structures.

SHRI SHIVKUMAR UDASI: Is it advisory or mandatory?

MS. ANJULY CHIB DUGGAL: It is enabling.

SHRI SHIVKUMAR UDASI: What does enabling mean here? Is it mandatory?

MS. ANJULY CHIB DUGGAL: No, it means that if the banks want to get together, there is a consortium of banks or there is a loan that has gone bad, then the banks have the option of sitting down in the CDREG and take the decision about what needs to be done next to resolve that particular issue.

SHRI SHIVKUMAR UDASI: My point is that when this Code comes into existence, then what will happen? Can you go on parallel with the CDR when insolvency is in progress?

HON. CHAIRPERSON: I want to raise a point to the Department of Legal Affairs also. There is an amendment in CPC for ADR conciliation, mediation. I think that it is in Section 81 in CPC. Now, you are bringing the Code here where you say that no civil code jurisdiction is there, and ADR is the mechanism, which is mentioned in CPC. Here, the Ministry of Corporate Affairs is specifically mentioning about ADR. So, that mechanism of ADR conciliation, mediation is available in CPC and there is no jurisdiction of civil code. Is there no contradiction between

the legal policy and the present code? कल को मैं कैन्सलेशन मीडिएशन में जाऊंगा, सिविल कोर्ट ज्यूरीडिक्शन या सीपीसी, इसके बारे में आप अपना एक ओपिनियन दीजिएगा। वेयर सिविल कोर्ट कैन एन्टर दिस आर नॉट।

श्री निशिकांत दुबे: आज का जो न्यूज है, जो करनन साहब ने किया है कि सुप्रीम कोर्ट के जज के ऊपर ही एफआईआर करने के लिए कह दिया है, उस सिचुएशन में वह मैकेनिज्म कैसे डेवलप होगा?

माननीय सभापति: नहीं-नहीं, वह अलग है, यह एक सच है कि...

श्री निशिकांत दुबे: वे जज तो कह रहे हैं कि मेरा अधिकार है। आप जो कह रहे हैं, आप ही को जोड़ रहा हूं उसमें।

माननीय सभापति: नहीं-नहीं, उसमें विषय यह है कि देखिए आपने इतना ज्यादा पैसा दे दिया, आप सभी विषयों को लाने के लिए, आप एक आर्थिक व्यवस्था को चलाने के लिए, जैसा आप कह रहे हैं, आपको कुछ व्यावहारिक पक्षों पर भी ध्यान देना होगा। आउट ऑफ कोर्ट जाकर आपने मीडिएशन कैन्सलेशन किया और आपने फिर बाद में उसको, क्योंकि सिविल डिक्री देने की पावर बैंकक्रप्सी कोड में नहीं है। अल्टिमेटली कोई एग्रीमेंट अगर आप करेंगे तो उसको ऐज ए डिक्री मानकर के लागू किया जा सकता है क्या? इसमें अगर कोई जजमेंट आप और हम हो गया, यह आर्बिट्रेशन किया, इसको डिक्री माना जा सकता है क्या? कल को कोई पक्ष मुकर गया तो उस डिक्री को रिकवरी करने के लिए कहां जाएंगे, एग्जीक्यूशन सूट कहां फाइल होगा? अगर ऐसी कोई समस्या आ गई, मान लीजिए जो हैबिच्युअल अफेन्डर है, जिसे पैसा देना ही नहीं है, उसने आपके साथ एग्रीमेंट कर लिया, आपने भी सीडीआर कर लिया, आपने उसको एक एडीआर मान लिया, तो उसमें फिर उस डिक्री की रिकवरी करने के लिए कहां जाएंगे और फिर दिक्कत पैदा हो जाएगी। कोर्ट को हमें इतना स्ट्रांग बनाना है कि आउट ऑफ कोर्ट भी अगर आपने सेटलमेंट किया है तो वह डिक्री किसको बाउन्डिंग करेगी। पैसा कैसे रिकवर होगा? इसके बारे में लेजिस्लेटिव डिपार्टमेंट एक पूरा नोट तैयार करके दे।

SHRI SHIVKUMAR UDASI: What the Chairman wanted to say was that it has to provide an order to provide a greater certainty. Otherwise, we are subsuming 13 laws and making one Code and if it is still confusing, then it is of no use. So, the Legal Department should also see as to how it can be worked out in this Code. If you can give suggestions in this regard too, then it will be appreciated.

SHRI P.P. CHAUDHARY: Basically, the CDR and ADR must be treated as very important components. In America and other parts of the world, 75 per cent litigation is reduced only on account of the pre-litigation mediation. I think that this should also be a part of this Code. Once it comes to court, then it creates a legal tangle and takes a lot of time.

If 75 per cent litigation is reduced, then we will reduce the burden on the court also. We have seen the experience all over the world. If you see as to how this pre-litigation mediation is working in other parts of the world, then you can compare this. If it is a workable mechanism, then we can also introduce it in this Code.

(SLIDE PRESENTATION)

श्री निशिकांत दुबे: लेकिन आपको इन चीजों से डर क्या है, सीडीआर, जेएलएफ या एसडीआर, इन तीनों मैकेनिज्म के ऊपर आप डर क्यों रही हैं? आप सिक्योर्ड क्रेडिटर्स हैं। मैक्सिमम जो कम्पनियां इन सिचुएशंस में जाएंगी, सिक्योर्ड क्रेडिटर्स के ही उसमें पैसे लगे होंगे। उसका एक परसेंटेज तय किया हुआ है कि इतना परसेंटेज क्रेडिटर्स का जो है, उसके लिए कन्करेंस की आवश्यकता है। दूसरा, कोई भी क्रेडिटर्स यदि जाएगा एडज्यूकेटिंग अथॉरिटी के पास और जब सिक्योर्ड क्रेडिटर्स अपनी बातें कहेंगे कि हम सीडीआर के पैकेज में चल रहे हैं, जेएलएफ के पैकेज में चल रहे हैं या एसडीआर के पैकेज में चल रहे हैं।

वह जो अथॉरिटी है, उसको जो डिस्पोजल करना है, वह तो इमीडिएटली वहीं उसको खारिज कर देगा। मैं यह कह रहा हूं कि यह जो सीडीआर, जेएलएफ और एसडीआर के ऊपर हम इतनी चर्चा कर रहे हैं, मैक्सिमम मान लीजिए कि एनपीए हो गए, मान लें कि जो कंपनियां एनपीए हुई हैं, उसमें सिक्योर्ड क्रेडिटर्स का परसेंटेज क्या है? आप केवल यह बता दीजिए। यदि आप वह बता दीजिएगा कि मोर दैन 75 पर्सेंट सिक्योर्ड क्रेडिटर्स हैं, तो आपका जो कंसर्न है, वह ऑटोमैटिक खत्म है, फिर इसमें चिंता करने की क्या बात है? आप बार-बार कह रही हैं कि टाइम चला जाएगा।

सुश्री अंजुली चिब दुग्गल: सर, मैं क्लेरिफाई करना चाहूंगी, जिस वक्त हमने ये तीन स्लाइड्स बनाई हैं, जो सवाल ऑनरेबल कमेटी की तरफ से हमसे पूछे गए थे, उसमें हमें लगा कि इसके ऊपर एक बार कॉमन परसेप्शन हो जाए, उसके बाद we are only making our submissions. The hon. Committee will...

श्री निशिकांत दुबे: आप इससे एग्री करती हैं। मान लीजिए कि किसी ने केस किया, कोई क्रेडिटर्स चला गया, सवाल यह है कि इनसाल्वेंसी में चला गया, कोई क्रेडिटर्स चला गया तो उसको एग्जीक्यूटिंग अथॉरिटी के पास जाना है। वहां सारे लोग, जिन्होंने डेट लिया है वे और जिन्होंने क्रेडिट दिया है वे, वे सारे लोग अपने-अपने केस को प्रेजेंट करेंगे। जब मोर दैन 75 पर्सेंट जो सिक्योर्ड क्रेडिटर्स हैं, वे कहेंगे कि हम इस मैकेनिज्म में जा रहे हैं, तो इनसाल्वेंसी का प्रॉसेस ही स्टार्ट नहीं होगा, वह कोड ही उसमें नहीं लागू होगा। मैं तो केवल इतना कह रहा हूं कि जो टाइम खत्म होने की बात बार-बार आ रही है, वह समय तो खत्म ही नहीं होगा।

SHRI SHIVKUMAR UDASI: In addition to what Shri Nishikant Dubey is talking about, I want to know who exactly is going to implement this Code. Which Department is going to implement this Code?

MS. ANJULY CHIB DUGGAL: There are two Departments involved in it, that is, the Ministry of Corporate Affairs through the National Company Law Tribunal for companies; and for individual insolvency and for unlimited partnerships, it is going to come to the Debt Recovery Tribunal. The administration of the Debt Recovery Tribunals is undertaken by the Department of Financial Services.

SHRI SHIVKUMAR UDASI: Who is going to control the regulator?

SHRI SHAKTIKANTA DAS: Sir, I must clarify here that as it stands today, before this law is passed, there are two Departments. There are components of this law which relate to NCLT, etc., which falls within the jurisdiction of the Ministry of Corporate Affairs; and then there are issues of DRT and other matters which are related to the Department of Financial Services. When the Bill was prepared and was approved by the Government, my colleague, probably, she was not privy to this, but since our Department moved the proposal, I must inform the Committee that when the matter was placed before the Government, the Government took a decision that the Bill will be moved by the Department of Economic Affairs and accordingly the Rules of Business were changed. As regards the implementation of this law is concerned, the matter is under consideration of the Government, and the Government will take a decision on that.

SHRI SHIVKUMAR UDASI: So, still the Government has not taken a decision as to who is going to implement this Code.

SHRI SHAKTIKANTA DAS: That decision will be taken. That is under consideration at the moment.

SHRI SHIVKUMAR UDASI: Who will control the regulator?

SHRI SHAKTIKANTA DAS: That is under consideration. Various options are under the consideration of the Government. So, the matter will be decided very shortly.

SHRI P.P. CHAUDHARY: Once this Code is enacted, then whether this remedy under CDR/ADR/JLF will be available.

SHRI SHAKTIKANTA DAS: Sir, there are two or three points which were raised. The first point that was raised was with regard to the SARFAESI. Now, hon. Member, Shri Nishikant Dubey Ji, has already replied to that point. However, I must also supplement that the SARFAESI is only for secured creditors, which the hon. Member has pointed out. The other thing is that the focus of SARFAESI is only on the recovery

aspect. It is not on the revival or the possibility of revival and restructuring of the company.

The other point is that under the Bankruptcy Code, during the moratorium period, all proceedings under the SARFAESI will be inoperative. They will be stayed. In case SARFAESI is allowed during the whole scheme, if it is allowed in this, then the resolution process that we propose under this new law will get jeopardised.

With regard to the point which was raised by the hon. Member about CDR process, whether it has to be CDR/ADR process, whether they can go on, the CDR process and ADR process have been notified by the Reserve Bank of India; under the RBI Act, the Reserve Bank is competent to issue certain regulations and directions. But then, eventually, when the law is passed, any executive instructions, even under the law, will be subordinate to the new law which is being passed. But the hon. Chairman has raised a very important point whether there is a need to have a provision in the Code for issuance of decree if there is an out of court settlement, whether NCLT can take cognizance of that matter and issue a decree so that the recovery process is implemented and the debtor, or anybody for that matter, cannot use this out of court settlement to vitiate the whole process. This matter, we will examined and we will revert back to the Committee during our written replies.

SHRI P.P. CHAUDHARY: Apart from the executive orders, suppose the earlier enactment is inconsistent with this present Code, once this Code is enacted, and if there is an earlier enactment or a provision is there in an earlier Act because there are so many Acts, if such type of provision is there which is inconsistent with the present Code, how do you resolve that controversy? There is the Arbitration Act and there are so many other provisions. Basically, if we go through this Code, we can infer that "Notwithstanding anything contained, inconsistent with the provisions of this Code, this Code will have an overriding effect". You should either make that provision, or we have to see each and every enactment and include them in the Schedule. If any provision is there anywhere, then the Code will have an overriding effect.

SHRI SHAKTIKANTA DAS: Sir, my recollection is that there is a provision, an overriding provision. I will recollect that Section and let you know.

SHRI P.P. CHAUDHARY: If we consider that everything has to come under this Code and has to be resolved under the provisions of this Code, then we should have that non-obstante clause.

SHRI JAYADEV GALLA: Sir, I wish to seek one clarification.

HON. CHAIRPERSON: There are only two or three slides left. So, let them complete their presentation first.

(SLIDE PRESENTATION)

MS. ANJULY CHIB DUGGAL: The rest of the slides give you only basic information. So, that is the end of the presentation, Sir.

SHRI SHAKTIKANTA DAS: Sir, the hon. Member was asking about the non-obstante clause. Section 234 contains this provision, "The provisions of this Code shall have effect notwithstanding anything inconsistent therewith contained in any other law for the time being..."

SHRI P.P. CHAUDHARY: Now the question is, in regard to ADR and CDR, the mechanism is not available because that is not a part of the Code. That is why the suggestion has been made. These are very good mechanisms. We have to harmonize and make a balance. Before approaching the court, there must be a pre-litigation mediation. How can that mechanism be created? If we do it by saying that it has to be done within 15 days or something like that, then we can reduce 75 per cent of the litigation in courts.

SHRI AJAY TYAGI: Sir, CDR, SDR, and JLF which RBI has issued under the Banking Regulation Act is only for banks and for certain conditions, like for CDR, it is that it should be a consortium of banks having a debt of more than Rs. 10 crore and above. Therefore, there are different conditions and it is only for banks. In this resolution process, there will be operational creditors and there will be unsecured creditors. If you say that only banks will have the say for resolution, notwithstanding the Code, that is not the case. The resolution mechanism, as pointed out, will supersede that. If everyone in Committee of creditors agree to banks' resolution proposa! then naturally they can treat that as a resolution plan and then the Tribunal will put a stamp on that.

HON. CHAIRPERSON: A situation has arisen. Now you have appointed the insolvency professionals to create a mechanism for the company. Can this insolvency professionals enter into an agreement with banks for the purpose of CDR?

SHRI AJAY TYAGI: Yes, Sir.

HON. CHAIRPERSON: What will be the consequence then? He is not a manager or a competent authority for a company. Once he was appointed, he entered into the agreement. He would take a restructuring law and if then he leaves. What will happen then?

SHRI AJAY TYAGI: The resolution plan will be approved by the Committee of Creditors. He is just like a Managing Director or the CEO. Committee of Creditors have to agree to whatever he does and finally the tribunal has to put a stamp that this is a resolution plan.

HON. CHAIRPERSON: Ultimately, it is the company's liability. Is it not?

SHRI AJAY TYAGI: When the tribunal approves it, then it is the company's liability.

SHRI JAYADEV GALLA: I have one clarification on slide No. 8. You have stated that you want to create three categories of special mention accounts. Is it for dues from the borrower to both secured and unsecured creditors? Or is it what is given as credit into the market? What do these dues consist of?

MS. SNEHLATA SHRIVASTAVA: These are counted from the day when the instalment was due for both kinds of creditors.

SHRI JAYADEV GALLA: My suggestion is that you should include dues of the suppliers also because they can accumulate a lot of dues by not paying to suppliers.

MS. ANJULY CHIB DUGGAL: This mechanism has been notified by the RBI for banks. But certainly the principle is extendable.

SHRI JAYADEV GALLA: The other suggestion is that rather than having a fixed amount like less than Rs. 100 crore and like that, could you use another matrix that is relative to the size of the business? We follow matrix like day's sale outstanding, days on hand to make sure that our pipeline is healthy. So, rather than fixing amounts, could you use the matrix that reflects the size of the business?

MS. ANJULY CHIB DUGGAL: Since RBI has issued these instructions and guidelines for banks alone, it is from the perspective of the bankers that a loan which is about Rs. 100 crore, necessarily has to go into a JLF mechanism, if there has been a special mention default of a particular period. But again, the principle is extendable to other categories.

SHRI JAYADEV GALLA: Could you consider that in this case?

MS. ANJULY CHIB DUGGAL: The Ministry concerned would take that up.

SHRI JAYADEV GALLA: In the case of SMEs, you are saying the overdue is not more than 30 days. Does that mean even a few days overdue?

MS. ANJULY CHIB DUGGAL: Normally, it is for not more than 30 days.

SHRI JAYADEV GALLA: I am still not clear as to what is the process that an insolvency professional, a company would pay to make the business viable before going for liquidation. Is there a set process that needs to be followed before they can think of disposing of the assets to make the business viable again? I have not really seen that anywhere. I just want to know, what is the process to be followed to try to make the business viable before going in for liquidation?

SHRI SHAKTIKANTA DAS: There is a Resolution Committee which is formed, which consists of all the secured creditors. The insolvency professional will facilitate setting up of this Committee of Creditors. And the Committee of Creditors with the assistance of the insolvency professional will first consider a revival plan, a resolution plan. During that process, they will consult the debtor company and others. Then the resolution plan is placed before the NCLT and NCLT is expected to put its stamp of approval or rejection. Suppose, it approves the plan, then it is put into implementation and whatever is the resolution plan, that is implemented. If NCLT does not approve that resolution plan, then that proceedings end there and automatically the liquidation process sets in. Once the resolution plan is approved, then it is implemented. Suppose, the resolution plan is rejected, then automatically the liquidation process sets in and the insolvency professional will facilitate the process of liquidation.

SHRI JAYADEV GALLA: In your opinion, is this the sufficient opportunity to revive the business?

SHRI SHAKTIKANTA DAS: Yes, Sir because six months time is given to the creditors. We have to see that the time given to the Committee of Creditors should be adequate to consult all stakeholders. At the same time, it should not also be too long which will have the effect of delaying the whole process. So, six months, extendable by another three months, that is, 270 days is considered as adequate.

SHRI JAYADEV GALLA: I was looking at the pending insolvency cases in district courts. I see that the number of such cases in Andhra Pradesh is abnormally high. Everyone else is less than 10. These three are almost 250, 231, 139.

MS. ANJULY CHIB DUGGAL: I may clarify that we have sought information from the Registrars of all the High Courts. But that information has not come in. What we are sharing with you today is the information that was available from the e-court portal. It is possible that one particular State Government has been better at posting it.

HON. CHAIRPERSON: I think, it is not correct. It was only three districts having 620 cases and the rest of country, the cases number 675.

Now, thank you very much for the Department of Financial Services for very good presentation on this issue. The earlier questions that we raised, you are giving a very good reply. My request to our Members is to put questions one by one.

SHRI NARESH GUJRAL: I have just one or two short questions. Yesterday I discussed with Shri Tyagi that in the order of precedence, labour comes at number 2, that is, after secured creditors. Second, you have restricted the labours' dues to one year. Even the Company Law says that it is up to two years. So, why is it for one year for labour? After all, they work and if they have not been paid their wages, they must be adequately provided for. What is the logic behind (a) only one year and second, why do they come at number 2 and not at number 1?

Second, do you feel that there should be a minimum threshold so that frivolous cases are not taken for these proceedings? What is your thought process on that?

Thirdly, when the stock exchanges came before us, they said that if a broker has entered into a transaction, then those should be kept aside otherwise, it will disrupt the stock exchanges in the country. What is your view on that also?

SHRI AJAY TYAGI: The first one is, why the workmen dues have been kept at second level. It is actually the insolvency cost is the first thing which we think should be recovered as the first thing. Otherwise, you have insolvency professionals and their costs are involved. So, those should be recovered first. Legitimately, cost of insolvency should be at first place and no one can really argue against that.

Then secured creditors and workmen dues have been kept at the level. They are *pari pasu*. They are not below secured creditors but at the same level but for 12 months. The idea behind this was that this Code as compared to the Companies Act allows workmen also to apply

and initiate insolvency proceedings which are not allowed elsewhere. So, workmen also need not wait for 12 months to get their salaries. The whole thing is to expedite it.

डॉ. संजय जायसवाल: सरफेसी एक्ट का जो हो रहा है कि रहने दिया जाए, जितने भी एनपीएज़ होते हैं, यह जरूरी नहीं है कि वे बैंक की मर्जी के खिलाफ होते हैं। बहुत सारे में बैंकर्स और इंडस्ट्रियलिस्ट्स भी कनसॉरटियम बनाकर सारा घोटाला कर जाते हैं। अगर हम ये सब एक्ट्स रहने देंगे, जैसे मैं एक छोटे शहर का हूं। मेरे यहां एक शुगर फैक्ट्री थी। बैंकर ने डैट रीस्ट्रक्चरिंग और जितने भी वड्र्स हैं, उनके नाम पर फैक्ट्री से तीन टाइम ज्यादा लोन उठा लिया। आज वह श्योर है कि सरफेसी एक्ट में मेरी लैंड बेचेंगे तो पैसे मिल जाएंगे। लेकिन हजारों किसान आज रोड पर चले गए, उनका कोई उपाय नहीं है। मुझे लगता है कि इस कोड को ही सबसे ऊपर रहने दिया जाए, उसके बाद ही किसी चीज को रखा जाए जिससे उन्हें भी बोलने का मौका मिल सके। अगर हम इन एक्ट्स को प्रिफरैंस देंगे तो हो सकता है कि कल बैंकर और इंडस्ट्रियलिस्ट दोनों मिल जाएं और बाकी सबकी बात ही नहीं सुनी जाए।

श्री गोपाल शेट्टी: एक बार 75 प्रतिशत वोटिंग होने के बाद हम इस कोड को इम्प्लीमैंट करने वाले हैं। यह कोड इम्प्लीमैंट होने के बाद सब कुछ इसके मुताबिक ही होना चाहिए नहीं तो फर्स्ट प्लेयर सैकेंड, थर्ड ऑप्शन को पकड़कर बाकी झमेले खड़े करते रहेंगे और यह काम नहीं करेगा। डैमोक्रेसी में मैजॉरिटी को मान्यता दी जाती है। एक बार इसमें 75 प्रतिशत का प्रोविजन रखने के बाद कोई दूसरा, तीसरा कानून लागू नहीं होना चाहिए। यह मेरा एक मत है।

मेरे मन में जो दूसरी बात है, उसे मैं कमेटी और सारे अधिकारियों के सामने रखना चाहूंगा। इसमें बैंकर्स और गवर्नमैंट को भी हमें जवाबदेही करना पड़ेगा। हम इंडस्ट्री को चलाएं कैसे और बंद कैसे किया जाए, इस पर कायदा करते हैं। उदाहरण के लिए, मैंने कल भी बात कही थी कि ओवर बिलिंग और बोगस बिलिंग का एक बहुत बड़ा झमेला हमारे देश में चल रहा है। यह कमेटी अगर प्रूव करेगी कि ओवर बिलिंग, बोगस बिलिंग हुई है तो उसमें गवर्नमैंट को भी जवाबदेही करनी पड़ेगी क्योंकि हम टैक्स लेकर बाजू में हो जाते हैं। चलाने वाला मर जाता है जो विलफुल डिफॉल्टर करता है। ओवर बिलिंग और बोगस बिलिंग का जो पैसा गवर्नमैंट के एकाउंट में गया होगा, उसने गलत किया, उसे सजा दे दो। जो बोगस बिलिंग सप्लाई करता है, उसे सजा दे दो, लेकिन जब क्रैडिटर के पैसे गए हैं उसका क्या है। वह सारा पैसा पूल में आना चाहिए। अगर बैंकर्स ने भी सौ करोड़ की कम्पनी को डेढ़ सौ करोड़ रुपये लोन दिया होगा, पॉलिटिकल प्रैशर के हिसाब से भी आप देते हैं, इंस्ट्रक्शन से ऊपर भी देते हैं, लेकिन यह कोड आने के बाद किसी को भी जवाबदेही होना पड़ेगा, तभी हम सारा सिस्टम ठीक कर पाएंगे। अगर बैंकर्स ने ज्यादा पैसे दिए होंगे तो हमें उन्हें भी जवाबदेही करना पड़ेगा। वह पैसा भी पूल में लाना पड़ेगा, तभी आने वाले दिनों में सिस्टम ठीक होकर कम्पनियां चलेंगी, नहीं तो हमें जो करना है, हम करेंगे, उन्हें जो करना है, वे करेंगे और फिर किसी तीसरे को दोषी बनाकर उसे ठीक करने की कोशिश करेंगे तो यह होने वाला नहीं है। बैंकर्स और इन्हें भी जवाबदेही होना पड़ेगा।

आरबीआई की नई-नई गाइडलाइन्स हमेशा आती हैं। परसों आहलूवालिया जी ने एक मुद्दा उठाया। 18 लाख का सीधा 91 लाख हो गया यानी एक पॉलिटिकल पार्टी अगर रूल करती है तो उसे ढीला देकर चलाते रहेंगे, दूसरी पॉलिटिकल पार्टी की सरकार आ जाएगी तो 91 लाख पर एनपीए लेकर सब कारोबार ठप्प कर देंगे तो यह कैसे चलेगा। हमारे देश में इतना कायदा होने के बाद एक आरबीआई के गवर्नर को लगता है कि मैं इस तरह व्यवस्था चलाऊंगा। उसके बाद लगता है कि मुझे इस तरह चलाना है तो इस तरह चलाऊंगा। यह चलने वाली बात नहीं है। इस कोड के माध्यम से कहीं न कहीं उसका भी समावेश करना पड़ेगा तभी यह ठीक होगा क्योंकि जो इनोसैंट कारोबार करके देश के लोगों को रोजगार उपलब्ध करवाना चाहते हैं, वे मार्किट में टिक पाएंगे। नहीं तो यह इस तरह ही चलता रहेगा। हजार करोड़ की कम्पनी डाल दो, उसमें पांच सौ करोड़ की लागत लगने वाली है, पांच सौ करोड़ उसमें से निकालकर बैंकर्स अपना शेयर ले लेंगे, जो भी गड़बड़ी करने वाले हैं। मैं पॉलिटिशियन का भी कहता हूं, हमारी जमात के लोग भी होंगे तो। फिर सिस्टम काम करने वाला नहीं है। सबको एकाउंटेबल होना चाहिए। सारी जांच होने के बाद जो भी दोषी हो, उन सबको देश को जवाब देना पड़ेगा। इसकी व्यवस्था भी कोड में होनी चाहिए, ऐसा मुझे लगता है।

श्री शक्तिकांत दास: इस कोड में कुछ सैक्शन्स हैं, उसकी तरफ आपका ध्यान आकर्षित करना चाहूंगा। सैक्शन 68-पनिशमैंट फॉर कनसीलमैंट ऑफ प्रॉपर्टी, सैक्शन 69-पनिशमैंट फॉर ट्रांजैक्शन्स डिफ्रॉडिंग क्रैडिटर्स, सैक्शन 71-पनिशमैंट फॉर फाल्सीफिकेशन ऑफ बुक्स ऑफ कारपोरेट डैटर। चैप्टर 7 के अंदर जो ऑफैंसेज और पैनल्टी दी गई है, जैसे माननीय सदस्य ने कहा, कई प्वाइंट्स का उत्तर इन्हीं सैक्शन्स में है।

श्री गोपाल शेट्टी: यह दूसरे-तीसरे के लिए है। मेरा बैंकर्स का मुद्दा था, उसे आपने नहीं बताया। गवर्नमैंट को जो फ्रॉड करके भी टैक्स आ जाते हैं, हमारा इनकम टैक्स डिपार्टमैंट कहता है कि आपने बिल फाड़ दिया, हमारे टैक्स का पैसा आ गया। लेकिन वह गलत ढंग से आ गया। उसने बोगस बिल सबमिट कर दिया, गवर्नमैंट को भी अपना टैक्स मिल गया। वह पैसा भी पूल में आना चाहिए। गवर्नमैंट के अधिकारी ने चैक नहीं किया, उसे भी जवाबदेही होना चाहिए। अगर मैं किसी बैंक को कहता हूं कि सौ करोड़ की मशीनें आने वाली हैं तो बैंकर्स को भी उसकी इन्क्वायरी करनी चाहिए कि मशीन सौ करोड़ की है या नहीं। पचास करोड़ की मशीन है और आपने सौ करोड़ लोन दे दिया।

SHRI SHAKTIKANTA DAS: What the hon. Member has raised are basically some general issues which amount to corporate fraud and that is dealt with separately; not in the context of the present Code. We have noted the points made by the hon. Member but they are general issues, not really in the context of this Code. So, I would like to submit that we can discuss it separately perhaps.

श्री गोपाल शेट्टी: कम्पनी का कोई भी दिवाला निकल जाता है या काम नहीं कर पा रहा है, क्यों नहीं कर पा रहा है। इसीलिए काम नहीं कर पा रहा है। मान लीजिए बैंक ने लैंड लेने के लिए लोन दे दिया। लैंड पचास करोड़ की है और आपने उसे सौ करोड़ लोन दे दिया।

पचास करोड़ की मशीनरी है और आपने उसे सौ करोड़ का लोन दे दिया। सौ करोड़ पहले ही उसके हिस्से में आ गया। उसके जो पार्टनर होंगे, वे होंगे। हमें पार्टनर्स को भी रिकार्ड में लाना पड़ेगा तभी सिस्टम ठीक चलेगा।

श्री शक्तिकांत दास: आपने जैसे कहा, कई केसेज ऐसे हैं। बैंक में जिसे गोल्ड प्लेटिंग कहते हैं यानी आइदर कॉरपोरेट बॉरोअर अपनी कॉस्ट इनफ्लेट करके कुछ केसेज हैं जहां वे लोन बॉरो करते हैं। कुछ केसेज में अगर बैंकर्स की तरह कोई गलती हुई है और उन्होंने इनफ्लेट करके लोन if they are sanctioned, there is a system of audit, there is a system of procedures, there is a system of RBI inspection, and there are a whole lot of process which I think my colleagues would be able to comment upon better but I think there are procedures in place to deal with such situations.

श्री निशिकांत दुबे: जो प्रैजेंटेशन फाइनैंशियल सर्विसेज ने दिया, उसमें सैक्शन 55 है, यदि उसे 22(सी) और सैक्शन 28(1)(ए) के साथ पढ़ा जाए, मैं इनसॉल्वैंसी कोड की बात कर रहा हूं। मुझे इन तीनों के बीच कहीं न कहीं कंट्राडिक्शन दिखाई देता है, है या नहीं है।

सेक्शन 20(सी) ए और सेक्शन 28(1)(ए), दूसरा प्रजेंटेशन बार-बार आया है, एमएसएमई एक्ट 2006 की परिभाषा है क्लेम, क्रेडिटर या डिफिनेशन की, उसकी इसमें कमी दिखाई देती है, उसको आपने इनकॉरपोरेट नहीं किया है। सेक्शन 3(18) में फाइनेन्शियल सेक्टर रेग्युलेटर की बात कर रहे हैं, उसमें ईपीएफओ आना चाहिए या नहीं आना चाहिए, इंडिया में ब्रांड मार्केट का डेवलपमेंट होना बहुत जरूरी है, बांड को सिक्युरड क्रेडिटर से ज्यादा महत्व देना चाहिए, यूएस का बैंकरप्सी लॉ में चैप्टर 11 362(डी) उसको इसमें इन्कलूड कर सकते हैं या नहीं कर सकते हैं, क्रेडिटर अगर फॉल्स केस को लेकर आते हैं बार-बार यह आता है कि कोई भी कंपनी को बदनाम कर सकता है, इसके लिए आपने केवल पैनल्टी का क्लॉज रखा है इसको जेल टर्म देना चाहिए या नहीं देना चाहिए अगर देना चाहिए तो कितना देना चाहिए, 521 ऑपरेशन डेब्ट में इनडिमिटी एग्रीमेंट होता है या इंटलेक्चुअल प्रोपर्टी लाइसेंस होता है उसको इन्कलूड किया जा सकता है या नहीं है, सेक्शन 53(1) यदि सेक्शन 11 ईपीएफ एक्ट और 3(72) एक्ट 2013 के एक्ट से एक दूसरे को कंट्राडिक्ट कर रहा है या नहीं। सेक्शन 3(15) है जिसमें आपने फाइनेन्शियल सर्विस की परिभाषा दी है उसमें इंडस्ट्री को रिकाग्नाइज किया गया है कि एनबीएफसी और अल्टरनेट इन्वेस्टमेंट फंड को, कोर इन्वेस्टमेंट कंपनीज को, एसेट मैनेजमेंट कम्पनीज को, रजिस्ट्रार एंड ट्रांसफर एजेंट को, इसको रखने में क्या परेशानी है। इंडस्ट्री ने इन चीजों को माना है, कॉरपोरेट गारंटी 62 जो सब-सेक्शन है उसमें पर्सनल गारंटी के जो फ्रेज़ेज हैं उस बारे में मंत्रालय क्या सोचती है। डिफॉल्ट सेक्शन 71 उसके बारे में लोगों के कंसर्न को कंपनी को बताना चाहिए। ऑपरेशनल क्रेडिटर ओवर प्रोटेक्टेड हो गया है, यह भी चिंता है सेक्शन 30/2(बी) है या 31 है इसके बारे में क्या सोचना है। सुप्रीम कोर्ट का 2011 का जजमेंट है कि वॉटर फॉल में सबसे पहले वर्कर और वर्कमैन आने चाहिए, सुप्रीम कोर्ट के जजमेंट के बारे में 178 के बारे में क्या सोच रहे हैं? एक्सटोरनेट ट्रांजेक्शन सेक्शन 50 और

51 उसके बारे में भी काफी चिंता है, उस बारे में विभाग क्या सोचती है? इसके बाद जो एक्सक्लूडेड एसेट है सेक्शन 79(13) उसके बारे में विभाग क्या सोचती है?

SHRI SHAKTIKANTA DAS: Sir, my colleagues have made a note of all the Sections. We will furnish written replies but with your permission I will ask my colleague to reply a few questions.

SHRI AJAY TYAGI: Sir, some of the questions I will attempt to reply. One is regarding the MSME Act, 2006. MSMEs are very important. They contribute 40 per cent of the GDP but 92 per cent of them are not companies. They are partnership firms, proprietory Firms etc. MSME Act did not provide for any resolution or liquidation mechanism and even the Companies Act would not have apply to them because they are not the companies. MSME Act was silent. One of the reasons to bring this Code, in fact the first Budget announcement of hon. Finance Minister in 2014-15, was only for MSME because there was no provisioning. MSME also need the same thing, early exit for the investments which have gone wrong and taking care of all stakeholders. So, MSME has been provided for. They have not been defined. Once we say that partnership firms and individuals as one category and companies as other category even small firms will be covered. There is a fast track mechanism for 90 days which says that the Government may notify for which it will apply, it is *inter alia* based on investment criteria. Faster mechanism is intended for smaller firms. It could also be for start ups. That could be notified separately. So, MSME has been included without mentioning specifically MSME, which we think by defining companies, partnership firms or individuals the distinction comes.

श्री निशिकांत दुबे: आपकी परिभाषा अलग है, एमएसएमई की परिभाषा अलग है, क्रेडिटर्स, डेब्ट्स का, ट्रांजेक्शन का, आपने इसे जोड़ा है या उसे जोड़ने में क्या परेशानी है? ट्रांजेक्शन की परिभाषा, क्रेडिटर्स की परिभाषा अगर यह अलग परिभाषा होगी तो इसे अलग ढंग से इंटरप्रेट किया जाएगा। मेरी चिंता केवल डेफिनेशन से है।

SHRI AJAY TYAGI: We will note down and reply. Only one clarification regarding creditors we say financial creditor and operational creditor. This is a distinction which suits the Bankruptcy Law. In other Acts the creditors have been defined separately and that may not exactly suit the purpose the way it has been used. But we will give a justification for all definitions which have been defined elsewhere and why there has been a need for defining them here.

Secondly, you have talked about the bond market. To encourage bond market we have only done one thing. We have reduced the priority

of the Government dues below unsecured creditors. Bond market is not above secured creditors but unsecured financial creditors have been kept above Government dues. One of the reasons was that we want to encourage bond market. So, there is a comfort to the bond holders that if the company goes in liquidation they will have a fair chance in the waterfall to get part of their investments.

श्री निशिकांत दुबे: यूरोप में बांड कई देशों में नंबर वन माना गया है।

SHRI AJAY TYAGI: Sir, in our waterfall the cost of insolvency proceedings, secured creditors and workmen dues for 12 months, employees dues for 12 months and then unsecured creditors. We have moved the Government dues below that. To move unsecured creditors above the secured creditors and workmen dues will be actually difficult.

SHRI SHAKTIKANTA DAS: Sir, we have made a note of the other points. We will submit a written reply.

SHRI SHIVKUMAR UDASI: My first question would be any enactment in this country will be effective if it is properly implemented. I asked the basic question who is going to implement this Code, the Government has still not decided on that. Why I am asking this question is, Companies Act, 2013 which had been passed in 2013, which is the rule of law, the law of land, has not been part of the governance right now. As subordinate legislation you are doing it. Right now I have heard there was a meeting concluded wherein and whereby they say that 75 clauses of Companies Act are going to be amended in the coming Budget Session or next Session. There are going to be 100 amendments. My point is very straight. *De jure* is not going to happen in this country. We have so many laws and enactments in this country but *de facto* is the thing. How well you are going to implement this is the thing going to happen. Just because the World Bank has asked us for a Questionnaire wherein and whereby we have passed GST, if you tick the ease of doing business will go up. If you have just passed the Insolvency and Bankruptcy Code it may go up to 60. Just to ensure that in the world scenario to have that ease of doing business.

Are you serious about this?

At this juncture, I would like to know what happened to cross border insolvency. Without that, how can you address Insolvency and Bankruptcy Code? When we asked Mr. Viswanathan to come here and explain his point of view, he had replied that it will be addressed in phase-II. In this economic global scenario, you are attracting Foreign Direct Investment. With Make in India, so many people are coming to

this country and making their investment. Then without this cross border insolvency, how can you address the Insolvency and Bankruptcy Code, 2015? This is my moot question.

We have been talking about transitional provisions. Before the process could take off, how do you deal with transitional provisions? What are the mechanisms in place? We do not know which Department is going to implement. What are the basic objectives of these things? If you can explain all this to this Committee, it will be appreciated.

SHRI SHAKTIKANTA DAS: Sir, with your permission, I would like to emphasise before the hon. Committee that it is not the World Bank report which has prompted the Government to propose this legislation. Even before the focus of the Government was turned towards the World Bank Ease of Doing business report, there were other recommendations within the Government – we can share the details with you – which have recommended and which have pointed out the inadequacy of the bankruptcy law in our country and the need to have a more robust legislation in this regard. There are many number of recommendations and I can share the details. We can furnish the details.

Secondly, with regard to cross border issues, I would like to submit before the Committee that if today any foreign investor is investing in India in an Indian Company or in any of the companies which are covered under this legislation, if the company is registered in India, if the company is located in India and if there is an FDI, he has full recourse to this law. Similarly, if the foreign investor is sitting else where, he can have recourse to this law. In other words, in case an Indian company defaults and suppose he has availed External Commercial Borrowings and he defaults, then the lender who is a foreign lender, he can initiate action under this law.

Therefore, with regard to cross border insolvency, all Indian companies and companies located in India are fully covered under this proposed legislation irrespective of who is the creditor. The other point which the hon. Member mentioned about transitional provisions, as I submitted a little while ago, there will be sufficient clarity within the Government. A decision will be taken very shortly and we will convey it to the Committee. I would expect to convey the decision to the Committee at the earliest. Perhaps, we will try and convey the decision well before the hon. Committee finalises its recommendations.

SHRI SHIVKUMAR CHANABASAPPA UDASI: Mr. Secretary, as regards Companies Act, without even implementing it, you are amending that Act.

श्री निशिकांत दुबे: उस दिन बात हुई थी, आपने कहा कि हमारी बात नहीं मानी गयी। आपने इस कानून के बारे में कहा कि हमारे कुछ ऐसे कन्सर्न्ड थे, जिन्हें इस बिल में नहीं किया गया। हमने उस दिन कहा था कि आप दोनों एक बार फिर से बात करके बताइये।

SHRI TAPAN RAY: Regarding the Company Law provision not being enforced and the Code coming into force, I think that has been reiterated several times because the Code is a comprehensive Code. It takes care of individual insolvency as well as firms and partnerships which are not covered in the Companies Act. So, in that sense it is a much more comprehensive Code which is why the Company provisions have not yet been invoked. Moreover the NCLT which was to be constituted under the Companies Law, could not be constituted because of which Chapters 19 and 20 of the Companies Law were not notified.

SHRI SHIVKUMAR CHANABASAPPA UDASI: My point is very simple. When that has not been implemented, how did you arrive at pros and cons of those things and you are amending them right now?

SHRI TAPAN ROY: Sir, two processes were going parallel but NCLT constitution got delayed.

SHRI SHIVKUMAR CHANABASAPPA UDASI: I know that. Chapters 19 and 20 were not implemented because of the court order. But my point is very simple. When you have not implemented that enactment, how did you come to a conclusion that there are pros and cons in that clause?

SHRI AJAY TYAGI: Sir, it is during the implementation when more problems come to fore. But if the provisions have been inadequate, then without implementing also, one can draw conclusion that the provisions are inadequate. I will tell you the provisions which are inadequate.

Now in the Companies Act, it says that a company will be declared sick, if it is unable to pay debt upon demand by secured creditors representing 50 per cent or more of the outstanding amount due within 30 days of notice. Now this will be a delayed trigger as per understanding of the Bankruptcy Committee which was set up. The main problem in SICA was that you waited for 50 per cent of net worth to get eroded. Here you will wait for the demand by secured creditors representing 50 per cent or more of the outstanding amount. So by that time, it will be much delayed trigger. That is a provision which needs improvement.

Now as regards moratorium, the Companies Act provides for 120 days but it is not clear whether it can be extended and secondly it is not that automatically after the moratorium it will go for liquidation.

So, this is a second discrepancy which we found while working in the Bankruptcy Committee in the Companies Act.

SHRI SHIVKUMAR CHANABASAPPA UDASI: Mr. Gujral was also asking it. You have reduced from 2 years to 12 months from the Companies Act. You have not implemented that the salary of a workman should be from 24 months to 12 months from the Companies Act. You quoted the Company Act which was 2 years but you are not incorporating that. Here you say that you are going to have some pros out of this but eventually you do not implement those things. How did you arrive at these things?

SHRI AJAY TYAGI: Sir, 2 years was part of Companies Act, 1956 also. So this is not a provisioning of 2013. It was there in the old Act and there is sufficient experience of implementation of 1956 Act. So, that provision was there.

The other thing was that since MSMEs were not covered as also pointed out by hon. Member and Secretary, Corporate Affairs. Then more importantly we wanted to have professional roles given to professional agencies and limiting the judicial role only to the Tribunal.

SHRI SHIVKUMAR CHANABASAPPA UDASI: That is part of your objective.

SHRI AJAY TYAGI: Sir, it was not provided for in the Companies Act. So, that was one of the reasons why the matters were getting delayed when you give the commercial affairs to a court rather leaving it to the commercial bodies rather than only leaving the judicial aspect to the court. That was the thought process. Most importantly, the water fall to promote bond market, the Government wanted to change which is there in the Companies Act to have unsecured creditors more priority than the Government dues. So, these are the things which were even not implemented were on the face of it required re-thinking.

श्री निशिकांत दुबे: क्या आप सिक्योर्ड क्रेडिटर्स में सिक्योर्ड बांड्स की परिभाषा को जोड़ सकते हैं?

SHRI AJAY TYAGI: If the bonds are secured, then these will be secured creditors.

SHRI ANAND SHARMA: Will the Government securities come in that?

SHRI AJAY TYAGI: Sir, the Government securities have sovereign guarantee and are not covered under code.

SHRI SHIV KUMAR UDASI: There will be junk bonds also.

SHRI SHAKTIKANTA DAS: Sir, if the company has raised certain bonds, then they are usually unsecured bonds. In any case, Government bonds do not come under this legislation because that is a sovereign guaranteed bond and Government is liable to repay it.

SHRI ANAND SHARMA: I am talking of the secured bonds.

SHRI AJAY TYAGI: Sir, the companies now are not able to get unsecured bonds. Right now in India they are also issuing secured bonds. They are actually securing by mortgaging property and issuing secured bonds because there are not many takers for unsecured bonds.

SHRI ANAND SHARMA: In the last few Budgets the limits get revised the amount for which the corporates can issue bonds.

SHRI AJAY TYAGI: Sir, I think, you are saying that for FPIs.

SHRI SHAKTIKANTA DAS: Sir, that is for the investment by the FIIs and the foreign portfolio investors. There is a 51 billion limit which the RBI revises from time to time. Currently it is 51 billion.

श्री निशिकांत दुबे: यू.के. में इसके लिए एक स्पेशल प्रोवीज़न 2(ए) के रूप में है, जो इन चीजों के लिए किया गया है। जर्मनी, यूरोप आदि का भी ऐसा ही है। उन सबको देखते हुए आपको सोचना चाहिए कि अपने यहां क्या हो सकता है क्योंकि आप बार-बार प्रत्येक बजट में कहते हैं कि हम बांड मार्केट को बढ़ाना चाहते हैं। इसलिए इन चीजों के बारे में क्या हो सकता है?

श्री शक्तिकांत दास: बांड मार्केट के बारे में अभी काफी मुद्दे चर्चा में हैं। इसके बारे में हमने कमेटी नहीं बनायी है क्योंकि बहुत-सी कमेटियों के रिपोर्ट्स हैं, उनको हम इंटरनली स्टडी करेंगे। जब कुछ डिसीजन लिया जाएगा, तो हम उसे शेयर करेंगे।

श्री जगदम्बिका पाल: इस सरकार के आने के बाद वित्त मंत्री जी की जो पहली स्पीच हुई थी, उसमें बांड्स को प्रमोट करने की बात कही गयी थी। I think you have almost completed two years.

SHRI P.P. CHAUDHARY: Sir, we have created the NCLT and the DRTs as on today, looking at the number of litigations. As on today we are having the mechanism of ADR, CDR and GLF. But once this Code comes into force, everybody has to invoke the jurisdiction of the NCLT and DRT under the Code and there is no other way out. So, looking at the litigations involved, whether these justice delivery systems, NCLT and

DRTs, can withstand the tide of the litigations. Or, in the alternative, can we incorporate the modified form of ADR, CDR and GLF so that before approaching the Quasi-judicial authority, at least 75 per cent of the litigations are reduced? As has been suggested by the Legislative Department, as per clause 234, once this Code comes into operation, then notwithstanding anything contained in any provision of law, this provision of the Code will have an over-riding effect, meaning thereby that if any Executive Order, even the enactment, so the provision of that Act or Executive instructions cannot over-ride the provisions of this Code. All these mechanisms under the ADR, CDR and GLF will have no significance and everything will be burdened on the NCLT and DRT. My question is whether it can withstand the tide of litigation. Or, in the alternative, if it cannot withstand, then can we think of providing the same mechanism before approaching the Quasi-judicial authority in a modified form under the Code or not? That is the first question.

The other point is about the commencement. If you see part III, from the very beginning, at page 1, I am taking from the Code itself, 'provided that part III of the Code shall not extend to the State of Jammu and Kashmir'. So far as Part I and II and IV and V are concerned, they will extend to the State of Jammu and Kashmir. Same thing has been stated at page 40, clause 78. This part shall apply to the whole of India except the State of Jammu and Kashmir. But in part I, II, IV and V, it will extend to the State of Jammu and Kashmir. May I the reason for not excluding part III from the State of Jammu and Kashmir?

DR. G. NARAYANA RAJU: Sir, this is because of the Constitutional provision. This matter was dealt under Concurrent List entry 9. As per Constitutional (Application to Jammu and Kashmir) Order, 1954, this entry 9 was removed from its application to Jammu and Kashmir. That is why we have not extended this part to the State of Jammu and Kashmir. That is why also DRT Act is not applicable to J&K, whereas Companies Act is applicable to the State of Jammu and Kashmir.

SHRI P.P. CHAUDHARY: So, DRT is with respect to the part III. This is the only reason. I would like to know if it is also related to partnership firm or individual persons, or whether this non-applicability is on account of the individual, or firm or on account of the DRT. It is a quasi-judicial authority. It may be on account of the partnership firm, or individual person. Non-applicability can only be on that account and not on account of DRT.

DR. G. NARAYANA RAJU: Sir, we will re-examine it.

SHRI P.P. CHAUDHARY: You are attaching this to DRT and DRT is a quasi-judicial body. How only on quasi-judicial authority you can say that this part is not applicable to the State of Jammu and Kashmir? This matter is required to be examined again.

DR. G. NARAYANA RAJU: The subject matter relating to bankruptcy of individuals has been removed by the Constitution as far as its application to the State of Jammu and Kashmir is concerned.

SHRI P.P. CHAUDHARY: What about partnership firms?

HON. CHAIRPERSON: Concurrent List does not apply to the State of Jammu and Kashmir?

DR. G. NARAYANA RAJU: Sir, it does apply subject to certain modifications entry 9 is there in the Concurrent List.

HON. CHAIRPERSON: In the 7th Schedule bankruptcy is there.

DR. G. NARAYANA RAJU: Sir, there is Constitutional Application to the State of Jammu and Kashmir Order, 1954 where they have mentioned certain entries in the Concurrent List are applicable to the State of Jammu and Kashmir and certain entries are not applicable to the State of Jammu and Kashmir and this entry 9 is in the exclusion part.

SHRI P.P. CHAUDHARY: Entry 9 is with respect to individual bankruptcy.

DR. G. NARAYANA RAJU: Entry 9 is insolvency and bankruptcy that is not applicable to Jammu and Kashmir.

SHRI P.P. CHAUDHARY: Part 3 deals with bankruptcy and insolvency only. Please verify it again.

DR. G. NARAYANA RAJU: No, if you want I will read out this entry.

SHRI P.P. CHAUDHARY: Please refer to page 36, clause 62 of this Code. First you have mentioned '60 days', then you have mentioned '90 days'. I think this is a misprint. Which is correct? 60 days or 90 days? I think it is a misprint. It should correlate. I think instead of '90 days' it should be '60 days'. When the purpose of the Code is to reduce the time, I think it should be '60 days'. I think the first part is correct. In the second part it should have been '60 days'. Instead of '60 days' it has been mentioned '90 days'.

Please refer to clause 65. The 'authority' has not been mentioned. Who is the 'authority' here? Who is the 'authority' competent to impose it? How can we read that? Are we required to specify the 'authority' or not? No doubt, under clause 65, in the notes, at page 127, you have mentioned the words 'adjudicating authority'. But these words 'adjudicating authority' is missing here. No authority has been prescribed. Who is competent to impose that penalty? In clause 66 it is not missing.

It has been specifically mentioned that it is the 'adjudicating authority', whereas the words 'adjudicating authority' is not there in clause 65. In the note also you have mentioned the words 'adjudicating authority'. It is at page 127.

HON. CHAIRPERSON: I think it is part 2. It is specifically mentioned in section 5 that adjudicating authority for this part is the NCLT.

SHRI P.P. CHAUDHARY: That is the definition. Adjudicating authority may be DRT, or NCLT. But it is only a definition. But who is the competent authority here?

HON. CHAIRPERSON: For this part, it is the NCLT.

SHRI P.P. CHAUDHARY: For every part it is the adjudicating authority. But when the authority has not been in the clause, then who is the authority?

HON. CHAIRPERSON: It is said in section 5, sub-section 1, that adjudicating authority for the purpose of this part means the NCLT.

SHRI P.P. CHAUDHARY: But they have to mention it.

HON. CHAIRPERSON: You correct this language.

SHRI P.P. CHAUDHARY: But you have to mention the adjudicating authority here.

HON. CHAIRPERSON: 'Means' creating confusion.

SHRI SHAKTIKANTA DAS: We will make a note. Wherever corrections are required as the hon. Member is mentioning, we will make a note.

SHRI P.P. CHAUDHARY: You please refer to clause 68 (2), Chapter VII. Here there is no dispute or quarrel on the question of adjudicating authority because it is the NCLT for that part. You are required to mention who is the authority competent to inflict the penalty. It is nowhere mentioned in any of the clauses, right from 68 to 77. You have mentioned the punishment. But the authority for inflicting the punishment has not been mentioned.

DR. G. NARAYANA RAJU: Whenever any fine and imprisonment concepts are coming, Cr.PC will take care of it. This is implied. We need not specifically mention it.

SHRI P.P. CHAUDHARY: Then why under clause 66 have you mentioned it?

DR. G. NARAYANA RAJU: Monetary penalty is to be imposed, by an authority constituted under that part when fine or imprisonment comes, as this is determination of criminality that will be taken care of by the criminal codes only.

SHRI NISHIKANT DUBEY: What about section 65 (1)?

DR. G. NARAYANA RAJU: Clause 61 is only about monetary penalty, not imprisonment.

SHRI NISHIKANT DUBEY: I am asking the same thing.

DR. G. NARAYANA RAJU: That they have to answer.

SHRI P.P. CHAUDHARY: Are you sure that right from 68 to 77 all the clauses relate to criminality? No monetary penalty is there. If monetary penalty is there – if that particular clause – one is criminal liability and another is monetary. Is it the combination of both? For the criminality, you can say that the criminal court will have the jurisdiction. But for monetary, there is no adjudicating authority. Who is competent to make that penalty?

DR. G. NARAYANA RAJU: There is slight difference. In the case of monetary penalty, adjudicating authority is imposing monetary penalty upon the persons who are violating the provisions of this code or part. In the case of fine and imprisonment, there, discretion is given to the criminal courts – either they may impose imprisonment or instead of imprisonment, also fine. This fine is also for the criminality of the person, not monetary penalty.

SHRI P.P. CHAUDHARY: In 68, three years, and also extends to five years along with Rs.1 crore. According to you, it is having the nature of criminality, nothing to do with the civil offence.

DR. G. NARAYANA RAJU: Yes, Sir.

SHRI P.P. CHAUDHARY: But offence may be civil but it may be converted into criminality. That is why in the entire Act, you have used the word, jurisdiction of the civil court, under this code is ousted not the jurisdiction of the criminal court. Everywhere the court is qualified by the word 'civil'. In the entire code if you see the words civil court is used, wherever the jurisdiction of the civil court is ousted for the purpose of NCLT or DRT, then, civil court is used.

Clause 179 was read out. This is regarding jurisdiction and on the question of territorial jurisdiction – I am on that point – over the place where individual debtor actually and voluntarily resides or carried

on business or personally works for gain or may entertain an application under the court regarding such person. Can we extend 'actually and voluntarily resides' jurisdiction to that level with respect to his residence, nothing to do with the cause of action? Can we relate the residence to the cause of action? Is there any corelation between residence and cause of action?

HON. CHAIRPERSON: I also want to mention that in part 2, section 5, you have specifically stated, for this part, adjudicating authority is NCLT; here, for this part, you have not mentioned who is adjudicating authority. DRT-part III – definition – page 41, para 79, there is no definition, who is the adjudicating authority here? In code you are saying that we are giving power to DRT but where is it mentioned?

SHRI SHAKTI KANTA DAS: Here it is mentioned – clause 78(3).

HON. CHAIRPERSON: But where is it mentioned in definition? You have not mentioned in definition.

SHRI SHAKTI KANTA DAS: We will bring it in the definition part.

HON. CHAIRPERSON: In Section 5, you have specifically mentioned in definition – adjudicating authority but here you have not mentioned in definition.

SHRI P.P. CHAUDHARY: I was on the question of residence. Basically territorial jurisdiction always if we see the determining factor of the jurisdiction of the court is the cause of action, not the residence of that person. If you go on changing the residence and voluntarily resides, he can have 10 residence. Basically the cause of action is in respect to territorial jurisdiction. We can't extend beyond that. Can we extend beyond it? Whether residence has correlation with the cause of action or correlation with the jurisdiction of the court?

DR. G. NARAYANA RAJU: Here, it was mentioned, territorial jurisdiction over the place where the individual debtor...

SHRI P.P. CHAUDHARY: Actually and voluntarily resides. His business is at place 'a', cause of action is at place 'c'.

SHRI SHAKTI KANTA DAS: We have made a note of this point which requires some amount of application of mind. We will discuss within our Ministry and with Ministry of Law. We will reply to this point.

SHRI P.P. CHAUDHARY: Clause 190-c – can we define the word 'moral turpitude' precisely after going through various judgements of

the Supreme Court on moral turpitude or should we leave it to the discretion of the court? He had been convicted on an offence which in opinion of the Central Government... And the Central Government has decided whether it is a moral turpitude or not. Thereafter, you leave it to the discretion of the court whether it is a moral turpitude or not. Can we define it broadly?

SHRI KALYAN BANERJEE: Moral turpitude cannot be defined. From time to time it differs.

SHRI P.P. CHAUDHARY: That Central Government has to decide. Power is given to the Central Government.

SHRI BHARTRUHARI MAHTAB: It also differs from person to person.

SHRI P.P. CHAUDHARY: Nature of crime – does not differ from person to person or from time to time. As far moral turpitude, it is based on crime, what type of crime, crime in relation to society. It is directly related to society.

DR. G. NARAYANA RAJU: This is used in various legislations and that is why we have adopted this principle for the removal of the Member.

SHRI P.P. CHAUDHARY: Clause 194(2). You see the discretion of the Board for appointment because a large number of people are required to be recruited in the entire country. Clause 194(2) was read out. Can we introduce the word, the Board may appoint in accordance with regulation? Otherwise, without regulation how can they appoint because this recruitment will be all over the country. The Board may appoint, we can introduce the word, 'in accordance with regulation'. The Board may appoint because direct discretion is given to the Board without any regulation or rule. Board is required to frame the regulations and then regulations is made known to everybody that these are the regulations for appointment and recruitment, and in accordance with those regulations because those regulations are required to be placed on the floor of the House. It is made known to everybody. Here, we are giving direct power to the Board, the Board may appoint such other officer and employee as it may consider necessary. So, we are completely resting on the discretion of the Board without on the basis of regulation.

DR. G. NARAYANA RAJU: Here the point is restricted to discretionary power. We can restrict the Board's powers in accordance with the regulation so that the regulation will be placed before the Parliament and the Parliament will have some verification power. We can say that the Board may, in consultation with the Central Government, may appoint certain number of persons.

SHRI P.P. CHAUDHARY: Basically all these things should be laid down in the regulation. The regulation is like service conditions. Here also, the regulation should provide all the conditions of service and thereafter, on the basis of that regulation, the Board is competent to appoint the person. The Board cannot be given the discretionary power without rules and regulations.

DR. G. NARAYANA RAJU: Sub-Section (3) of Section 194 provides for the salaries and allowances payable and other terms and conditions of service.

SHRI P. P. CHAUDHARY: One part of service condition with respect to the payment of salary is to be regulated by the regulation and another part with respect to the appointment is not being regulated by the regulation but by the discretion of the Board.

HON. CHAIRPERSON: What is the language in the other Acts?

SHRI BHARTRUHARI MAHTAB: In Part 3, it is said that it is as per regulation. We cannot read a clause separately and not read the following clause.

श्री निशिकांत दुबे: सेक्शन 234 में जो लिखा हुआ है, यही बेनामी ट्रांजेक्शन एक्ट में लिखा है और यही इनकम टैक्स एक्ट में लिखा हुआ है।

SHRI P.P. CHAUDHARY: After Clause 196 (1), it directly comes to sub-clause 3 and there is no sub-clause 2. I think it is a typing mistake.

DR. G. NARAYANA RAJU: Yes Sir.

SHRI P.P. CHAUDHARY: Clause 201 (2) is very important relating to the rejection of application. In this, I think we can incorporate the words, "in writing assigning reasons" at the appropriate place.

HON. CHAIRPERSON: Wherever some error is there, we will send them a questionnaire.

SHRI P.P. CHAUDHARY: When we are giving an opportunity, is it not necessary that once we are hearing and after hearing we must assign the reason as to why your application is being rejected so that he may have an opportunity whether those reasons are germane to the ground given in the order or not?

Clause 231 on page 96 is all right. In Clause 236 (2), we have added "all" with respect to the Board. In Clause 194 (2) we have not provided

that situation. We can also make regulation with respect to Clause 194 regarding appointment and salary. This may also be provided there because the power of the Board to frame the regulation with respect to appointment etc. .

Then, in Clause 236 (3), the regulation may be made or this clause may be replaced by Clause 235 because the power to frame the rules is with the Central Government and the power to frame the regulation is with the Board and the Board cannot frame the rules.

DR. G. NARAYANA RAJU: This sub-section 3 has to be removed.

SHRI P.P. CHAUDHARY: You have to place it at 235 because the power to frame the rules is with the Central Government.

DR. G. NARAYANA RAJU: 237 says every rule, every regulation, every bye-law shall be placed before the Houses of Parliament. So, 237 takes care of all rules and regulations. Immediately after their making, they have to be placed before the Parliament.

SHRI P.P. CHAUDHARY: Who is competent to frame that? Once it is framed, it will be placed.

SHRI ANAND SHARMA: The normal practice is, once a Bill is passed, it becomes a law. Then the rules are framed and they are notified which are placed before the Parliament. The rules would have been notified by the time rules are framed. Kindly explain.

DR. G. NARAYANA RAJU: Clause 235 (6) says the Central Government may, by notification, make rules. By notification they will frame the rules and place before the Parliament.

SHRI BHARTRUHARI MAHTAB: There is scope. Parliament ultimately has to concur with the rules. That is given 15 days or one month or three months; time is there.

SHRI SHAKTI KANTA DAS: Sir, I would like to draw your attention to clause 237 where the detailed procedure is given that both Houses agree in making any modification in the rule, regulation or bye-law or both Houses agree that the rule, regulation or bye-law should not be made so that in case the House disagrees, there is a provision.

SHRI P.P. CHAUDHARY: Now, I come to clause 237: every rule, every regulation and every bye-law. Now, who is competent to frame the rules? It is the Central Government. Who is competent to frame the

regulation? It is the Board. Who is competent to frame the bye-laws? Under clause 205, neither the Board nor the Government is competent. It is entirely a different authority. How those bye-laws can be placed on the floor of the House? The bye-laws are framed by the society. If a society registered under the Societies Act frames its bye-laws, I would like to know whether those bye-laws are required to be placed on the floor of the House or not.

DR. G. NARAYANA RAJU: Sir, they are required to be placed in the Houses of the Parliament.

SHRI P.P. CHAUDHARY: What I am saying is this. It is a society registered under the Cooperative Societies Act or the Societies Registration Act. They frame their bye-law. One can understand the rules framed by the Government of India, the regulations framed by the Board, that is a statutory authority and the rules framed by the Central Government, those are required to be placed on the floor of the House. I would like to know whether the bye-laws framed a society registered under the Societies Act are mandatorily required to be placed on the floor of the House or not.

DR. G. NARAYANA RAJU: Sir, they have to be placed before the Houses of the Parliament.

SHRI P.P. CHAUDHARY: I do not think so. Just you examine it.

SHRI KALYAN BANERJEE: Mr. Chaudhary, what you are saying, that is the normal law. But Parliament is having a power. In respect of this, they are having a power to make the bye-law if it is prepared by any society.

SHRI P.P. CHAUDHARY: Sir, thousands of societies will be there. They are professional and all these, Chartered Accountants etc. Then, all these bye-laws are required to be placed on the floor of the House. Do you think how many societies will be there? It is because, once we are thinking about this, we have to frame the model bye-laws. The model bye-laws are required to be approved by the Board. Once they are approved by the Board, then again those which are approved by the Board, whether they are required to be placed on the floor of the House or not.

SHRI SHAKTIKANTA DAS: Sir, we will have a re-look on this.

SHRI JAGDAMBIKA PAL: My colleagues have already raised plenty of questions. I have a few questions in my mind.

I just want to seek clarification from the Legislative Department. Are there any laws which will become redundant when the Code is implemented? If yes, how does the Department propose to remove those redundant laws after the Code has been implemented? As in the case of all new legislations, how will the existing cases migrate to the newer laws which are part of the Code? Will they remain under the old laws? If yes, will this not mean that the impact of this Code will be felt much later, possibly years thereafter? Since the Code creates an alternate system for bankruptcy cases, how does the Department plan to manage the bankruptcy cases? Will this mean a new set of tribunals or similar sort of mechanism has to be created? The existing cases in the tribunals have already been going on for years. With this new law, the case load will be increased. Do the existing tribunal institutions related to bankruptcy have the capacity to bear the increased load? If not, how will you cope up with the increased number of cases?

I have one question for the Ministry of Corporate Affairs also. Since the Code asked for rules and regulations to be framed for the Bankruptcy Board of India, how prepared is the Ministry for creating rules and regulations in this regard? What will be the process followed in creating these rules? Will there be adequate consultations with the stakeholders? Will these rules be transparently created?

I have one question for the Department of Economic Affairs also. What measures are to be taken for capacity building to manage the simplified bankruptcy regime? Similarly, what steps need to be taken for skilled manpower requisitioning and creation of infrastructure? Thank you, Mr. Chairman.

SHRI AJAY TYAGI: Sir, we will respond in writing. About rule-making, as the Secretary said, the Government will decide as to which Department will administer this enactment. So, rule-making, capacity building and infrastructure creation actually will be by that Department. That is how it will be done.

SHRI JAGDAMBIKA PAL: It is under process.

SHRI AJAY TYAGI: It is under the process. As the Secretary said, before the Committee gives report, we will say which Department will be administering this legislation.

SHRI JAGDAMBIKA PAL: So far you have not finalized it.

SHRI AJAY TYAGI: No, Sir, the Government is yet to finalise that.

DR. G. NARAYANA RAJU: Sir, as far as redundant laws are concerned, I think your question relates to the repeal of Presidency Towns Insolvency and Provincial Insolvency. If this Act is clearly repealed by this Act, then we will consult the administrative Ministries whether they are for repealing of this one. The Legislative Department, for every 10 years, will do an exercise of repealing and amending the Acts which are unnecessary and redundant on the Statute Book. Before doing that, we will take the views of the concerned administrative Ministries. If they say that okay you can proceed for repeal, then we will include all those Acts in one enactment and we will repeal all those enactments. This is our process. At present, we are doing that exercise also.

SHRI TAPAN RAY: Sir, you mentioned about the transfer of proceedings. Section 434 of the Companies Act provides for that. As per the Code, it has been slightly amended to distinguish between the cases to be handled by NCLT and those which are to be handled by the DRT. It says that all the Company Law Board matters will get transferred to NCLT. Then all proceedings under the Companies Act relating to arbitration, compromise, arrangements, reconstruction, winding up, which are already pending in the District Court and the High Court will get transferred to the NCLT. So, we have to take a phased-manned approach because suddenly all the cases will come to NCLT. In the first phase we will take up the Company Law Board cases. Then we will take the cases under the Sick Industrial Companies Act and finally the cases which are pending in the High Court and the District Court under the Companies Act.

SHRI JAGDAMBIKA PAL: Have you decided any time frame for this?

SHRI TAPAN RAY: We have not yet specifically done any time frame. It will be a function of the way how quickly we can set up the National Company Law Tribunal. It is in the process of being set up. So we will have several Benches all over the country.

SHRI JAGDAMBIKA PAL: You have already given that you are going to create the courts. How much time you will take to set up all these courts?

SHRI TAPAN RAY: Our strategy is to start from the first half of the next financial year starting with the main Benches at the main metro centres, four big areas and then slowly develop the other Benches as and when we get the judicial and technical members recruited. We are yet to get the appointments through which is pending in the ACC. Once those members join, we will set up the Benches quickly. Since the load will come all of a sudden, we will do it in a phased manner starting with the easier cases of the Company Law Board and then the cases under the SICA.

SHRI JAGDAMBIKA PAL: You have said that there are 33 DRTs and six new DRTs are being set up at different places.

HON. CHAIRPERSON: He is dealing with NCLT.

श्री रवि प्रकाश वर्मा: मैं लैजिसलेटिव विभाग से यह जानना चाहता हूं कि आप लोगों ने यह जो लिक्विडेटर्स के लिए तय किया है, उसके लिए क्राइटेरिया ऑफ एलिजिबिलिटी क्या है? क्या वे लोग स्टेकहोल्डर्स हैं या गवर्मेंट ऑफिसर्स होंगे या कौन होंगे? Who would be the liquidators?

SHRI TAPAN RAY: Sir, we have only official liquidators under the Companies Act. They will function as private liquidators. That is the provision in the Code.

श्री रवि प्रकाश वर्मा: उसके लिए सारे स्टेकहोल्डर्स का सहमत होना जरूरी है।

SHRI TAPAN RAY: I think, the Regulatory Board will decide what would be the qualifications.

HON. CHAIRPERSON: What is the policy for the insolvency professionals?

SHRI AJAY TYAGI: Sir, for the transaction period in Clause 241 it provides that whatever would be the broad qualification and till the regulator comes, the Government can decide those qualifications and that says, persons, category of professionals having such qualifications, experience in the field of finance, law, management or insolvency as deemed necessary. So there is some qualification which can be described for the Government till regulator comes. Once regulator comes then regulator will frame regulations. So, liquidators also will be insolvency professionals.

श्री रवि प्रकाश वर्मा: एक चीज और जानना चाह रहे थे कि यह जो अर्ली डिस्ट्रेस आइडेंटिफिकेशन के लिए कल एक बात उठी थी कि कंपनी के साथ में अर्ली वॉर्निंग सिस्टम्स भी कुछ होने चाहिए तो इसको आप कैसे फॉर्म्युलेट करेंगे?

श्री शक्तिकांत दास: सर, इसमें कोई सिस्टमिक अर्ली वॉर्निंग सिग्नल नहीं रहेगा। इसका अर्ली वार्निंग यह रहेगा कि जब भी कंपनी डिफॉल्ट करती है, चाहे वह ऑपरेशनल क्रेडिटर हो या फाइनेंशियल क्रेडिटर हो, when the company defaults in repayment, so any of the creditors, operational or financial creditors, they will approach the NCLT and file an insolvency petition.

श्री रवि प्रकाश वर्मा: जो यूटिलिटी वाले हैं, क्या यह उनका काम नहीं है कि वे पहले से सबको इंटिमेट करें? उनके पास में सारी जानकारी रहती है।

SHRI SHAKTIKANTA DAS: Sir, the insolvency process kicks in only if a stakeholder, even workman whose dues are still outstanding, all the financial creditors, they can do that.

श्री रवि प्रकाश वर्मा: क्या कंपनियों की परफॉर्मेंस ग्रेडिंग भी कर सकते हैं?

HON. CHAIRPERSON: The specific question is this. Can they create a mechanism?

SHRI SHAKTIKANTA DAS: Sir, I think, we will examine this aspect and we will reply to that.

SHRI ANAND KUMAR SHARMA: What we were discussing earlier, the Seventh Schedule, List 3, Entry 9, you were saying that that is not there. It has been omitted. If it is omitted then, how are we framing it? Then you have to go to 370B.

HON. CHAIRPERSON: He said order 94, Entry 5-10, is not applicable to Jammu and Kashmir. I think that was his statement.

DR. G. NARAYANA RAJU: Sir, we cannot omit Entry 9. As far as Jammu and Kashmir Modification Order is concerned, that order omitted entry 9 from its application as far as Jammu and Kashmir is concerned.

श्री सुभाष चंद्र बहेड़िया: सर, एक तो जो इन्होंने प्रपोज किया है, फाइनेंशियल क्रेडिटर्स और ऑपरेशन क्रेडिटर्स, तो क्रेडिटर्स की कमेटी में ऑपरेशन क्रेडिटर्स क्यों पार्ट नहीं ले सकते हैं? एक ने पैसा दिया है और दूसरे ने पैसे के बराबर माल दिया है या सर्विस दी है। नहीं तो क्या है कि जो ऑपरेशनल क्रेडिटर्स, कहीं सप्लायर है, कोई छोटा सप्लायर है, कोई बड़ा सप्लायर है, सबको दिक्कत हो जाएगी। इसको ऐसे ही इसके साथ ही लिंक करें तो इसमें जो वॉटरफॉल दिया है, सैक्शन 53(1) और 178(1) में तो ऑपरेशनल क्रेडिटर्स को सबसे बाद में लिया है। जब कि सिक्योर्ड क्रेडिटर्स का जो अनपेड रह जाता है, सिक्योरिटी के बाद वह भी उसके ऊपर आ गया। फाइनेंशियल क्रेडिटर्स भी ऊपर आ गया, लेकिन ऑपरेशनल क्रेडिटर्स, उसमें भी जो लेबर पेमेंट हुआ, वह तो सब टॉप में आ गया। लेकिन ऑपरेशनल सबसे बाद में रह गया तो इसकी फाइनेंशियल क्रेडिटर्स के साथ इक्वल नहीं कर सकते हैं? क्योंकि एक ने पैसा दिया है और एक ने पैसे के बराबर माल दिया है, दोनों में कोई ज्यादा फर्क नहीं है, दोनों ही अनसिक्योर्ड हैं।

श्री शक्तिकांत दास: सर, पिछली मीटिंग्स में भी यह बिंदु उठा था, इसको हम इंटरनली एग्जामिन कर रहे हैं। आपने जो सवाल उठाया है, यह बहुत ही जायज है, इसको हम इंटरनली एग्जामिन कर रहे हैं, जब हम रिप्लाई सब्मिट करेंगे we will address that point.

श्री सुभाष चंद्र बहेड़िया: सर, दूसरा जो एक्सक्लूडिड एसेटस है, 79 (13) में इसमें जैसे पब्लिक प्रोविडंट फंड में पैसे जमा हैं, उसको एक्सक्लूड नहीं किया है। यह तो व्यक्ति की सोशल

सिक्युरिटी का होता है, इसको तो एक्सक्लुडिड असेट्स में मेंशन होना चाहिए, यह मेंशन नहीं है।

श्री शक्तिकांत दास: सर, जैसे मैंने पहले कहा, यह प्वाइंट भी हमने नोट कर लिया है, यह पिछली मीटिंग्स में भी रेज हुआ था, हम इसको गवर्मेंट अप्रूवल लेकर इंटरनली डिस्कस कर रहे हैं। जैसे ही हो जाएगा, हम रिप्लाई सब्मिट कर देंगे।

SHRI JAYADEV GALLA: Sir, I have just one question on that. Clause 205, which Mr. P.P. Chaudhary, had pointed out earlier. I have one question on that. It says here that every insolvency professional agency shall make bye-laws to provide for so many different things. But many of these items, if not all, should be consistent across all agencies. How are we giving the freedom to each agency to form their own bye-laws even with respect to standards of professional competence for its members for instance? It should be consistent across all agencies. So, should we not break this up into bye-laws that need to be consistent across to all agencies and others that can be framed by each agency?

SHRI AJAY TYAGI: Sir, we agree that there should be uniform rules. We discussed it yesterday also. It should be model bye-laws rather than each agency is making.

श्री चंद्रकांत खैरे: चेयरमैन साहब, इस कोड में उन कंपनियों को शामिल नहीं किया गया है, जो कंपनियां इंडिया से आउटसाइड इंकॉर्पोरेटिड हुई हैं। मेरे विचार से इनका प्रोविजन होना चाहिए। क्योंकि कंपनियां कभी भी वाइंड-अप करके बिजनेस बंद करके जा सकती हैं। फिर यहां के लोगों का निवेश और लेनदारी भी होती है, वह मिलेगी नहीं, इसलिए इन कंपनियों को भी इस कोड में शामिल किया जाना चाहिए।

SHRI BHARTRUHARI MAHTAB: I am sorry. I could not witness the power point presentation that was given. Four of us were held up elsewhere.

Basically we are actually ventilating the concerns that were raised from different witnesses to get clarifications from you. Of course, some of your Officers, Shri Tyagi and also officers from the Legal Department were present and they must have taken note of those concerns. We want to ventilate those questions. We are not that intelligent enough to go through the Clause by Clause today. But I would just ventilate those concerns which have been put forth during the course of our deliberations in the last two weeks.

The first one is relating to Clause 31(1)(a). The failure of resolution plan is not included as a ground for initiating liquidation under

Clause 31(1)(a) and this could cause confusion. So, we were told that it would be examined. If you have examined that aspect, please let us know. Ultimately, when we will be submitting our amendments, we will see the amendments that will be put forth by the Government and after that, we will be submitting our amendments. If the amendments are incorporated, then accordingly we need not repeat those amendments from our side.

HON. CHAIRPERSON: Shri Tyagi ji, do you want to say something?

SHRI AJAY TYAGI: Our understanding of Clause 33 (1) – Initiation of Liquidation – says that liquidation starts after 180 days and in case there is no resolution plan made or it is rejected. So, Clause 33(1) initiates liquidation in case there is no reservation plan. That is our understanding.

SHRI BHARTRUHARI MAHTAB: You see Clause 31(1), which says:

"If the Adjudicating Authority is satisfied that– (*a*) the resolution plan as approved by the committee of creditors under sub-section (*4*) of section 30 meets the requirements as referred to in sub-section (*2*) of section 30; ..."

But when the failure of resolution occurs, it may lead to confusion. That was the concern which was expressed.

SHRI SHAKTIKANTA DAS: Sir, this is replied under Clause 33(1)(b). It says:

"where the authority rejects the resolution plan under section 31 for the non-compliance of the requirements specified therein, it shall –

(*i*) pass an order requiring the corporate debtor to be liquidated in the manner as laid down in this Chapter; ..."

SHRI BHARTRUHARI MAHTAB: Okay, that is the view of the Government.

Now, I come to Clause 14 – moratorium. In Clause 14, it is said that it needs to be expanded, and definition of moratorium need be made. I think, you can take down these queries and explain them now, if it is necessary on your part.

On corporate insolvency resolution from Clauses 6 to 32, I have some points. I think, those can be taken down. The framework is well conceived but there are certain shortcomings which I would like to draw.

Is there any mechanism for monitoring the implementation of resolution plan approved by the adjudicating authority? Is there any possibility for indication of the stage when after finalization of a resolution plan, the resolution professional exits?

There is no indication of how and at what stage the committee of creditors would cease to exit and the Board of the Directors of the company become functional. I do not find anywhere indication of the period of validity of the resolution plan.

I find no indications of who will determine if the resolution plan has been completed. Is there any provision of initiating liquidation where there are major defaults and failures during the course of implementation of the resolution plan?

Now, I come to the liquidation process from Clauses 33 to 54. Failure of resolution plan is not included as a ground for initiating liquidation under Clause 33 (1) (a). Do you not think that this could cause confusion and delay, the question which I had put forth first? How do you look at a suggestion like absence of power to the Committee of creditors to recommend liquidation instead of resolution in exceptional cases? Do you not think that this could save time in obviously hopeless situation?

Why do we not make a provision for an appeal against violation of claims under Clause 42? This is confined to rejection of claims only. This could lead to filing of writs delaying disposal. What is your view on this aspect? My impression is that this gives a scope for further litigation and it will create more delay.

Clause 48 is specifying the kind of orders that the adjudicating authority may pass while deciding matters arising out of undervalued transactions. Such orders would involve deciding complex issues of various branches of civil law. I hope, Shri Chaudhary is taking cognizance of it. It is likely that this provision will be open to challenge on the ground that adjudication of such matters is the core function of courts, court of law, and not of quasi judicial bodies. Can one avoid it?

Clause 51 makes a salutary provision for denying the benefits derived by a creditor who had entered into transactions within the corporate debtor involving extortionate interest. The provision does not provide ouster of such a creditor from the Committee of Creditors. Do you not think that such exclusion will be equitous?

In the first meeting I had mentioned that there was a case in 1947 relating to insolvency or liquidation in Odisha. It was settled in 2014. More than 500 such cases are pending in various High Courts for more than 10 years. We had asked for those details. I think, those details have not been shared with us, if the Committee has received those details.

The main delay in the insolvency proceedings apart from pendency in civil suits is due to long time taken in sale of assets included in the liquidation assets. Is there any provision giving a time limit for completion of sale in the present proposed Code, leaving a major source of delay unattended?

Can you suggest a time-frame for completion of auctions etc., by the liquidators failing which the matter should be referred to the adjudicating authority with wide powers of issuing binding directions to complete a delayed sale process? On regulatory framework, an opinion is that the regulator needs to be provided some insulation from the Government to ensure independent functioning. Don't you think the procedure for appointment of such Members needs to be laid down in the Code itself? Why power to issue certificate of registration to insolvency professionals should vest in the Board instead of by insolvency professional agency as implicitly provided in Section 199? That is all from my side.

HON. CHAIRPERSON: You please note down all these points and send us a written reply.

SHRI KALYAN BANERJEE: The main object of the Act is that the whole adjudication proceedings, whatever it may be, should be very expeditiously done. You have given some provisions stating the time schedules that within this time, you have to give it. First extension can be made. My question is this. Is it mandatory? If it is not mandatory, it will continue for years together like other matters? I would give you an illustration. Under the Industrial Disputes Act, disputes are to be resolved within 60 days. This is not mandatory. The law of interpretation is so clear to this extent that if a penal clause is not there, in that case it is directory provision. Therefore, if the whole of your object is to speed up the entire thing and finish the things within certain time, it would be frustrating. It will be only on paper.

You think about it as to how can you make the provisions mandatory. Experience speaks about everyone's voice there. Neither your DLT sits in time nor the Appellate Tribunal nor the companies. All are so casual like anything. As much as one can be casual, they are casual to this

extent. If this is the object to speed up everything, to give relief to the aggrieved then, where is the provision you have made that 'within this particular time you have to finish it'? Where is that mandatory provision? You have given them time saying 'within 15 days, you do it. Thereafter, 30 days you do. If you cannot do, then one time extension would be there'. But this is not enough. It is insufficient in the Act itself. You have to rethink about the matter. When this object is laudable, then the object has to be implemented. So far as my experience is concerned, you have to face the earlier days again, where were there. Be it National Company Law Appellate Tribunal, or whatever you say, everything is same.

My second point is about Chapter I, Clause 4. It says: 'This Part shall apply to matters relating to the insolvency and liquidation of corporate persons debtors. Where the amount of the default is not less than one lakh rupees or such other amount not exceeding one crore rupees'. Then, it says: 'as the Central Government may, by notification, specify'. What does it mean? If it is an applicability less than one lakh rupees, up to one crore rupees, it is all right. What do you want to mean by adding words, 'as the Central Government may, by notification, specify'? The Act is mainly applicable in the case of pecuniary jurisdiction. Let is take a case of Civil Court. There, the Additional District Judge will entertain a suit – more than 10 lakh rupees and less than 50 lakh rupees. I can understand it. It is a pecuniary jurisdiction.

Coming to Section 78, it says that 'the provision of this Part shall not apply where the amount of the default is less than 1,000 rupees and not exceeding one lakh rupees'. Therefore, if a dispute is there of more than Rs. 1 crore, this Act is not covering it. Then, what is the use of bringing this Act?

SHRI AJAY TYAGI: That is the floor amount. That is not the ceiling. The trigger amount between one lakh rupees and one crore rupees.

SHRI KALYAN BANERJEE: Sorry, your words should not do. The Act has to be interpreted as it is. The English is simple there. it is not so complicated to understand it. But where from this interpretation is coming? Nobody's words can be added here. Even a Judge cannot ever add a word and change the Statute. That is the law.

Up to Rs. 1 crore, you are making the Act applicable. But it is more than Rs. 1 crore, the Act is not applicable. There is no point for discussing by saying about the floor price or roof price. Therefore, you have to think about it so far as the pecuniary jurisdiction is concerned. Therefore, still now, you are not obliterating the Companies Act so far

as the winding of petition is concerned. Whenever it goes to more than Rs. 1 crore, then you have to take the remedy under the Companies Act or SICA or the other Acts. Whatever Act is there, that would be applicable there.

SHRI SHAKTIKANTA DAS: Sir, if we read Clause 4, Chapter II, it says: 'The Part shall apply to matters relating to insolvency and liquidation of corporate debtors. Where the amount of default is not less than one lakh rupees...' it means that it will not apply to cases where the amount of default is less.

SHRI KALYAN BANERJEE: I understand it. It comes under Section 78.

SHRI SHAKTIKANTA DAS: Sir, I will just complete. It says: 'Where the amount of default is not less than one lakh rupees or such other amount not exceeding rupees one crore...' So, this is the floor. Within one lakh to one crore rupees, the Central Government will notify a particular amount. The Central Government may notify fifty lakh, the Central Government may notify 75 lakh, which will mean, all matters, all cases, which are above 50 lakh or 75 lakh, up to whatever limit, the law will apply in those cases. So, this is only a floor, which the Centre will notify.

SHRI KALYAN BANERJEE: That may be for your last words interpretation, 'as the Central Government may, by notification, specify'. My question is, if the dispute is more than one crore, what would happen?

SHRI SHAKTIKANTA DAS: Then, it will apply.

SHRI KALYAN BANERJEE: How? The Central Government has no power at all about more than one crore rupees. Read the law.

SHRI SHAKTIKANTA DAS: The Central Government will notify.

SHRI KALYAN BANERJEE: No. How can the Central Government notify? It is not by pressure. The Act is very clear.

SHRI ANAND SHARMA: Let us hear, Secretary, Legislative.

DR. G. NARAYANAN RAJU: Section 4 deals with the minimum amount only. It is not the higher amount. Every higher amount will be taken care by this Part. At present, the minimum amount is one lakh rupees. In future, if the Central Government wanted to enhance this, enabling provision was given to the Central Government. They can enhance it up to one crore.

SHRI KALYAN BANERJEE: This may be your interpretation. Very nice! You go with this interpretation. Get the law legislated. The law will be passed. But I am very sorry to say that with great respect, I do not agree with your interpretation at all.

No sensible lawyer can agree with your interpretation.

HON. CHAIRPERSON: You examine it and send us a written reply. We will circulate here to all the Members.

SHRI ANAND SHARMA: The language must be clean. There is a need to clean the language.

SHRI BHARTRUHARI MAHTAB: If you delete the upper limit, it does not restrict to rupees one crore. Delete that upper limit. That is my suggestion.

SHRI KALYAN BANERJEE: Now, read clause 62 and clause 182 at the same time. Clause 62 reads:

> "Any person aggrieved by an order of the NCLT may file an appeal to the Supreme Court on a question of law arising out of such order under this Court within 60 days from the date of receipt of such order."

Now, read clause 182:

> "An appeal from an order from the Debt Recovery Tribunal on a question of law under this Code shall be filed within ninety days before the Supreme Court."

In part two, you are saying it as sixty days and part three, you are saying it as ninety days.

Now, read Clause 62 sub-clause 2:—

> "The Supreme Court may, if it is satisfied that a person was prevented by sufficient cause from filing an appeal within ninety days, allow the appeal to be filed within a further period not exceeding thirty days."

Now, in 182, you are saying:—

> "The Supreme Court may, if it is satisfied that a person was prevented by sufficient cause from filing an appeal within ninety days, allow the appeal to be filed within a further period not exceeding thirty days."

Now, I am asking you a very pertinent Constitutional question. Consider about it. Can you limit the power of the Supreme Court, who is having the plenary power under article 142 by limiting it within the 30 days? Can it be said that the Supreme Court cannot condone a delay even after 30 days? So far as the Supreme Court is concerned, can you put a restriction on the Supreme Court? Is it not unconstitutional framing of the words? The Supreme Court is having a plenary power. Even if you put these words, that will be deemed as undermining the Supreme Court's jurisdiction. My suggestion is about undermining the Supreme Court's jurisdiction. Whatever you are doing, you do it. But do not undermine the Supreme Court Jurisdiction. Do not give an impression that you are taking the Supreme Court's power.

Under Article 41 and 42, anything can be done by the Supreme Court. Therefore, as far as the entertainment of the appeal is concerned, kindly consider about it.

So far as the National Company Law Tribunal is concerned, I must say that this National Company Law Tribunal has been constituted long back. You could not do anything. Whose fault is this? You do not have anything. You have no infrastructure. You are saying that you will do the first part. You have not done anything. Where is your infrastructure? Your DLT is at one place. Your Company Appellate Authority is at another place. Your BIFR is at different place. Nobody knows about your existence. You think about it. When you are going to implement this Act, you have to bring up National Company Law Tribunal and National Company Appellate Tribunal. You please reconsider that the premises should be there where your adjudicating authority is. Somewhere it is becoming Appellate Tribunal or Original Jurisdiction. You cannot ask the litigant to run from one place to another place. Think about that. You are going to implement. Otherwise, it will not work at all. Ensure one thing. Whoever the adjudicating authority, whoever would be Presiding Officer, tell them to please sit at 1030 hours. You are taking the public exchequer's money. They should be under supervision. These are my suggestions.

HON. CHAIRPERSON: Thank you very much Shri Kalyan Banerjee for your very valuable input to the Committee.

माननीय सभापति: विभिन्न मंत्रालय के जो अधिकारी यहां पर उपस्थित हैं, उन सभी को मैं धन्यवाद देना चाहता हूं कि उन्होंने बहुत अच्छे ढंग से इस समिति के समक्ष सारे विषयों को रखा है। इस समिति में आज जो भी प्रश्न हुए हैं, हमें दो दिन के अंदर उनका जवाब चाहिए।

कुछ माननीय सदस्य देरी से आये थे, उनसे मैं यह आग्रह करना चाहता हूं कि हम आज कमेटी की एविडेंस समाप्त कर रहे हैं, जो भी सदस्य इसके संबंध में अमेंडमेंट देना चाहते हैं, वे 23 तारीख तक सचिवालय में अमेंडमेंट दे सकते हैं।

SHRI BHARTRUHARI MAHTAB: Sir, I have a suggestion. When all the amendments are supposed to be submitted by 23rd, you give another three days time because the Secretariat has to circulate all the amendments among the Members and we have to study what those amendments are. I think at that point, you can give instruction to the Secretariat to club certain amendments which are identical.

HON. CHAIRPERSON: I have already instructed.

Shall we fix the next date on 3rd March at 9.30 in the morning?

SHRI BHARTRUHARI MAHTAB: That will be better.

HON. CHAIRPERSON: Our next meeting will be on 3rd and 4th March at 9.30 in the morning. So, we will sit on 3rd and 4th March. We will move a Motion in the House for the extension of time. We had discussed that in the morning also.

(THE COMMITTEE THEN ADJOURNED)