

an>

title: Discussion on the motion for consideration of the Insolvency and Bankruptcy Code, 2016 (As Reported by Joint Committee).

HON. CHAIRPERSON: Now we will take up Item No. 12- The Insolvency and Bankruptcy Code, 2016. The Minister of State in the Ministry of Finance Shri Jayant Sinha.

THE MINISTER OF STATE IN THE MINISTRY OF FINANCE (SHRI JAYANT SINHA): I beg to move:

"That the Bill to consolidate and amend the laws relating to reorganization and insolvency resolution of corporate persons, partnership firms and individuals in a time bound manner for maximization of value of assets of such persons, to promote entrepreneurship, availability of credit and balance the interest of all the stakeholders including alteration in the order of priority of payment of Government dues and to establish an Insolvency and Bankruptcy Board of India, and for matters connected therewith or incidental thereto, as reported by the Joint Committee, be taken into consideration."

HON. CHAIRPERSON: Motion moved:

"That the Bill to consolidate and amend the laws relating to reorganization and insolvency resolution of corporate persons, partnership firms and individuals in a time bound manner for maximization of value of assets of such persons, to promote entrepreneurship, availability of credit and balance the interest of all the stakeholders including alteration in the order of priority of payment of Government dues and to establish an Insolvency and Bankruptcy Board of India, and for matters connected therewith or incidental thereto, as reported by the Joint Committee, be taken into consideration."

The motion was adopted

HON. CHAIRPERSON: Shri Jayant Sinha, do you want to speak on the Bill?

SHRI JAYANT SINHA: No, Madam Chairperson.

KUMARI SUSHMITA DEV (SILCHAR): Hon. Chairperson, I am elated that I got an opportunity to be a member of this Committee, the report of which was Tabled on 28th of April. I am even happier that I have got an opportunity to speak as this Bill gets introduced. I wish the House had more Members. The reason I say this is that often the impression that goes out of the Parliament is that this Lok Sabha has seen many tumultuous times and maybe on many occasions we have been in too many adversarial positions. But as a young Parliamentarian who has been elected to the Lok Sabha for the first time, I feel I should put on record that where the debate about stalling of Parliament and slow reform is dominating public space, the same Parliament, which I am proud to be a part of, has seen constructive Bills and reforms come its way. To name a few, the historical Bill on the coal auctions was passed by both the Houses; the amendment to the MMDR Act was passed by both the Houses; we saw the capping of FDI in insurance and defence also go up in this Lok Sabha.

Today, I would say that the Insolvency and Bankruptcy Code 2016 that we are now going to debate is an important reform, a reform that this nation and this economy have waited for. Often when I travel abroad and I interact with members of the business society or journalists overseas, I am asked what India's story is and where it is going.

Given the huge mandate that this Government has come with, will this country see the reforms come at a pace which the world is expecting from India? I come back to why I said that I was elated to speak on this Bill. It is because this Insolvency and Bankruptcy Code comes as a very important reform for the nation. It is not that India as a country did not have legislation or statute in place. It definitely had. It had the SARAFESI Act; it had the SICA; it had the Company Law; and other insolvency legislation that were applicable to individuals and partnerships. But what emerged over the years is, since the legislation was so scattered and it was bound in so many different legislative pieces, the system was evolving in a way that the legal system was under a huge burden of binding legislation.

More than 5,000 companies were undergoing the process of liquidation without reaching its logical conclusion. This Government has repeatedly spoken, or as a part of their public relations exercise spent a lot of time and effort talking, about start-ups. But for an economy and for a country that is looking for more start-ups, I feel for a viable business environment just like start-ups are important, smooth and efficient methods of exits are equally important. I would like to say that today we are all aghast at what happened in the Kingfisher case. We know that way back in 2012 this airline was grounded but a secured creditor like a bank even saw a piece of property or asset was only as recently as in February 2015. Therefore, this Code in this current atmosphere when the news or the debate is revolving around the Kingfisher case becomes even more significant.

I have to say as a Member of the Committee that we had spent hours over I think almost 12 meetings in discussing and debating our Report which has been submitted. Therefore, I think, procedurally or morally I will not have the right to disagree with whatever has been placed by the Committee and accepted by the Government. Very broadly speaking, I would not like to go through every provision of the Code because the time available is short.

I think, the key word in this Code is 'speed'. I feel the Government has given a huge emphasis on timely resolution and timely liquidation. The reason is this. If liquidation as a process becomes time-bound and predictable we can expect that the entire trend in our country where lending by banks are generally concentrated amongst a few big companies who are asset rich is likely to change. This is because if my chances of recovering from a business fails improves, I become much bold when it comes to lending.

Secondly, I would say that this Code has tried to initiate or has introduced some totally new systems and new institutions and a new genre of professionals which only time will tell how it unfolds. I think one of them is what is called, 'Insolvency Resolution Professionals'. They may be individuals like Chartered Accountants or lawyers or even an agency which will have to be registered with the appropriate authority. Apart from that, we have the Bankruptcy Board. We are also looking at the National Company Law Tribunal which will be the appropriate authority before which the IRPs will present their resolution proposals. Over and above that, there is something very interesting. Generally, when we want information about a company, we go to the Registrar of Companies and apply for information; but this Code is actually introducing a new entity or a new system known as 'Information Utilities'. These agencies will collect financial information about various businesses and collect it in a way that if I today want some financial information about the viability of the business I can go and apply to the information utilities. So, these are primarily the new sides to this Code which I hope we will be able to succeed in actually implementing.

The reality today is that why has this Code given importance to speed, like I said, or expeditious liquidation is because on an average today in this country, the liquidation procedure despite the fact that the High Court hears it as quickly as it can, and there is an entire body of official liquidators which look into liquidation, it takes about three to ten years for a company to be completely liquidated. And, as a consequence, the biggest exposure of the people, the lenders or the creditors of that company is that invariably the value of the assets of this company depletes because of which recovery is almost negligible or nothing compare to the kind of credit they have extended to that company.

Apart from that, what I think that this Code has taken a paradigm shift is that once a company enters into a process of liquidation, which was a huge danger in the past, its management used to be retained with the owners, promoters or the Board of Directors. In this case the moment the company applies for liquidation to the appropriate authority, what happens is that the management goes into the hands of the professionals, which I think is a very important step in the right direction because that is how we manage to keep the assets from straying of the company.

I will not spend much more time going through the various provisions because that is already a part of the Report but I will spend the last ten minutes talking about the advantages and the good side to this Insolvency, Bankruptcy Code. Madam, what I fear is will we be able to walk the talk. Today in a country like India, I do not think there is dearth of any legislation and this is yet another legislation. It is pretty clear to me that if we pass this legislation and make it the law of the land before or by the 31st May, 2016, I have no doubt that India's ranking by the World Bank about ease of business will go up by many points. And, yes, I would say as a parliamentarian, as a young representative I would like that to happen. Actually, as per the business report of the World Bank 2015, India is ranked at 136 out of 189 jurisdictions for resolving insolvencies. So, with this Code coming in before the 31st of May, which I hope it will, we will improve our ranking but Madam, my biggest fear is that because we have through this Code created a new genre of professionals, we have created I would say some new quasi judicial authorities, will my Government be in a position to put life into this policy, put life into this vision that I feel is the vision of this Code in terms of human resource and in terms of infrastructure.

I think it was in May, 2015 that the Supreme Court gave great emphasis to set up the National Company Law Boards but till today - as far as I know, the appellate body or the NCLT and the NCLAT - there are only 11 benches and probably one circuit bench of NCLT in the first phase which has not yet been established. Over and above that I have heard that in the beginning of 2016 or before 2017, the tribunals will become operational.

I am sure the hon. Minister will reply whether that has been done or not. So, I urge this Government that where we all have worked hard towards this Code in the hope that India as a nation will go towards a more vibrant economy not just *vis-À-vis* Start Ups but smooth and efficient exits. The bankruptcy should not necessarily be a stigma like in the case of Kingfisher. It is because today if you give me ease of exit, then I can again start another business. I hope that infrastructurally and from the point of view of human resource, this Government will put in its best efforts.

As a Member of that Committee, I would hope the Government has or will take a few suggestions on board. There is a clause about recoveries and it has been seen that the Government of India and the State Government can actually recover dues up to 24 months preceding the date or commencement of liquidation. When it comes to workmen and employees, that period is just 12 months. So, the Committee has suggested that that be increased to 24 months because after all our workforce is the backbone of our country. Apart from that, another suggestion that the Committee has had and I think most of us were unanimous on it and Mahtabji has even spoken in the public domain about it is if we could cover the aspect of cross border insolvencies. We have inserted a new Section. I think it is Section 233A that where the Government of India once this Code comes into effect can actually enter into an agreement with any other nation or a country for the implementation of Code. Today, again as in the Kingfisher case, we have seen that we are going to face cross border insolvency issues.

Now I come to last point which I feel I may not be able to grasp as a Member of the Committee. It seems that the Government's vision about information utilities is that anybody can apply to the relevant Authority, register itself as an Information Utility, keep all the information and then anybody can go and apply for information. But what I would like to understand from the Government is that why can we not have one agency under the Government of India or at least under the supervision or aegis of the Government of India like we have Registrar of Companies rather than having multiplicity and especially in case of information which is trying with a aim to make it transparent so that anybody who is claiming as a creditor from the Company has the relevant information? I wonder why we are giving a facility of many people setting up an Information Utility as opposed to a single entity under the supervision of the Government so that whatever information we get from that agency is authentic and is correct and serves the purpose it meant to.

So, with these observations I end my speech. I would again like to say Madam, that often as a young parliamentarian, I am asked as to why Congress is stalling the GST and Parliament. It is a public perception problem. Therefore, I had started my speech by saying that I am elated to be taking part in a debate for a Code or a legislation which I think is an important reform and my Party supports it. I hope it will be perceived as a constructive move by the biggest opposition party which is my Party.

SHRI TATHAGATA SATPATHY (DHENKANAL): Madam, I am on point of order under Rule 77(2). We are discussing the Insolvency and Bankruptcy Bill 2015 after the Joint Committee's report. Now it is 2016. So, it came in December, that is why, there is difference in the year. But the JPC report has not been made available. It was not there yesterday.

This needed at least a minimum of two days.

HON. CHAIRPERSON: Hon. Member, I will look into it afterwards.

SHRI TATHAGATA SATPATHY: Madam, but we are discussing this. This is a very complex Bill. This is not an easy thing and we have to first read it and understand it. The JPC took a long time and we did not even get the mandatory two days. It is a huge report and the Bill is also very complex. Till yesterday it was not available. I can be overridden saying that it was available but I did not take it. That is one thing. But I have enquired. It was not there and therefore, this should have been at the counter. JPC reports probably are not sent home. It should have been available at the counter. I do not think even the hon. Member from the Congress party also does not have the Report.

श्री अर्जुन राम मेघवाल (बीकानेर): मैडम, रिपोर्ट टेबल कर दी गयी है। 28 तारीख को रिपोर्ट टेबल हो गयी है और उसके बाद वह पब्लिकेशन काउंटर से ली जा सकती थी।

HON. CHAIRPERSON: Hon. Member Shri Meghwal says that it was laid on the Table of the House on the 28th April, 2016.

SHRI TATHAGATA SATPATHY: It was laid. I am not taking up cudgels. Please do not misunderstand me. It takes a little bit of time to understand but that time has not been given. That is all I am saying. I am not disrupting the proceedings.

श्री अर्जुन राम मेघवाल : रिपोर्ट हाउस में टेबल होने के बाद पब्लिकेशन काउंटर से ली जा सकती है। इसकी रिपोर्ट लोक सभा की साइट पर भी उपलब्ध है।

PROF. SAUGATA ROY: Madam, my point of order is with regard to rule 96 (2). This is regarding Money Bills. If a Bill other than a Money Bill passed by the House and transmitted to the Council and is passed by the Council without amendments, the message received from the Council to that effect shall be reported to the Secretary General. Please read the earlier one. The Secretary General shall certify on top of the first page of the Bill the following – provided that if it is a Money Bill within the meaning of article 110 of the Constitution, the certificate by the Speaker shall be endorsed at the end of the Bill in the following form: 'I hereby certify that this Bill is a Money Bill within the meaning of article 110 of the Constitution of India.'

Madam, now the original Bill was placed in this House on 21st December, 2015. On 23rd December, 2015 we decided to refer it to a Select Committee of the House. The Report of the Select Committee has come and it has been available to some and it has not been available to others. But we have not been given a Bill in a new form. The title of the original Bill was Insolvency and Bankruptcy Code 2015 and now it is 2016. So, it should be Insolvency and Bankruptcy Code 2016. If it is a Money Bill, then we have not got any Bill with the Speaker's certificate because hon. Speaker is the final authority to decide on whether a Bill is a Money Bill or not. I would like to know as to where is the certificate.

15.00 hours

THE MINISTER OF FINANCE, MINISTER OF CORPORATE AFFAIRS AND MINISTER OF INFORMATION AND BROADCASTING (SHRI ARUN JAITLEY): Madam, I think, Prof. Saugata Roy has been preoccupied for the last three months in West Bengal.

On 21st December when it was tabled, there was a request that it may be referred to a Standing Committee. In the debate on the 23rd itself, on an objection raised by Prof. Saugata Roy supported by Shri Mahtab, I had clearly said that we are not pushing it as a Money Bill. It is not a Money Bill. So, please be content on this that it will go for approval to the other House also.

Secondly, the best evidence of that is, this is not a Select Committee of this House. This was a Joint Committee of both Houses. So, Rajya Sabha has also been involved in the drafting of it.

The third response to what you say is, a Joint Committee does not report to the Government and Government move an amendment. The Joint Committee reports the Bill to the House itself. So, the Joint Committee on the 28th that is, eight days ago, reported it to the House and while reporting it to the House, they corrected 2015 to be 2016 itself.

Since you were busy elsewhere which is quite understandable as a part of democracy, I thought that I will update you on the facts.

PROF. SAUGATA ROY : I am happy that the hon. Minister has taken note of our business with the State elections in West Bengal.

Is it the procedure now that after the Joint Committee submits its Report, the Bill will not be freshly brought incorporating the amendment? It is because today, we had the Finance Bill which was passed. What happened then? Shri Arun Jaitley, the hon. Finance Minister, brought in the amendments one-by-one. Hon. Speaker asked for permission for each of the amendments.

Now, you are bringing a Bill with many amendments. You are accepting the Joint Committee Report *in toto*.

HON. CHAIRPERSON: There is no amendment in this Bill.

श्री निशिकान्त दुबे (गोड्डा) : इसमें अमेंडमेंट नहीं दिया जा सकता, आपकी पार्टी की तरफ से कल्याण बनर्जी साहब उसके पार्ट थे। ... (Interruptions)

HON. CHAIRPERSON: Nothing will go on record.

...(Interruptions) *

SHRI ARUN JAITLEY: Madam, let me clarify that there is a difference. When a Bill goes to a Standing Committee, the Standing Committee Report tabled in the House goes to the Ministry. The Ministry may or may not accept those amendments. But when a Select Committee and a Joint Committee tables a Report, it reports to the House and the Bill as amended is brought by the Select Committee or the Joint Committee to the House. So, the Joint Committee, in this case, has submitted a Report to both Houses of Parliament in the amended form. The Government has

proposed no amendment and we have accepted it *in toto*.

PROF. SAUGATA ROY: So, there are no amendments and that is the Bill. ...(*Interruptions*)

SHRI ARUN JAITLEY: Madam, the Government may, as a technical procedure, say that we are also accepting these amendments which Governments do but if the Government has to disagree with the Select Committee, then like any ordinary Member, we will also have to propose only an amendment.

SHRI P.P. CHAUDHARY (PALI): Madam, I thank you very much for permitting me to speak on Insolvency and Bankruptcy Code.

Earlier, this Bill was placed before the Floor of the House and was referred to the Joint Committee. After deliberation and hearing the stakeholders and experts and recording their evidence, a consensus was arrived at by the Committee and recommendations were made. A copy of the Report was placed on the Floor of the House.

I am happy that the Government has accepted the Bill in the amended form, as laid on the floor of the House, *in toto*.

Now a question arises as to what is the need of Insolvency and Bankruptcy Code. It is needed keeping in view the ranking of India in the Ease of Doing Business Report of the World Bank. According to the World Bank's Ease of Doing Business Report, out of 189 countries, India stands at 136. There is difficulty in the exit of business and the average winding up time is around four years.

There are as many 13 as enactments which deal with insolvency and bankruptcy and there is no single law in India which deals with insolvency and bankruptcy. The existing framework for insolvency and bankruptcy is inadequate, ineffective and result in undue delay in resolution on account of multiple fora, multiple enactments, conflict of law and conflict of judgements by various courts.

15.06 hours (Shri Hukum Singh *in the Chair*)

The basic objective of this Bill is to consolidate and amend the laws relating to reorganisation and insolvency resolution of corporate persons, partnership firms and individuals. Basically, it supports development of credit market and it encourages entrepreneurship. It would improve ease of doing business and facilitate more investment leading to higher economic growth, development of credit market. The provisions relating to insolvency and bankruptcy for companies at present in law we can find it in the Sick Industrial (Special Provisions) Act, 1985, the Recovery of Debt Due to Banks and Financial Institutions Act, 1993, the Securitisation and Reconstruction of Financial Asset and Enforcement of Security Interest Act, 2002 and the Companies Act 2013. So, to deal with insolvency and bankruptcy of a company, all these laws are applicable and it is very difficult for the creditors basically to invoke and proceed against the debtor.

Not only this. Under these various laws, various fora are there, like the Board of Industrial and Financial Reconstruction, (BIFR); the Debt Recovery Tribunal, DRT; National Company Law Tribunal, (NCLT). The DRT and the (NCLT) are also having the Appellate Tribunals. The cases are not limited just to these Tribunals. In the case of liquidation matters, one has to approach the High Court also because these Tribunals do not have the jurisdiction. For individual bankruptcy and insolvency because there is no answer in these laws, we have to go back to laws enacted way back in 1999, etc. These are Presidency Towns Insolvency Act 1909, and Provincial Insolvency Act 1920. For this purpose, there is no Tribunal and the courts have to deal with these matters. So, looking at the multiplicity of law and looking at the multiplicity of fora this Act is very necessary and I fully support this Code.

In the Code, we have used one expression, that is 'adjudicating authority'. Various authorities are there under the NCLT Act, and under the DRT. The Code basically seeks to designate authorities under the NCLT and the DRT as the 'adjudicating authority'. So, a single authority is there to deal with corporate persons, firms and individuals respectively for liquidation and bankruptcy. The Code separates commercial aspect of the insolvency and the bankruptcy proceedings from the judicial aspect. The Code also seeks to provide for establishment of Insolvency and Bankruptcy Board for regulation of insolvency professional agencies and information utilities. The Code also proposes to establish a fund to be called the Insolvency and Bankruptcy Fund, whereas at present there are at least 11 laws to deal with insolvency and bankruptcy. Through this Code, all the respective amendments have been carried out in all the 11 laws, like the Indian Partnership Act, Central Excise Act, Customs Act, Income Tax Act, the Recovery of Debt Due to Banks and Financial Institutions Act, the Securitisation and Reconstruction of Financial Asset and Enforcement of Security Interest Act, 2002, the Sick Industrial (Special Provisions) Repeal Act, 2003, the Payment and Settlement System Act, 2003, the Limited Liability Partnership Act, 2008, and the Companies Act 2013.

In all the enactments under the Code, it has been clearly mentioned that notwithstanding anything contained in these Acts, the provisions contained under this Code will have an overriding effect.

A special feature of this Bill is that this is applicable to all kinds of cooperate enterprises, limited liability partnership firm and individual. The scope of this Code is insolvency, liquidation and voluntary liquidation and bankruptcy, and the objective of this Code is to preserve by providing linear, time-bound and collective process; improve the time taken to return; failure to provide clear exit option to investor; increase recovery value; bring all insolvency, bankruptcy related cases under one umbrella; and to develop other avenues of financial businesses.

In case of default, the resolution process is also clearly provided under the Code. How to deal with resolution process? In case of default and appointment of an insolvency professional, this is the first step. Then comes the moratorium period from 180 to 270 days. If 75 per cent of the creditor is to approve, and if they say, 'yes', then they would implement the plan; and if they say 'no', it goes into liquidation.

If we look into the entire Bill, we can come to the conclusion that the key pillars of the Bankruptcy Code is this. First is the Tribunal; second is the

Regulator; then, insolvency professional, information utility and credit committee.

The problem of multiple fora. There are parallel proceedings and conflict. In a large number of court proceedings, we have seen that the cases are filed under different Acts and for different purposes. So, there is no question of resolution. The delay is one part; there is no credibility of the institution as such. I would like to mention only a few examples wherein with respect to an issue, cases are being filed.

Now I would like to cite as to how the problem is created. If a secured creditor filed an application in DRT for debt recovery, another creditor filed a petition for winding up, another secured creditor that lend fund enter into a Memorandum of Undertaking with the bank for bank to sell the debtor property and pay the secured creditor, then initiate proceedings for invoking arbitration; then secured creditor sister concern would initiate proceedings under the SARFAESI Act; then the unsecured creditor files a civil suit. With respect to one company, this is how multiple proceedings under various fora are there. This is the reason for cause of the delay. On account of this, the credibility is not being assured and the Ease of Doing Business is not enhanced.

How does it conflict? The conflict between SICA and Debt Enforcement law; the conflict between winding up proceedings and the SARFAESI Act; and the conflict between SARFAESI and RDDBFI Act. These are the conflicting institutes. To resolve these, a single Code is there. With all this, the problem would be resolved and the Ease of Doing Business would be enhanced.

There are many reasons for causing delay – on account of interpretation, etc. If we look into the Code, the entire Code is divided into five parts. Part one deals with the preliminary things including definition; part two deals with only insolvency liquidation and resolution of corporate matters. It is not applicable for the individual and partnership firm. Basically, it is also applicable to the State of Jammu and Kashmir. So far as part three is concerned, this is an insolvency liquidation resolution and for individual and partnership firms. This is not applicable for the companies. Part four and five are applicable for all. This Code has been compartmentalised in such a way that one can easily handle, operate and so easy to deal with it.

Now, for the protection of interests of labourers, instead of 12 months, 24 months of wages have been recommended by the Committee. This has been accepted because our Prime Minister believes that basically it goes to the poorest of the poor and he should get this benefit.

So far as the punishment part is concerned, in the clauses dealing with providing the punishment, the discretion has been given to the adjudicating authority either to impose imprisonment or fine or both. It is not mandatory that he can impose both these punishments and penalties together. So, one or all can be imposed. If we see the Code, a timeline has been provided. As regards the details of clauses, pertaining to timeline, it is clear that speedy justice will be there and there will be no delay.

Now I come to Clause 140. This is very important. This clause deals with disqualification of even a Member of Parliament or a Member of State Legislature. Even an MP or an MLA can be disqualified from bankruptcy commencement day. This provides that the bankrupt shall, from the bankruptcy commencement day, be subject to disqualification mentioned in this, clause.

It is provided that the bankrupt shall, from the bankruptcy commencement date, be subject to the disqualifications mentioned in this section. In addition to any disqualification under any other law for the time being in force, a bankrupt shall be disqualified from being appointed or acting as a trustee or representative in respect of any trust, estate or settlement; or being appointed or acting as a public servant; or election. If he becomes bankrupt and election is held afterwards, this is applicable. But once election is held and he is elected and thereafter he becomes bankrupt, then this provision is not applicable. But on account of passage of time, I request the hon. Minister to add the words, 'or for being elected' because this is also provided in Article 102 of the Constitution of India.

HON. CHAIRPERSON: Please conclude.

SHRI P.P. CHAUDHARY: I will conclude now.

So, this provision makes it clear that a bankrupt can be disqualified and he is not entitled to contest the election. But the analogous provision as provided in the Constitution, namely, 'for being chosen as and for being' if these words are included, then it will cover both the situation, pre-election and post-election. In case of bankruptcy before the election, he cannot contest the election and if he is a bankruptcy after the election, he will be disqualified. Therefore, this provision requires to be looked into again and my suggestion may be considered by the Government.

HON. CHAIRPERSON: I request you, please conclude now.

SHRI P.P. CHAUDHARY : Sir, I will conclude.

Sir, this Bill also provides model by-laws with respect to all the agencies and so there will be no conflicts in various by-laws enacted by them.

After this Code comes into force, it is necessary to establish sufficient number of National Company Law Tribunals, Appellate Tribunals, Debt Recovery Tribunals, Debt Recovery Appellate Tribunals etc. This is required because once this Code is implemented, then all the pending cases will be transferred to these tribunals. Besides this, if both the NCLT and DRT are located at the same place where the civil court are located, it will help the lawyers to appear in these cases and delays can be avoided.

Further, adjudicating authorities and the professionals are required to be given proper training. Awareness should be created among all the stakeholders. Then only we can we implement this Code properly.

As far as the Board is concerned, it has the power to regulate the professionals and framing of regulations. This is one of the salutary Code which need to be passed unanimously by this House. In addition, two Clauses 233A and 233B have been included in this Code by the Committee with respect to cross border insolvency, which are very much required because, these were earlier not there. I appreciate the action of the Government

that without any objection they have been included. I fully support the Insolvency and Bankruptcy Code, 2016. Thank you, Sir.

PROF. SAUGATA ROY: Sir, I rise to speak on the Insolvency and Bankruptcy Code Bill, 2016. As you know, this Bill was placed in this House and debated. We had then taken a position that it should not be directly passed. The Finance Minister was in a hurry. In the face of our objection, the Bill was referred to a Joint Committee of Parliament. On 23rd December. The Joint Committee has submitted the Report.

Sir, I will tell you just one small experience of mine. In earlier part of my life, I was involved in trade unions. In the late sixties and seventies, in Bengal we faced the problem of sickness of industries. One after another, industry used to be closed down. Some were taken over by the then Government of India under Mrs. Indira Gandhi, but there were other companies which closed down. We had to go to the High Court, to go to the liquidator to get the dues of the workers.

Then the Sick Industry Control Act (SICA) came into being. The Board of Industrial Finance and Reconstruction (BIFR) was set up and its appellate organization was also set up. Now, again BIFR did not prove to be too successful in reviving companies which were facing closure. As trade union leaders, we had to run from pillar to post to get the workers' dues. After all the fears, the problems turned from the workers dues to the problem of banks. Workers' dues are not given that much importance by any Government. But when it came to the problem of banks, the Governments were more active, as a result of which the Debt Recovery Tribunals were set up under the law called 'Recovery of Debts Due to Banks and Financial Institutions Act, 1993'. So that was a way in which banks could get their debts quickly. But this problem of insolvency of companies, their bankruptcy continued to haunt the successive Government. Then we had what is the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002. It is called the SARFAESI Act.

As I said, the Sick Industry Control Act gave rise to BIFR, one legal body. The Debt Recovery Act gave rise to the Debt Recovery Tribunals. Then, the SARFAESI Act gave rise to asset reconstruction companies, all in case that what will happen if a company closes down. How will the creditors be paid? How will the workers receive their dues? So, even that has not proved satisfactory. So the Government has moved one step now; they have brought the Insolvency and Bankruptcy Code. This again speaks of setting up of a new sort of entity. These entities are called the Insolvency and Bankruptcy Board with 10 members. So, from one authority, we are setting up another authority. But the problem of sickness remains and workers are the most affected. I am thankful to Mr. P.P. Chaudhary, Sushmita Dev and other Members of the Committee. At least while forming this, finally submitting the Report, they kept the workers interest in mind.

What was not in Jaitley's original Bill has now been incorporated thanks to the Standing Committee. What is the Report of the Standing Committee? They have asked for amendment of Clauses 36(4) and 155(2). The Report says:

"The Committee after in depth examination are of the view that provident fund, pension fund and the gratuity fund provide the social safety net to the workmen and employees and hence need to be secured in the event of liquidation of a company or bankruptcy of partnership firm. The Committee, therefore, feel that all sums due to any workman or employee from the provident fund, the pension fund and the gratuity fund should not be included in the liquidation estate assets and estate of the bankrupt."

Again, Clause 53(a), (b) and (c) has also been sought to be amended by the Committee. They said that secured creditors and workmen's dues for 24 months and then other employees' dues for 12 months will be having equal charge. This was very important so that secured creditors did not get a preference over the workmen dues. I know that in spite of this, Mr. Jaitley or Mr. Sinha may say: "We are improving the ease of business. We are creating an exit route. We are creating a good policy." But I will tell you from my experience that that sickness will not go and this closing down of factories will not stop. It is because in our country the strange thing is that only those companies will survive which have got an absolute monopoly or which require large capital investment like automobile companies. If you observe all Government laws – we have framed many laws – then everything will become costlier. Take for instance, a brick, to build a house, costs Rs. 2. The brick kiln owners do not observe any law. If they implement all the laws in the country, the bricks will cost Rs. 4. Then, they will not sell them and then they will close down. We have to think of ways in which we can make our business viable and profitable so that they can learn. Otherwise, there can be a plethora of legislation. It will not resolve the problem of sickness.

I have asked people abroad. In America, so many companies go sick. Mr. Jayant Sinha has the degree from the Harvard Business School. But in America a strange thing was there. It was called Chapter-XI of the Bankruptcy Code. According to that, anybody could go to the Bankruptcy Board and say: "I have become insolvent." So, he could go on running his business without paying any dues. Some companies deliberately went for insolvency so that they do not have to pay their dues. We should see this. One good thing about this Bill is that it specifies the time limit. In America, there was no time limit in the Chapter-XI of their Bankruptcy Code. In our Bill 180 days time limit has been fixed and at most 90 days extra time can be given. I think, this is a good feature.

Sir, I will be very short because the Government is in a hurry. What does this Bill envisage? We will understand that. This Bill envisages that when a company is going bankrupt, it can go to any Insolvency Professional. The management of the company then be taken up by the Insolvency Professional. Now, where will the Insolvency Professional come from? They will come from insolvency professional agencies. Now, a new concept has been made that creditors will form a committee. They will sit along with the insolvency professional and decide to restructure the debt or liquidate the company. Earlier the only place for liquidation was to go to the High Court.

HON. CHAIRPERSON: Please try to conclude now.

PROF. SAUGATA ROY: I will be very short. In fact, I am compressing my speech into a few sentences.

Now, there will be the National Company Law Tribunal or DRT. An individual may go to DRT. A company will go to the National Company Law Tribunal. Then, there will be liquidation. Either reconstruction will be approved or liquidation will take place, and then priority in distribution of assets will take place. Maybe I am very doubtful whether this will end the problem altogether.

Now, this Bill leaves certain questions in my mind. I am not very clear as to the purpose of establishing the Insolvency and Bankruptcy Fund because the Government is to put money into the Insolvency and Bankruptcy Fund. What is the purpose? It has nowhere been stated as to why they are setting up such a Fund. They are saying that they will have interim regulator. In case all these Boards are not set up, then you will have interim regulator like IRDA. I do not know whether it is necessary. If this Bill is passed now and implemented in full, then interim regulator will not be necessary. So, all these bodies are to be set up. Only then this process can start.

I may inform the Minister – he must be already aware – that your DRTs are overloaded, and everybody who goes there asks for six months' time and things get delayed, here at least ...(*Interruptions*)

HON. CHAIRPERSON: Prof. Saugata Roy, please conclude now.

प्रो. साँगत राय : सर, मैं इतना ही कहूँगा कि बिल ज्वॉइंट कमेटी से आया है।

The Joint Committee had Members from all Parties. Kumari Sushmita Dev, Shri P.P. Chaudhary, Shri Kalyan Banerjee, Shri Mahtab and other Members were all in that Committee. They are thoughtful people. They are our representatives. They have given a final Report. Their Report makes the Bill better. One other addition that they have made is that off-shore companies have also been included in the purview of this Bill. Earlier, only national companies were included. But the main problem is about one issue on which we are fighting and that is NPAs of the banks. Will they decrease? Vijay Mallya goes abroad, with the Government's knowledge maybe, with Rs.9,000 crore dues. ...(*Interruptions*) He has now resigned from Rajya Sabha. He is a private citizen now.

Sir, you know, today the Finance Minister was defending the defaulting steel companies and also infrastructure companies. If a poor man takes a loan of Rs.10,000 and tries to run away, five bank officers will land at his place. Now, there are steel companies which are owing Rs.10,000 crore to the banks and their infrastructure companies are owing more. The Minister should also think of resolving this problem.

Lastly, the Minister has not clarified one point. Maybe he will clarify in the Rules as to who will be the insolvency professionals. Will they be Chartered Accountants or Cost Accountants or Company Secretaries? That point has not been dealt with in this Bill. All of them are good because they are qualified people.

Sir, I support the Bill and thank you very much.

HON. CHAIRPERSON: Shri Tathagata Satpathy ji, please conclude your speech within seven minutes.

SHRI TATHAGATA SATPATHY (DHENKANAL): Sir, I will speak only a few points. I will not go into the details. Sir, as you know, the Committee Report came out on the 28th April, 2016.

Today is the 5th of May, 2016. It is not even a full week, after six or seven days. The original Bill whether of 2015 or 2016 was of about 113 pages. This JPC Report is of 100 plus pages. It took me time to understand it because I am not a financial wizard; I do not understand matters of finance and of company *heraferi*. So, this is completely to do with a lot of misdeeds.

What I understand is that there are two types of insolvency. There are two issues, we have to handle. One is, somebody who is a defaulter because of inefficiency or because of lack of knowledge of how to run a company or how to handle his corporate affairs. The other is the fraudulent one, who has consciously tried to hoodwink the system – hoodwink banks or Governments, and tried to run off with money that should ideally not have been available for him.

Sir, this Bill is trying to address insolvency but without really very clearly defining where exactly we want to take this country. First of all, what I understand is that you have to encourage entrepreneurship in this country. You cannot bring about a reservation in entrepreneurship. Reservation can only be in jobs. How many jobs can you produce? So, to counterbalance that, with your limited ability to produce jobs, whether in the private sector or in the

Government, you want to encourage people who have the ability to do business, to succeed and who can create jobs. We want the job creators and not the job munchers. So, with that, you have to clearly define category A, category B – who is a cheat and who is a genuine failure. That has not been clearly spelt out in this Bill.

Sir, there are the Information Utilities, about which my previous speakers have clearly mentioned. I was never a Member of this Joint Parliamentary Committee. I am sure, my colleagues from both the Houses have definitely put in a lot of efforts and have tried their best to address the problems that have cropped up with the original Government Bill. But as far as I could read this 100 plus pages Report of the Committee, it has not been able to deal with all the problems.

Sir, to finish it quickly, about the Information Utilities, there will be a multiple of these Information Utilities. That is very clearly spelt out here. Regarding these Information Utilities, eventually, the Indian mindset has to be taken into account. If I have some information, I am not going to volunteer that information out to you. So, I will try to silo it; I will try to hold it onto my own axis. So, when this information is siloed by this Utilities, as yet, we do not have bank computers talking to each other in India. We are in the 21st century. We heard, when these people were in power, that in the Eighties, computer age was supposed to descend on India. We bought a few laptops. But today also, our banks do not talk to each other. That is the primary difficulty arising out of that for which, a mischief monger, a mischief creator is able to take loans from various banks, various financial

institutions whether as creditors or whatever other excuse. Because they do not talk amongst themselves, these individuals or these companies are able to cheat all of them.

Therefore, when you are forming these Information Utilities, you have not mentioned how they should be joined together that their information is available to anybody, who puts in a single query to one Information Utility and gets the complete picture of an individual or of a company. That is not very specific in this Bill.

So, I would like to know whether the Government can assure this House that loan shoppers' information will be entered by all the parties involved. Suppose, let us say, the State Bank of India gives a loan to a person and then that person goes to the Bank of Baroda or Andhra Bank, will the State Bank of India enter all the details? Is there any mandatory law for that? It is not spelt out very clearly. Is the platform equal for all? Will the information be available to each other? Like for credit cards, you have CIBIL. Are you contemplating that? Like the lawyers are managed by the Bar Council, doctors are managed by the Medical Council of India, how do you plan that these information professional associations will be managed? What is the authority that is going to manage them? How many layers of command will you create that they will be managed and who will manage them?

One thing we have seen with our Indian mentality is that if I can hide some information, in this way, many senior, very top rank officials have been involved in these misdeeds. They have hidden the information by which banks have been duped by individual investors. So, what is the system you are putting into place that a certain person or a certain group of people or a certain institution will not eliminate certain data, certain information and enable another person to go ahead and create the mischief? There is no such system that you have put into place. There are several laws and institutions which regulate insolvency resolution for companies in India. There is a Sick Industrial Companies Act, Recovery of Debt due to Banks and Financial Institutions Act, SARFAESI. Then, we have the older laws Presidency Towns Insolvency Act and Prevention of Insolvency Act and all these regulate insolvency resolution for individuals.

To come to another point is the liquidation process. You have the order of priority. Here it says that secured creditors will receive their entire outstanding amount rather than up to their collateral value. This is unclear. Why are you doing that? Then, unsecured creditors have priority over trade creditors. Finally, what really bothers me that we are dealing with the tax payers' money. I have been insisting on this. We have to forget saying these are the Government funds. There is no Government fund. The Government does not have money of its own. It prints the money. You give it to me. It is my money. You are taking money from me. So, the Government dues will be repaid after all unsecured creditors are clear. Why should the Government funds not be cleared first? Why should the taxpayer bear the brunt of some criminal who is duping the banks, who is duping the institutions? Why should I as a tax payer suffer for that?

One colleague had asked about what was the insolvency fund that you had created. There are no clear guidelines as to how the fund will be funded and how the fund will be used.

Sir, you must have read in the newspapers recently that the biggest punishment that we can give in this country is that the insolvent person or somebody who has duped banks cannot contest for a public office, cannot become an MLA or an MP or a Sarpach. Does everybody who is duping banks or who is trying to run away with money, want to fight elections? So, the Government has to come out with more clarifications and before winding up, I would like to state here that there are many other points but because of paucity of time, I am cutting that short. All that I am saying is that I am extending all my respect to the Members of the JPC. I still feel that this Bill is a haphazard Bill and I am not able to support this Bill.

SHRI ANANDRAO ADSUL (AMRAVATI): Sir, I rise to support this Insolvency and Bankruptcy Code, 2016.

First of all, I will go to the borrowers. There are various types of borrowers. Out of them, there are corporate borrowers, partnership borrowers and individual borrowers. The money lying in the bank is of the common persons. Out of these borrowers, some of the borrowers are defaulters. There are two types of defaulters. One defaulter is natural defaulter, and another is willful defaulter. It may be corporate, partnership or, otherwise individual. They borrow money from the banks or financial institutions. Whenever the question of repayment is there, they are not repaying the money on time or, otherwise, they are not in a position to pay for ever and ever.

The first type of borrower, that is, the natural defaulter, whose industry or business collapses, is unable to repay the amount to the bankers sometimes when natural calamity comes. Sometimes, due to lack of upgradation of the machinery, his produce is not competent in the market and he goes on incurring loss. Sometimes, there is mismanagement. The other type of borrower is the willful defaulter. He is not in a position to repay but he is in a position to cheat and he manages the bank executives or the executives of the financial institutions.

I will bring to the notice of the House and the Minister that in 2002 there was NDA Government under the leadership of respected Shri Atal Bihari Vajpayee. Day by day the NPAs of the banks were increasing. Then, the Finance Minister went to the root of the problem and he had brought one solution, that is, Securitization Act and simultaneously one time settlement scheme. It was very much helpful to all the public sector banks. The NPA was reduced like anything. This is the situation today, and this Bill is definitely taking a very important part of it.

If we see all the bankruptcy and insolvency matters, there were various connecting laws numbering about 30. If I read, it will take time. Sir, you are giving me a very little time. But none of them was effective in dealing with insolvency and bankruptcy matters. That is why, the hon. Finance Minister, Arun Jaitley Ji went to the root of the problem. This was the problem. He has brought this Code, that is, Insolvency and Bankruptcy Code, 2016. Earlier it was in 2015. Now it is 2016.

This Bill was introduced in the month of December in the Winter Session. I had also got an opportunity to put my thoughts on that Bill. But our senior and well-studied Member, Mahtab Ji had requested the Government to send this Bill to the Standing Committee. Accordingly, so many Members supported this and it was sent to the Joint Committee. The Joint Committee has given so many recommendations. Out of which, important recommendations are incorporated in this Bill.

Earlier, the problem of NPA was there in our country. Today also we are facing this problem again. As I told, there are wilful defaulters in our country. I will not take their name. But, the owner of Kingfisher Airlines, the Wine King and the ex-Member of Parliament of Rajya Sabha is a big defaulter, who has cheated the banks with not Rs.1000 or Rs.2000 crore but with Rs.9400 crore.

As I initially told, there are many borrowers, who manage the bank officials or executives, declare their company or partnership firm insolvent or bankrupt and get relief out of it. But what about their companies; what about their assets? What happens to the workers? They are exploited and their families come on road. Today, if we see, we will find that there are many companies in various sectors – whether it is steel, sugar, chemical and fertilizer or any other – which are weak and are on the path of liquidation. Who is responsible for it? Workers are definitely not responsible for this.

HON. CHAIRPERSON : Please conclude.

SHRI ANANDRAO ADSUL: Sir, I finish in just two-three minutes.

The hon. Finance Minister has taken care of the employees in the original Bill. The Standing Committee has given a few recommendations which have been added in the Bill. I would like to read it here. It says that whatever assets of the debtor are there, first of all, the workers' provident fund, pension fund and the legal dues will be given priority. So, he has taken proper care of it and I am very much thankful to him for it. For this purpose, there is a committee, which consists of financial creditors. As per the recommendations of the Committee, the committee will take decisions in a time-bound manner. Accordingly, the liquidation of the company or partnership firm will take place. In the voting process, the professional creditors would not have the right to vote. There are many more good things which the hon. Minister has adopted in the Bill.

Due to time constraint, I would again say that the hon. Finance Minister has gone into the root of the problem and has brought this Insolvency and Bankruptcy and Code. With these words I support this Bill. Thank you very much.

SHRI JAYADEV GALLA (GUNTUR): Thank you, Chairman, Sir, for giving me this opportunity to speak on this very important subject on the Insolvency and Bankruptcy Code, 2016.

Sir, this is an extremely important piece of legislation and it could not have come at a better time than this considering the goals that this Government has and this country has for economic growth and prosperity. It certainly brings the ease of doing business and makes it much better than it has been before. Possibly after the GST this may be the most important piece of legislation for ease of doing business.

Sir, we sat, under the chairmanship of Shri Bhupendra Yadavji, for almost 11 sittings over four months to deliberate clause by clause the entire Code. I echo the sentiments of my colleague Sushmitaji who said that it was a very good atmosphere, the Chairman was very fair and gave everyone a chance to talk. I think, every Member participated quite effectively, without any major disagreements. I think, we came to some good conclusions and a good consensus on almost everything that was discussed.

Sir, I will just make a few comments in very short. The key to this Code's working is the new system and structure that is being created - right from the Insolvency Board to the insolvency resolution professionals, the agencies, the information utilities and various things that have been envisioned. I would only like to say that on paper, it looks very good, but I think, the implementation is going to be the key and quite challenging.

We are planning on starting a new class of professionals in India. In that way, it is very historic also. Just like chartered accountant or company secretary, insolvency professional will be a similar type of professional qualification that someone will have to attain to play this role. So, the first thing is creating this whole new class of professionals throughout the country. We will have to ensure the speed at which that can be done with the quality that is required because a lot rests on the shoulders of these professionals. The entire resolution process, insolvency process depends on the capability of these individuals. So, how long will it take to create such a class of individuals to cover so many different cases is one great challenge that we are going to face? I hope, we are up to it.

Sir, there are 43,000 cases pending before DRTs and nearly Rs. 1.4 trillion are stuck as per the latest data which is of March, 2013. So, by today, it may be even higher. This is the scale of the problem that we are looking at. These are the type of things which need to be resolved at the earliest.

This Code calls basically for finding early warning signals by reviewing the finances of all the companies that are registered in India. This is what the information utilities will be doing. I think that if that system works well, then detecting difficulty early and being able to address it is going to help many companies, which otherwise might have become sick, from becoming sick also.

There is a fine line between genuine cases and fraudulent cases. I think that is one big challenge that this Code may not really address adequately at the moment. I do not remember the number and I apologise for that, but I heard that something like one-half or one-third of all the companies in India are in financial distress. If that is the scale of companies in India which are detected by early warning signal to be under financial difficulties, that is also the number of people who will have to go in and support these companies. If we do not distinguish between genuine cases and fraudulent cases, it will not help. I think, it is very easy to liquidate but very difficult to revive and very difficult to start a new company also. So, we have to ensure that the focus is on revival first before it goes into liquidation. I think, that is something which this Code does not address sufficiently. I would request the Finance Minister to look into that.

I think, one of the earlier speakers also referred to the Company Law Board. We know the experience of trying to transition to the National Company Law Tribunal since 2013 and it is still not done. I think that is another example of what we should avoid while setting up the Insolvency Board and creating these professionals.

Sir, I would like to make one point regarding personal guarantees. It is not actually part of this Code, but I think, it is related. Therefore, I would like

to bring it up. When a company goes for a loan to a bank, it is very common for the bank to insist on personal guarantees of the promoters. By taking a personal guarantee, the whole idea of limited liability company is lost.

16.00 hours

If the promoter has to sign a personal guarantee then that means his entire assets are at risk aside from what he is trying to do in the business.

I would just like to give the example of a company like Tesla. When will we ever have an entrepreneur like Elon Musk to setup a company like Tesla in India if they have to provide personal guarantees? This company has been in existence for more than 10 years and I think that it has made profit only in one year. It is definitely in financial difficulty from a profit and loss point of view, but the market cap is huge and therefore it continues to survive. But such a project, which is of such importance to the society at large, the whole world if not just one country, and if the system discourages somebody to start a company like that, then I think that we need to look at the system and make sure that we correct it.

My personal experience also is that even with companies with assets and which are making profit, lately -- may be as a response to the Kingfisher issue that many people spoke about and all the NPAs in the banks -- the banks are insisting on personal guarantees. I think it goes against the very nature of entrepreneurship and discourages entrepreneurship. I would like the Minister to please look into it and see as to why are banks suddenly tightening up on promoters and insisting on personal guarantees. Thank you, Sir.

SHRI JAYANT SINHA: Sir, I would just like to clarify an issue. My good friend, Jay, who was talking about Tesla as an example of risk-taking and entrepreneurship, this Bill is intended to look primarily at creditor rights, operational creditor rights, workmen's rights and so on. The kind of financing that he is talking about for Tesla is typically done by equity financing, which is the high-risk financing that we need. Of course, we as a Government have done a whole host of things to build up the domestic venture capital industry and also to encourage risk-taking in India. So, that is an example of equity financing and not debt financing. This is primarily about debt financing.

SHRI JAYADEV GALLA: Sir, I would just like to make one more point.

HON. CHAIRPERSON: I think that it is enough now. You have raised your point and it has been answered well.

SHRI JAYADEV GALLA: Sir, I wanted to talk about accountability of banks. I think that now the entire attention on NPAs is putting the blame on promoters. I think banks also have to have some accountability. They are reviewing business plans and approving business plans. So, they have to take some share in the risk. Therefore, this personal guarantee should not be insisted on. Thank you, Sir.

HON. CHAIRPERSON: The next speaker is Shrimati Kavitha Kalvakuntla. Kindly try to conclude within five minutes as we are short of time.

SHRIMATI KAVITHA KALVAKUNTALA (NIZAMABAD): Thank you, Sir, for allowing me to speak on such an important and very progressive legislation.

इंडिया में जो एंजिस्टिंग फ़ैमवर्क इन्साल्वेंसी सॉल्व करने का है, ऑन एन एवरेज 4.3 साल एक कंपनी का इश्यू सॉल्व करने में लगता है, कई तो ऐसे ही 20 साल से अटके पड़े हैं। But now, this new Bill proposes to solve all these issues and probably put us on par with the global standards. I believe that this is very important because इज़ ऑफ़ डुइंग बिजनेस में एक महत्वपूर्ण क्वाइटेरिया है, यह बिल पास होने के बाद अचानक वर्ल्ड बैंक रेटिंग में इंडिया का नाम ऊपर जाएगा। हमें बाहर से ज्यादा इन्वेस्टमेंट भी मिलेगी and within the country also if an insolvency case can be solved within nine months or a year वह मनी जिस बैंक ने दिया है, वापस उस बैंक को जाएगा so that this bank can again re-loan this money to some other entrepreneur. यानी इन्टरनली देश में एन्टरप्रायोजर्स को बेनिफिट होगा और बाहर भी हमारे देश का नाम शेज़न होने के चांस हैं।

I am optimistic, but a little cautious because इस बिल में दो पहलू हैं। One is mainly the very procedure of the insolvency itself, and the other one is the infrastructure that this Bill aims to create. The very procedure of insolvency is a wonderful thing. You have moved away from the age-old approach of solving these issues inside a door. You have opened it and you have now formed a Committee called the Committee of Creditors. इसमें बहुत ही अच्छी बात यह है कि इसमें एम्प्लायर्स को भी चांस मिलता है to participate, although they cannot vote.

Another very very important thing about this Bill is that earlier it was only a prerogative of a creditor who could have initiated this insolvency process, but now अगर कंपनी के किसी एम्प्लॉई को ज्यादा दिन तक सैलरी नहीं मिलती है, then he can initiate it.

Here, I had a question and if you could answer to it. As regards the broad definition of an operational creditor you have said that it is workers, employers and suppliers. अगर किसी सप्लायर को भी ज्यादा दिनों तक पैसा नहीं मिलता है तो वह भी इस प्रोसेस को इनीशिएट कर सकता है। That is not clearly mentioned in the Bill. If that can be the case, then it will help the medium range business to quite an extent. Of course, as आनंदराव जी ने कहा है कि वर्कर का पीएफ का जो पैसा है, उसे आपने सिक्कोर किया है। क्रास बार्डर इनसोल्वेंसी के बारे में मेरा एक प्रश्न है। This Bill says that cross-border insolvencies are allowed, but only with countries which also have a similar law in their country. हम अपने देश में केस देखते हैं कि बहुत-से मीडियम रेंज के बिजनेस करने वाले वाइना से बहुत साया सामान मंगाते हैं। They go to China, see a piece, book an order and come back, but the container comes with an entirely different shipment altogether. Is there any protection for our own businessmen against duping companies from abroad? How do we address that issue? Does this Bill take care of that thing at all? क्योंकि मीडियम बिजनेस करने वालों के साथ अगर ऐसा हो जाए तो उन्हें अपना बिजनेस बंद ही करना पड़ता है। In that case, it is not the problem of the investor as he is not wilfully defaulting. So, is there any protection offered? That is another issue which the Minister may address.

16.06 hours (Shri K.H. Muniyappa *in the Chair*)

Regarding the infrastructure that you have created, majorly, you have proposed three infrastructure areas. One would be the bankruptcy and insolvency adjudicator. Of course, there is already a certain mechanism. We already have a few DRTs, but we also know that these DRTs have a host of cases pending and they are not up-to-date. They are also not manned properly. अभी नए एनसीएलटी को प्रोज़ किया है लेकिन इसके ऊपर आपने और एक लेयर क्रीस्ट की है। It is bypassing the High Court. But all said and done, we can still go to the Supreme Court. Once a defaulter agrees to everything, all this process happens. एक साल के बाद फिर वह सुप्रीम कोर्ट जाएगा तो what do we achieve at the end of the day is another question. Of course, there is a very urgent need to revamp the facilities of these things. Then, there is an Insolvency Regulator which you have proposed and you are creating a new set

of Insolvency Personnel Agencies and Agents also. उनको कैसे मोनिटर किया जाएगा, उनका मोरल कोड आफ कंडक्ट क्या है; These are all to be definitely very sharply.

Lastly, I do have one serious apprehension about this Information Utility that you have created. Why do we need an Information Utility? You already have the RBI. RBI is our biggest Information Utility. We are not simply giving away the information. The rest of the banks which are supposed to give away the information of the wilful defaulters, they are not doing it. Why does the RBI not give an express direction to all the banks which can probably give away this data? Why do I say this? I would like to bring to your notice that On July 15, 2014, the RBI issued a notification which is called '5:25' arrangement. In other words, it relates to flexible structuring of long term project loans. उसके तहत थोड़ी कम्पनीज ने बेनिफिट प्राप्त किया है, फिर उन कम्पनीज का क्या होगा? These are huge companies with Rs. 16,000 crore or Rs. 20,000 crore loans, which have restructured their loans up to 2030. What is the effect or how many companies have been benefited in that? Again, in June, 2015, there was an SDR notification which came out from the RBI, which allowed these lead banks to take up 51 per cent of the stake, but of course, these banks could not manage the business, so they had to give it back. Again, there are a few companies which have benefited from that. How do we address this issue is very important. Is this legislation retrospective? Will it at least look into issues from the time you came into power? That is very important. I hope you will address these issues.

Apart from that, मुझे एक ही बात कहनी है क्योंकि हमने अपने देश में देखा है कि एक बड़ी कम्पनी होती है, they invest in four companies at a time. Usually, the strike rate is such that तीन कम्पनी उनमें से बस्ट हो जाती हैं लेकिन एक कम्पनी फायदे में चलती है; अगर एक कम्पनी फायदे में चल रही है तो बाकी तीन कम्पनियों ने जो बैंक से लोन लिया है या कहीं मार्केट से पैसा लिया है nobody can go and take money from that profit-making company, but that is the sole case of the wilful defaulters. How do we address this issue? इस बारे में कहीं बात होती ही नहीं है; मैं गंभीरता से रिविस्ट करना चाहूँगी कि विलफुल डिफॉल्टर्स के बारे में आरबीआई ने क्या है which gives away huge room to leverage allowing these wilful defaulters to get away, I would request you to kindly address that issue. Thank you very much.

श्री मोहम्मद बदरुद्दोज़ा खान (मुर्शिदाबाद) : सर, इंसोल्वेंसी एंड बैंकप्टसी कोड बिल, 2016 आज इस सदन में प्रस्तुत किया गया है। यह बिल ज्वाइंट पार्लियामेंट्री कमेटी में चर्चा के बाद सदन में आया है। हमारे एक प्रतिनिधि उस ज्वाइंट कमेटी में थे। इसलिए इसमें विशेष करने की बहुत कम गुंजाइश है। फिर भी इसके संबंध में मैं कुछ बातें कहना चाहता हूँ।

Hon. Chairman, Sir, our Finance Minister just today told in this House that India has the world's fastest growing big economy. But it is a matter of great surprise that this big economy is not creating enough jobs for our crores of unemployed youth. So, it is a jobless growth.

On the other hand, non-performing assets are growing day by day. A liquor baron fled away and 17 banks are pursuing for 1.4 billion dollars owed by his collapsed Kingfisher Airlines. The same thing is going to happen in KG Basin Oil worth bank loan of Rs.20,000 crore. Till date, there are so many laws, but it is not easy to recover such huge amounts of NPA. Courts are there for taking legal action. But for some loopholes and complications of Indian laws, it is a never ending process. Finally, the lenders are frustrated going from High Court to Law Board and from BIFR to Recovery Tribunals.

There are dozens of Acts and laws to deal with insolvency and bankruptcy. Some of them are from 1909. In spite of that, there is a backlog of 70,000 liquidation cases still waiting for clearance. So, a new initiative of bankruptcy code is very necessary at this time.

There are some positive sides in this Code also. In the new Bankruptcy Code, it is a positive step that lenders do not have to wait until a loan is declared stressed. They can take action at an early stage.

There is also one other positive and huge step for banking sector that a time limit of 180 days is fixed for legislation. It will help the banks to reduce the stress on their balance sheet. The existing Debt Recovery Tribunals are not effective due to lack of expertise and staffing. They have also no time limit to dispose of the cases.

Finally, I just want to speak on Insolvency and Bankruptcy Fund. Two of our colleagues have already mentioned about this. I will conclude just by saying this. Here, it is mentioned that the deposits made in the Insolvency and Bankruptcy Fund will include grants made by the Central Government. My question is as to why the Central Government will deposit in this Fund. Why? Secondly, why will the persons be interested to deposit in this Fund? I want to know about these two questions from the Finance Minister.

With this, I conclude.

SHRIMATI BUTTA RENUKA (KURNOOL): Sir, I welcome this legislation on insolvency and bankruptcy which has been a long-overdue. After we opened up our economy and started soliciting investments from abroad, such investors have been making their investments basing on not only the returns on investments but also the statutory and legal framework for the protection and safety of their investments. The foreign investors basically looked at the ease of doing business with us.

Since I have commenced my role as a parliamentarian about two years back I have seen the sincerity and commitment with which the hon. Prime Minister and the hon. Finance Minister have initiated measures in doing away with number of redundant laws and in bringing in fresh legislation in the required areas which will remove the irritants and promote investments both from abroad. and within the country. This pro-activeness on the part of the Government is commendable and we look forward to more such initiatives to ensure efficiency in managing our economy.

Insolvency and Bankruptcy laws of our country have been the major bone of contention for many investors mainly because of the multiple number of laws and the time taken for the resolution of the dispute. This makes recovery of debts a cumbersome process. The multiplicity and redundancy of these laws are making mockery of our financial system.

India is a capital starved country and therefore it is essential that capital is not frittered away on weak and unviable businesses. Quick resolution of bankruptcy can ensure this.

The passage of this Bill will enable quick and prompt action to be taken in the early stages of debt default by a firm, maximising the recovery

amount. The creditors will not become victims of red-tape and promoters will directly become accountable for any financial lapses. Bankruptcy laws accept that business ventures can fail and allow entrepreneurs to get a fresh start.

Currently it takes, on an average, more than four years to resolve insolvency in India, according to the World Bank's Ease of Doing Business report. The new code seeks to cut down the time to less than a year. India is ranked 136 among 189 countries in the World Bank's ease of doing business index in the category of resolving insolvency. India's overall ranking is 130. This Act and similar other Acts in the pipeline will push not only the rank up but also the image of our country.

Sir, we all know that our banks are saddled with huge amounts of NPAs thereby choking the financial system. Time has come to overhaul the laws prevalent in our country especially the laws concerning the financial sector. This legislation is meant to connect the various laws and consolidating India's insolvency and bankruptcy laws which govern bankruptcy and insolvency for all debtors, including companies, unlimited liability partnerships, limited liability partnerships, individuals and other entities. The code is aligned with the Government's initiative to make doing business in India easier, and even creditors residing outside India are included in the definition of 'creditor'.

Sir, the Insolvency and Bankruptcy Code 2015 is a welcome initiative for creditors, investors and debtors alike. The streamlining of procedures, simplification of the insolvency process and fast-tracking of recovery are hallmarks of the code which will have a positive effect on India's lending climate. The code allows investors to exit from failing projects. The failure of businesses impacts employees, shareholders, lenders, and the broader economy. In a country like India particularly because of tactics employed by company promoters to delay reorganisation or attempts to sell off assets, changes of management, or litigation that goes on and on has significant bearing on jobs, income generation and economic growth.

The major incentive for the lenders and investors is the change in the order of priority of the charges. Government taxes have been relegated to the position below the creditors and employees thus giving confidence to the lenders and investors. The government shall put in mechanism to collect taxes as and when due, instead of allowing them to be accumulated to a level for recovery through liquidation. Another significant feature is inclusion of penal provisions in the Bill which provides for monetary penalty and jail term of up to five years for concealment of property, defrauding creditors and furnishing false information. This I hope will act as a deterrent for the potential wrong doers.

Sir, even while supporting the bill wholeheartedly I would like to express my concern and reservation on one aspect that is appeal process provided in the Bill subject to correction if any. I hope the hon. Finance Minister will give a serious thought to this aspect especially in view of the length and breadth of the country. As per the provisions of the Bill, National Company Law Tribunal and Debt Recovery Tribunal are the adjudicating authorities. These decisions could be challenged in appellate tribunals. These appellate tribunals are located in the national capital or at the most in metropolitan cities. Any further appeal can be made only to the Supreme Court of India. This will increase the cost of appeal process and will be burdensome on the people. High Courts which are there in almost every State capital have been totally left out in the scheme of arrangement. If the appeal process could be restructured to allow appeal from the National Company Law Tribunal and Debt Recovery Tribunal or even from the appellate tribunals to the High Courts and finally to the Supreme Court, it will be a great convenience and financial relief to the parties involved.

With these observations, I strongly recommend passing of this Bill and looking forward to similar enactments which will strengthen our economy.

डॉ. उदित राज (उत्तर-पश्चिम दिल्ली) : सभापति महोदय, मैं वित्त मंत्री जी का धन्यवाद करता हूँ कि जो काम बहुत पहले हो जाना चाहिए था, वह उनके द्वारा हो रहा है। इसकी वजह से हमारी अर्थव्यवस्था के ऊपर असर पड़ता रहा है। मल्टीपल एक्ट्स को हम लोग इनकम डिपार्टमेंट्स में डील किया करते थे और यह भी देखते थे how the creditors are duped. हालांकि आरबीआई और बैंक का सिस्टम फॉरिसिक ऑडिट का हुआ करता था। But we definitely lacked professionals. As on date also, we don't have professionals. But now onwards, care will be taken that professionals are created. Of course we will be pooling professionals from CAs, Stock Exchange and advocates and there will be expertise.

In Chapter 11 of the Code, the provisions of insolvency and bankruptcy are very strict, but here I find that it is easy to get away. Of course, my friends had mentioned some of the names and how they had duped banks and how they had duped the creditors. मैं इस बिल के समर्थन में खड़ा हूँ। लेकिन हमारे सामने प्रोफेशनल्स की चुनौती आएगी कि उनको कैसे ट्रैड किया जाएगा। But I am very confident that the country is in the hands of very safe leadership and that will also be looked into at a faster speed.

It is not connected to it directly but I have found how the profit is being siphoned off in the name of progeny and children and they start enjoying the assets and credits but the companies or individuals who are real debtors declare themselves insolvent and bankrupt. They say that they don't have anything.

A very important point was raised that in the bank also, the responsibility should be fixed on an individual, the person who is in the bank, who is responsible for advancing the credit. Otherwise, what is happening is that when the institution as a whole is held responsible, then nobody is accountable for that. To some extent, the person who surveys, who exercises his consent and finally approves for heavy loans, should be held responsible even if he has superannuated. So, I am hopeful when the rules are framed, all these things will be taken care of. लेकिन आजकल हमारे देश में यह बहुत बड़ा मेनस हो गया है कि अमीर लोग लोग लेकर के अपने आपको इंसोल्वेंट और बैंकप्ट डिवलेयर करके मजे मारते हैं। कुछ क्रेडिट को छोड़कर मैंने मैक्सिमम क्रेडिट में देखा है कि उनकी औलादें मजे मार रही हैं और उनके पास बड़ी-बड़ी सुविधाएं हैं, कोठियां हैं, उन्होंने विदेशों में पैसा साइफन आउट कर रखा है और इंकम टैक्स की फाइल में उन्होंने अपने आपको डिवलेयर कर रखा है कि उनके यहां सारे लॉसेज हो गये हैं। So, it is an inter-connected approach.

I am very thankful at the end that the Government has brought out this Code. Of course, it will definitely help in improving the economy.

Thank you.

SHRI GAURAV GOGOI (KALIABOR): Thank you, hon. Chairman.

First of all, I would like to thank all those people who have played a very critical role in the formulation of this Insolvency and Bankruptcy Code. I would like to especially mention at this time the former Law Secretary Dr. T.K. Viswanathan who has done a phenomenal service through the Committee. I would like to express my gratitude to the Members of the Joint Parliamentary Committee. In a true symbol of bipartisan support for a Bill which would push forward India's economic growth, this Parliament has shown to the Indian nation that its Parliamentarians are concerned; and when we are united on ideology and in our economic philosophy, we come together.

I would like to talk about the larger purpose of this Act which is to ease bankruptcy and insolvency procedures for sick industries as well as increase the amount of debt that is recovered. Currently, it is at 20 per cent. We hope, through this Bill, the debt recovery percentage would increase to 80 per cent. But the fact that we need such a law or that such a law is so important at this point of time points to the health of our economy. Let us be honest that the current health of our economy is not as good as we make it out to be. Currently, the amount of bad loans in the country is Rs. 71,000 crore across major infrastructure sectors such as steel, coal, and real estate as well as industries which employ labour such as textiles, chemicals, and weaving. Our core industries are not doing so well. Therefore, because of bad debts, bad business models, banks have stopped lending due to the NPAs; and because banks have stopped lending, industries are not able to expand their projects. So, it is a vicious cycle that is slowing down our economy and putting obstacles to our economy.

While we congratulate the Government, all the Parliamentarians and bureaucrats for coming out with great legislation, we must also be careful that this legislation, when it talks about sick industries, is also related to labour and employment. We must introspect how much employment we have been able to generate. We talk about ease of doing business but what about the ease of getting a job? In today's world and in today's India, it is not easy to get a job. We talk about India's growing demographic dividend but for this demographic dividend, but for this demographic dividend getting jobs in this current scenario is proving to be one of the toughest. The Government's own report says, 'In 2015, the year saw the lowest job growth since 2008.' It is a shocking fact that we must talk about and we must acknowledge. We must face it; only then can we plan forward. There were 43,000 jobs lost from April to June, 2015. The Government's own report says that till now 90 per cent of our workforce is in the unorganised sector which is outside the ambit of this law. But nonetheless it is important to point out because we are talking about the economy. It is the economy the context in which this Bill is being brought forward.

Before this legislation came, there were previous legislations as well, previous regulators as well. It was not because of the regulation that bad debt had increased. It was because of bad business decisions, bad business modelling, and bad investment decisions which led to such a bad situation. We must ask about how we can prevent bad business decisions in the future. We do not want any more Vijay Mallyas to come, take the banks for a ride, and escape the country.

So, how do we prevent bad decisions and how do we incentivise good business decisions must be clarified by the Government.

In this Bill, a new regulator has been proposed, which is the Insolvency and Bankruptcy Board of India. My question and I hope it would be clarified later on that how will this regulator be different from the previous regulator which was the Board of Industrial and Financial Reconstruction.

Thirdly, a new sector is being created. A new layer of professionals will be required. A new layer of judges would be required. Has there been any study by the Government as to how many professionals we will need, how many judges we will need and by what year will we have this vacancy completed or we will only have tribunals on paper but no judges or we will only have insolvency resolution agencies but no professionals. Has there been any labour study to say how many jobs will be created, where will get these people from and how will they be trained.

My penultimate point is that there are a number of existing cases under the current tribunals, whether the Company Law Tribunal or the earlier debt recovery tribunals. What happen to these cases? How do you manage the transition? What are your plans? It is good to have a plan for the future but managing a transition is also a complex process. So, what happen to the existing cases? Will they be now tried under the new law or will they be tried under the existing law?

Lastly, Sir, this is the general point that I want to draw your attention to. Many public sector banks provide hardly any credit to projects in the Northeast stating the fact that they have bad debts on their book or they have already given loans to big players. But if you want to grow the economy, you have to improve the credit ratio in the Northeast and you would see from your own data that amongst the entire geography of India the Northeast gets the miniscule amount of credit from public sector banks. I wanted to draw your attention to that point.

In the end, I support this Bill. I do hope that capital flows become easier. Capital flows becoming easier will only contribute to our GDP. The GDP as of now is 7.3 per cent. But this is, as you also know, is as per the revised formula. If you go as per the revised formula, the last year of UPA was 6.9 per cent. So, I do hope that the GDP grows and the debt recovery percentage increases to 80 per cent and I support this Bill. Thank you.

श्री जय प्रकाश नारायण यादव (बैंक) : सभापति महोदया, जो बिल पेश हुआ है, दिवाला और शोधन अक्षमता संहिता, 2016, उस पर बोलने के लिए मैं खड़ा हुआ हूँ। सबसे पहले तो माननीय वित्त मंत्री आदरणीय अरुण जेटली साहब एवं माननीय जयंत सिन्हा जी को बधाई देता हूँ कि यह बिल सामने आया है। बैंक को बैंक बैचर के लिए अधिक होना चाहिए। प्रो-पूअर होना चाहिए। फर्स्ट बैचर के लिए कम होना चाहिए। बैंक हमेशा प्रभावकारी हो, लाभकारी हो, गरीबों के लिए होना चाहिए। लेकिन कई ढंग की परेशानियों इसमें थी, जिससे तृककारी शक्तियां इसमें ज्यादा बढ़ कर काम करती थीं। बहुत से लोग कर्ज चुकाए बिना भी देश से बाहर हैं, यह हर कोई जानता है। जैसे पानी के लिए जलाशय रिज़र्वारर होता है, वहां जैसे ही बैंक हमारा रिज़र्वारर है आर्थिक समृद्धि के लिए, आर्थिक विकास के लिए, आर्थिक संसाधनों को वतुर्दिक विकास के लिए फैलाने के लिए है। यानि जहां कम पानी होता है, वहां हम पानी डालते हैं। जैसे ही छोटे-छोटे व्यापार, छोटे-छोटे उद्योग आर्थिक समृद्धि के लिए बैंक साधन और कर्जा देता है और हम आगे बढ़ाते हैं। लेकिन बड़ी चाताकी से इसको बड़े-बड़े घराने और उद्योगपति अपनी तरफ खींच कर ले गए।

माननीय उच्च न्यायालय ने, सुप्रीम कोर्ट ने भी कहा है कि जो बैंड लोन है, उसे शेकना चाहिए, बैंडिंग सिस्टम को बदलना चाहिए और जो अमीरों का पक्ष है, उस पक्ष पर ध्यान देकर के अमीर और गरीब के मापदण्ड में अन्तर नहीं होना चाहिए। यह हम सब लोग भी अपनी चिन्ता जाहिर कर रहे हैं। जो डिफॉल्टर हैं, उन पर कठोर से कठोर कार्रवाई होनी चाहिए। उनका लोन रिकवर होना चाहिए, जो बिल में है। यह अच्छी बात है। इसमें कई सुधार और बढस से अलछाईयों निकलकर सामने आएंगी। अगर कोई गरीब लोन लेता है तो वहाँ डुगडुगी बजाई जाती है। हजारों घरों में चर्चा हो जाती है, अखबार में फ्रंट पेज पर आ जाता है कि अमुक गरीब के घर पर आज बैंक ने पुर्तिस को भेजा है। उसकी इज्जत और पूर्तिस आँखा दाँव पर लग जाती है। वह डुगडुगी बजाकर किया जाता है। अगर उच्च उद्योगपति लोन लेता है, वह 25 साल से ढका का ढका रहा है, देहाती में कहते हैं कि ढका रहा है, वह हाथी बना हुआ है, उस पर मझावत की तरह अंकुश लगाने में भारी कमियाँ रही हैं। इसलिए उस पर अंकुश लगाना, जो उच्च उद्योगपति है, उसको डर होना चाहिए कि सबसे बड़ी संसद है, सबसे बड़ा कानून है और कानून के रखवाले जो कानून बना रहे हैं, उससे उसका डर बढेगा। इसलिए ऐसे

हाथी पर कार्रवाई करना, ऋण लेकर जो बाहर चले जाते हैं, अपने-अपने ढंग से, वह अलग बात है... (व्यवधान) हम दो मिनट में अपनी बात समाप्त कर देंगे। इसमें बोलने का जो स्कोप है, वह बहुत तारीके से है। जो बैंक से राशि लेकर हेरफेर कर रहे हैं, उन्हें दिवालिया घोषित करके उन पर कठोर कार्रवाई होनी चाहिए। जो बड़े उद्योगों के नाम पर कर्ज लिया जाता है, कामगारों को पेशानी होती है, ऐसी कम्पनियाँ हैं, जिन्हें ऋण घोषित कर देते हैं, जिन्हें बंद कर देते हैं, सिक कर देते हैं, उससे पेशानी गरीबों को होती है। इसलिए हमें व्यवसाय को बढ़ाना है और ऐसी चीजों पर ख्याल रखना और पेशेवर एजेंसियों पर कठोर से कठोर कार्रवाई करना लाजिमी है। जो उधार लेकर भाग जाते हैं, कर्ज नहीं चुकाते हैं, इस बिल से उन्हें बाँधा जाएगा। इसीलिए विद्वान वित्त मंत्री माननीय जेटली साहब इस बिल को लाए हैं, मैं इसे अच्छा मानता हूँ और सपोर्ट करता हूँ।

श्री अजय मिश्रा टैनी (स्वीडी) : महोदय, आपने मुझे समय दिया, इसके लिए मैं आपको धन्यवाद देता हूँ। मैं दिवाला और शोधन अक्षमता संहिता, 2016 का समर्थन करता हूँ। आज सुबह हमारे माननीय वित्त मंत्री जी जब वित्त विधेयक पर बोल रहे थे तो उन्होंने कहा था कि भारत आज दुनिया की सबसे तीव्र गति से चलने वाली अर्थव्यवस्था है और लगातार इसकी गति बनी रहे, इसमें बैंकों की बड़ी भूमिका है। अभी 15 दिसम्बर को राज्य सभा में एक प्रश्न पूछा गया था, जिसमें विपक्ष ने दिवालियेपन के समाधान के सन्दर्भ में पूछा गया था, सरकार ने उत्तर देते हुए बताया था कि 189 सर्किटों में 136वें स्थान पर भारतवाला था और इसी के कारण माननीय वित्त मंत्री जी दिसम्बर 2015 में बिल लाए थे। उसके बाद यह ज्वान्ट पार्लियामेंट्री कमेटी में गया और अब यह बिल 2016 कोड के रूप में प्रस्तुत है। मैं उसका समर्थन कर रहा हूँ। वास्तव में इस बिल को लाने की जरूरत इसलिए पड़ी, क्योंकि अभी दिवाला और ऋण शोधन अक्षमता मामलों के निबटारे के लिए कोई एक कानून भारत में नहीं है। अलग-अलग क्षेत्रों में कई कानून हैं, लेकिन वास्तव में कोई एक कानून ऐसा नहीं है, जिससे इन चीजों से निबटा जा सके। यह जो विधेयक लाया गया है, इसका उद्देश्य निवेश को प्रोत्साहित करने के साथ-साथ पेशेवर एजेंसियों और सूचना-सेवाओं के क्षेत्र कम्पनियों, गठजोड़, फर्मों और व्यक्तियों के दिवालिया होने के विचारों को नियमन किया जा सके, यह इस कानून का उद्देश्य है। वास्तव में जिस तारीके से जीएसटी में हम सब लोगों ने देखा है कि विपक्ष के विरोध के चलते हम लोग उसमें आगे नहीं बढ़ पा रहे हैं, लेकिन इन सारी बातों को ध्यान में रखते हुए भी सरकार लम्बित आर्थिक सुधारों को लागू करने में कोई कसर नहीं छोड़ रही है। इसी दिशा में कदम बढ़ाते हुए सरकार यह बिल लेकर आई है और यह बैंकरप्सी के मामले में समयबद्ध तारीके से निपटने का एक बहुत बड़ा संसाधन बनेगा। असल में इस बिल में दिवालियेपन के क्षेत्र में काम करने वाली पेशेवर एजेंसियों के नियमन और दिखलू बनाने का प्रस्ताव भी किया गया है। लेकिन हम सब जानते हैं कि यह सब जो कानून हम बना रहे हैं, इसके पीछे मुख्य उद्देश्य एनपीए है। वास्तव में इस समय एक बड़ी कठिन परिस्थिति से हमारे देश के बैंक गुजर रहे हैं। उसमें भी लोग राजनीति कर रहे हैं। अभी हमारे कई कर्ताओं ने यहाँ विजय माल्या का जिक्र किया। लेकिन सरकार निरंतर प्रयास कर रही है और उसके बावजूद लोग ऐसे उदाहरण देते हैं, इन मामलों में भी राजनीति करते हैं। जबकि मेरा ऐसा मानना है कि हम सब लोग जब जाइंट पार्लियामेंट्री कमेटी के माध्यम से बिल लेकर आए हैं, और वैसे भी 2004 से 2014 के बीच में देश में ऐसी अक्षम सरकार रही जिसने दुर्बलता का परिचय दिया और दस साल में देश का बहुत नुकसान हुआ। मैं चाहता हूँ कि लोकतंत्र में एक मजबूत विपक्ष होना चाहिए और उसकी एक भूमिका होती है। लेकिन जिस तारीके से विरोध किया जा रहा है और जिस तारीके से हम लोगों ने देखा था कि सुषमा जी और वसुंधरा जी का इस्तीफा मांगते हुए सदन को नहीं चलने दिया जा रहा था, आज ऐसी परिस्थितियाँ आ रही हैं कि अगर आप राजनीति करना चाहें तो वह अलग बात है। मैं यह मांग नहीं करता हूँ, लेकिन कहना चाहता हूँ कि क्या आपकी नैतिकता यह नहीं कहती, आपसे यह सवाल नहीं पूछती कि जिस तारीके से आप सुषमा जी और वसुंधरा जी का इस्तीफा मांग रहे थे और आज जिस तरह से सोनिया जी, राहुल जी और मनमोहन सिंह जी का नाम उच्च न्यायालय के आदेश में आया है, क्या वह लोक सभा और राज्य सभा से इस्तीफा देने, अपने को साफ-सुथरा साबित करने के लिए क्या वे यह कदम उठाएँगे? लेकिन उनका उद्देश्य राजनीति करना है।

मैं कहना चाहता हूँ कि जिस तारीके से एन.पी.ए. और जो फँसे हुए कर्ज हैं, उनके लिए देश में राजनीति हो रही है लेकिन सरकार लगातार कदम उठा रही है, हम सब जानते हैं कि जिस तारीके से जो तॉफुल, विलाफुल डीफाल्टर होते हैं, उनसे वसूली बहुत कठिन होती है। हम लोग केवल 12 से 15 प्रतिशत वसूली अभी तक कर पा रहे थे, जब बहुत प्रयास किये जा रहे थे। बैंकों को इससे बड़ी शिकायत है। उनकी जहाँ पर पूँजी बढ़ रही है, बड़ा खाता बढ़ रहा है। हम लोगों ने देखा है कि जो विलाफुल डीफाल्टर हैं, जो जान-बूझकर कर्ज नहीं लौटा रहे हैं, उनकी संख्या भी लगातार बढ़ती जा रही है। अभी हम लोगों ने देखा है कि 2015 तक देश के बैंकों में कुल 26,95,132 करोड़ रुपये का कर्ज दिया है जिसमें से 2,23,613 करोड़ रुपये, यानी लगभग 8.30 प्रतिशत ऐसे लोग हैं जो विलाफुल डीफाल्टर हैं।

HON. CHAIRPERSON: Please conclude.

श्री अजय मिश्रा टैनी : मैं आपके माध्यम से कहना चाहता हूँ कि यह जो बिल आ रहा है, इससे बैंकों को बहुत बड़े अधिकार मिलने जा रहे हैं। उन अधिकारों के द्वारा जो बहुत महत्वपूर्ण परिवर्तन हो रहे हैं, मैं केवल उनकी बात करूँगा और उसके बाद मैं अपनी बात समाप्त कर दूँगा। इसमें एक जो सबसे बड़ा परिवर्तन हो रहा है कि बैंकों, वित्तीय संस्थाओं और निवेशकों को पैसे लेकर खुद को दिवालिया घोषित करने वाले कर्जदार अब विदेश में भी अपनी संपत्ति नहीं बचा पाएँगे। कर्ज न चुकाने वाले ऐसे दिवालिया व्यक्तियों की देश के बाहर स्थित संपत्ति दिवालियेपन एवं प्रस्तावित नए कानून के दायरे में आएगी। ऐसा होने पर दिवालिया घोषित होने वाले व्यक्ति या कंपनी की विदेश की संपत्ति को भी नियंत्रण में लिया जा सकेगा और उसके साथ-साथ अभी जो समिति ने नया उपबंध किया है... (व्यवधान)

HON. CHAIRPERSON: Your time is over. The hon. Minister has to reply today.

Shri Rajesh Ranjan.

â€¦ (व्यवधान)

श्री राजेश रंजन (मधेपुरा) : सभापति जी, गॉव-देहात में एक कहावत है कि 'चोर के लिए ताता क्या और कफील के लिए कबाला क्या।' आप जितना कानून बना लीजिए, आप अच्छे आदमी हो सकते हैं, पूरा सदन अच्छा हो सकता है, हम अच्छे होंगे, हमारी व्यवस्था कैसे अच्छी होगी और फिर बार-बार वे बातें याद आ जाती हैं अंबेडकर साहब की कि कानून और संविधान बहुत अच्छा बन सकता है लेकिन उसको चलाएगा कौन। कोर्ट बन जाए लेकिन इनवैस्टिगेशन कौन करेगा? क्या वह स्वीन्दनाथ टैगोर के स्कूल में पढ़ा कोई नैतिक और ऊँचे मूल्य वाला व्यक्ति है? इनवैस्टिगेशन जब अच्छा नहीं होगा तो न्यायालय से आप दंड कहाँ से दिला देंगे? पैसा लेगा इनवैस्टिगेशन करने वाला, पैसे लेंगे पप्पू यादव यहाँ बैठकर कर, न्यायालय की आलोचना हम नहीं कर सकते, लेकिन न्यायालय बहुत अच्छा है, यह भी नहीं कह सकते। आप लोगों का बिल बहुत अच्छा है, कानून बहुत अच्छा आ जाएगा, बहुत सारी चीजें हो जाएँगी लेकिन मेरा बहुत ही विनम्रता के साथ आग्रह है कि दुनिया में इतनी अकूत संपत्ति पोलिटिशीयन के पास होती है, क्या इस पर कोई बिल होगा या नहीं? ये बाबाओं के पास इतनी अकूत संपत्ति 15 साल में कहाँ से आ जाती है, इस पर कोई बिल होगा या नहीं? व्यूरोक्रेट्स के पास इतने अरबों-खरबों रुपये घर में रखते हैं, इस पर कोई बिल आएगा कि नहीं? पत्रकारों पर कोई बिल आएगा कि नहीं? बिल पर बिल आ रहे हैं, हमारा वक्त कम हो रहा है, इसलिए हम सिर्फ सुझाव ही दे सकते हैं।

1. MSMEs should be kept out of its purview. Their bankers are already able to take possession in two to three months under SARFAESI. An even more draconian law is not required to recover from them.
2. Operations of BIFR should be continued for MSMEs with suitable amendments in SICA to enable it to deliver in a time bound manner. Enough judges should be provided on its benches for it to be able to dispose of the pending cases. At present, it is virtually not functioning since the last one and a half years for want of bench strength.
3. Right of first denial should rest with the borrower if he is willing to give better terms of settlement vis-à-vis an ARC.
4. If the proposed law is being brought as an 'Exit route', then let it be in force with prospective effect for the new companies going to be set up or for those promoters who want to exit their companies.

5. We must try to concentrate and recover the amount from wilful defaulters first instead of treating all the borrowers in the same way.
6. The protection from recovery from the date of SICA is repealed (as soon as this Bill becomes law) to the date the defaulter company gets itself registered in NCLT (the maximum period prescribed for this is 180 days) and the due adjudication starts under the new law, must continue even after reference under BIFR and AAIFR is automatically abated. Otherwise, the FIs or other Departments will take possession of the assets of the company immediately after abatement and would have already sold them by the time the adjudication by NCLT would start (which may take upto seven or eight months) rendering the entire exercise futile.
7. The FM himself has repeatedly said that the companies in steel, power, aluminium and infrastructure sectors have gone sick due to sectoral sickness and even went to the extent of exhorting the bankers to give special dispensation to these companies. This aspect must also be explored.
8. The exclusivity period of at least six months should be provided. Even Chapter 11 provides for an exclusivity period of four months. This is required to prevent hostile takeovers.
9. A panel of experts, having promoters of MSMEs also on board, should be formed to give detailed suggestions in a short time bound period.

1.14 लाख करोड़ रुपये, मैं वित्त मंत्री महोदय से आग्रह करूंगा कि हिन्दुस्तान में कितने पैसे हैं? सिर्फ इस तरह के कानून को लाकर आप हिन्दुस्तान की प्रगति को या जी.डी.पी. को बढ़ा नहीं सकते हैं। हमारी व्यवस्था बड़े लोगों के लिए नहीं बनती है। यह सिर्फ छोटे लोगों के लिए बनती है। गरीब उस व्यवस्था में पिसे जाते हैं और अमीर हमेशा बच निकलते हैं। कानून ऐसा होना चाहिए, ताकि वह दोनों के लिए समान हो। हम किसानों के कर्ज पर येते हैं, हँसते हैं और हल्ला करते हैं। लेकिन, अमीरों और बड़े लोगों के कर्ज पर हम कभी हल्ला नहीं करते हैं।

महोदय, मुझे कुछ और ज्यादा नहीं कहना है। हम आपसे आग्रह करेंगे कि पॉलिटीशियंस के चलते यह जो हमारी व्यवस्था है, हमारा जो पॉलिटिकल सिस्टम है, यह खराब है। इसलिए आज आपको कानून पर कानून लाना पड़ता है। इसलिए हमें पॉलिटिकल सिस्टम और विल पावर को मज़बूत करने की जरूरत है। जब तक विल पावर मज़बूत नहीं होगा, तब तक कोई कानून आप ले आएँ, आप हमारी व्यवस्था को बदल नहीं सकते।

SHRI RAM PRASAD SARMAH (TEZPUR): Mr. Chairman, Sir, thank you. The Insolvency and Bankruptcy Code, 2015, which has been amended as 2016, is a welcome step towards improving the ease of doing business and it will certainly help the Indian economy grow faster.

We are already in the track of faster growth of economy since we took over two years back. I hope this Code will help us in achieving our goal further because it will lead to a single window system. It seeks to repeal other laws like the Presidency Towns Insolvency Act, 1909 and Provincial Insolvency Act, 1920. The commendable provision in this Act is the 180 days fixed for resolution of the disputes. It will be done in a time bound manner. It will help the creditors as well as the debtors to initiate the Insolvency Resolution Process, the IRP. It also provides for punishment for those who conceal their source of income or their properties while taking loans or while being indebted to banks or financial institutions.

The process for resolution provided to two agencies will certainly fast track the process and resolve the disputes quickly so that the banks or the creditors will recover their money faster and will not lose their money. Another major step is that debtors fleeing the country or residing outside the country, like Vijay Mallya, can also be brought to book and force to face the trial under the Insolvency Act.

In North-East we have got very limited resources for development. Banks are not performing well. It is very difficult for a poor man to get any loan under the present situation there. There is no industry at all, either small or big. The growth is very slow. So, I would request the hon. Finance Minister to look into the situation that prevails in North-East in general and Assam in particular, which is one of the poorest States in India and encourage banking system in the North-East. The MUDRA loans and other loans are not percolating to the poor there. It is being reaped by the well to do families. Bank officers are to be bribed for getting the loans in the North-East. Otherwise, loans are not sanctioned. So, I would certainly expect from our Government to provide North-East with better facilities and also to take care of cross border insolvency. This provision of 180 days is a good step.

Under Clause 180 even the legislators can be brought to book. Those who become MPs also should be brought under the law so that they can also be booked and their defaults, if any, can be looked into. Thank you for giving me time.

SHRI JAYANT SINHA: Mr. Chairman, Sir, we had a very good discussion today in the House about this legislation. As you know, the hon. Prime Minister's goal is to reform India to transform India. This legislation is one of those transformational building blocks that will actually be able to transform our economic landscape. I am very pleased as hon. Member spoke as they recognized the transformational aspect of this legislation.

The fact we have been able to bring this transformational legislation to this august House – I must say this is now 'the august House', after the other House has become a 'joke' – is because of the hard work of many people who have worked on this for a long period of time, notably Shri T.K. Viswanathan, who was shepherded of putting this legislation together. Then, it was brought to the Joint Committee of Parliament where 30 Members worked very hard; there were 12 sittings; they provided many good recommendations including among them that we have to strengthen workmen's rights; we have to consider cross border insolvency; and that we also need to strengthen operational creditors. So, these very excellent recommendations came from the Joint Committee.

Many Members of the Committee are present here. I would like to really thank them for what they did. We have accepted all of their recommendations in toto. They are of course in the Report that was presented to Parliament.

We had a number of excellent speakers who spoke, highlighted many facts here. I am not going to get in my reply into most of the details of the legislation that was brought out very well by most speakers. I will take the short time that we have right now. I would just go into a few clarifications and just explain those in some detail. Before I get into that, I do want to recognize that श्री पप्पू यादव जी का एक नया रूप आज हम लोगों ने देखा। उन्होंने एक नई भूमिका दिखाई, तो हम सब लोगों को, उनको धन्यवाद देना चाहेंगे कि उन्होंने इस प्रकार से आज भाषण दिया। ... (व्यवधान) एक नए रूप में हम लोगों ने देखा। If this is the transformational legislation, I would just very quickly tell hon. Members what is so transformational about it. What we have done is, we have redressed the balance of power between promoters and creditors, broadly defined in putting financial creditors, operational creditors, Government, etc. We have redressed that. It is a big transformation. We have gone from a situation as many hon. Members pointed out where the winding up and resolution process would last from three to ten years, and from 180 to 190 days. We really changed that dramatically. We have gone from a situation where we had 12 laws that pertain to the bankruptcy, the default process to one where you have just one law. Some of these laws which were more than 100 years old have been replaced by a modern 21st century law which is as good as anywhere else in the world.

We hopefully with this law would be able to move up quickly in the World Bank ranking in the Ease of Doing Business - that is also a transformational step.

Finally, through the information utilities, which many hon. Members touched on, we are going to go from a situation of very fragmented information, a lack of information, and opacity about the bankruptcy and insolvency process to where there is a lot of transparency, and a lot of knowledge as to what is happening, who is in distress, and who is not in distress. In that sense, we will be also creating an industry with the Bankruptcy Board and the insolvency professionals. This is indeed a major transformation.

On to the clarifications there are five or six, I would just go through them very quickly. There was a question Prof. Saugata Roy posed about whether the promoter himself can trigger a voluntary default. That is indeed possible. They will be able to do that.

About the early warning, Shri Jayadev Galla brought up this up whether we can get an early warning signal, whether we can get revival in doing it that way with the information utilities, promoters have the ability to think about the voluntary default and then try and revive their enterprise that way.

The other thing that we have done here is we have put employees and workmen right at the top of the waterfall in terms of protection of rights. That was brought up and that was the question several people had, but of course what we have done is, workmen and employee who have worked hard for the company, who in many cases have no other means of support are right on top of the waterfall.

There was another question that was asked is this. Why is it that the Government comes after employees in secured creditors in this waterfall?

17.00 hours

The answer to that is because we want the people to come first with secured creditors because after all it is depositors' money; it is tax payers' money as Shri Satpathy was pointing out. Obviously, employees are most dependent and most vulnerable. So, we put the most dependent and the most vulnerable tax payers' money ahead of the Government which has other ways of borrowing money and we put the Government next after these two creditors in the waterfall.

There was another point raised by Prof. Saugata Roy. He pointed out that we have seen many situations where there have been sick companies in West Bengal. It is unfortunate that West Bengal has had to go through that. I think under the leadership of his Party, West Bengal will surely do much better. But what we have done to protect workmen and employees – and this is from the suggestion that came from the Joint Committee – is to strengthen their salaries from just 12 months to 24 months. So we are really making sure that the most dependent are fully taken care of.

As far as creditor rights are concerned – this was touched upon by many hon. Members namely, Shri Galla, Shri Adsul and Shri Mahtab – of course, they are able to trigger default and because they are able to trigger default, they can then have significant leverage over promoters because obviously when the default happens, promoter comes last and this gives a lot more leverage, transfers the balance of power from promoters to creditors. In doing so, of course, this also strengthens the corporate debt market so that creditors can then issue debts with a better understanding of the risks that they have to deal with, which means a better pricing of the risks. We also believe that this will lead to a much broader, deeper, more liquid corporate bond market as well. So, it significantly strengthens the corporate debt market.

I have already clarified Shri Galla's question as to why is that we want personal guarantees. The fact is that when you cannot enforce bankruptcy as a debt financier, you are going to want to have something like a personal guaranty to be able to enforce your creditor rights. Now, the fact that we are going to put in place this very robust bankruptcy process, hopefully it will reduce the need for personal guarantees because you know that you would be able to recover loans in the bankruptcy process. So, this deals with the problem that he has raised.

Then, several Members asked about information utilities as to why is it that we need information utilities. Shri Satpathy and Shrimati Kavitha spoke about it. The reason is, as I said earlier, we have a very fragmented, opaque insolvency and bankruptcy process that is scattered across different legislations and many adjudicating authorities. By putting in place, these well regulated information utilities and by forcing people to deliver information to these information utilities, we will have transparency in terms of who is borrowing, how much he is borrowing, what is his exposure across the system and an early warning signal to understand as to who could potentially be in distress and whether wilful default is happening. By having these information utilities, we prevent these kinds of situations. Of course, hon. Members should know that these information utilities will be regulated by the Bankruptcy Board which will have very eminent people and capable professionals. Therefore, we are quite confident that this transparency that we need in these situations will, in fact, come about.

Finally, there were a lot of Members who spoke about wilful defaulters. Shri Rajesh Ranjan, Shri Adsul, Shri Satpathy and Shrimati Kavitha spoke about it. Everybody of course, like all of us in Government, wants to avoid people operating as wilful defaulters, taking money from our banks and then either diverting it into other purposes, siphoning it away or not paying when they can pay. These are the definitions that the Reserve Bank of India already uses for identifying wilful defaulters. So, that framework is in place right now. Wilful defaulters are being identified. Previously, while

replying to a question in this august House some days ago, I explained that over 7,000 wilful defaulters have been identified, FIRs have been filed against them and the process for identifying wilful defaulters, going after them and taking criminal action against them is very well defined. It is a parallel process from the bankruptcy process and they will both continue to operate as we would like.

Finally, Mr. Gogoi wanted to know why is it that we are not able to create more jobs. We are, in fact, creating jobs. A lot of jobs are being created in the informal sector thorough initiatives such as Mudra, what we are doing in construction, in public investment and so on. But I would like to conclude by reminding Mr. Gogoi that it is precisely this type of transformational legislation, these kinds of very important building blocks of our economy which, once they are brought in, will enable the kind of creative destruction which Mr. Galla was talking about, companies to be able to get going quickly, to wind up quickly, for creditors and investors to invest fearlessly. It is that type of friction free market performance, market processes that will enable the creation of these jobs.

With that, I think, all the hon. Members will join me in supporting this legislation, this very transformational legislation. Thank you very much.

DR. BOORA NARSAIAH GOUD (BHONGIR): Thank you, Sir, for giving me the opportunity. Since I did not get time to speak for the Bill itself, I have only one question, a bit longer question. How does it address the willful but not fateful pre-planned defaulter who can use the spirit of the Bill, that is ease of doing business to ease of cheating which can result in public bankruptcy to personal aristocracy? The recent example being king of good times in bad times also, that is Mallya syndrome. Thank you, Sir.

SHRI JAYANT SINHA: Sir, I just explained the process of going after willful defaulters. It is independent of the bankruptcy process. For instance, suppose, somebody has not defaulted, but we know that they are in fact diverting their funds, they are siphoning funds away, we can immediately start to take action on them. We can file an FIR and we will pursue them through our investigative agencies and the kind of police action that we can take. They will end up in jail because of the kinds of laws that we have in place right now. So, I think, the hon. Member should be reassured to know that all of that is already under way.

श्री अजय मिश्रा देवी : सभापति महोदय, अगर सरकार दिवालियापन पर कानून लागू करने के लिए दूसरे देशों के साथ समझौता कर लेती है तो क्या गजट अधिसूचना द्वारा किसी भी कारपोरेट, दूसरे कर्जदार तथा उनके गारंटर को भी भारत से बाहर की सम्पत्ति को इस कानून के दायरे में ला सकेगी। यदि कम्पनी दिवालिया हो जाती है और उसकी कोई सम्पत्ति बेची जाती है तो क्या उस पर पहला हक उनके कामगारों का जो बकाया दो साल का है, उसे तुकाने पर किया जाएगा।

श्री जयंत सिन्हा : माननीय सांसद ने काफी महत्वपूर्ण प्रश्न पूछा है। उनका प्रश्न है कि अगर आप बैंकर्स प्रोसेस में हैं और कोई कम्पनी है जिसके ऐशेंट्स वगैरह देश से बाहर हैं तो किस प्रकार और किस प्रक्रिया से हम उन ऐशेंट्स को इस देश में ला सकते हैं। जैसे इस विधेयक में बताया गया है, इसका पूरा विवरण भी किया गया है, हमें कौंस बार्डर ट्रीटीज करनी पड़ेगी, अन्य देशों के साथ समझौता बनाना पड़ेगा कि इस डिफॉल्टर पर हम एक्शन ले रहे हैं। जब हमारे पास एक दुरुस्त और अच्छा कानून होगा, जैसे यह कानून है, जिसमें अन्य देश को स्पष्ट हो जाएगा कि हम कानूनी तरीके से, बाय ड्यू प्रोसेस ऑफ लॉ एक्शन ले रहे हैं। उन्हें भी विश्वास होगा और वे हमारे साथ समझौता बनाकर ऐशेंट्स जो देश से बाहर हैं, वह अटैच करेंगे। हमारी अन्य देशों से बातचीत हो चुकी है। उन्होंने बताया है कि जब इस प्रकार का कानून हमारे देश में होगा तब यह सब हमें जो कॉन्फिडेंस करना है, उसे ज्यादा सरलता से कर पाएंगे। इस कानून के तहत काफी संभावनाएं बढ़ जाती हैं।

श्री अजय मिश्रा देवी : सभापति महोदय, वह पैसा...(व्यवधान)

श्री जयंत सिन्हा : वह बन चुका। जैसे कोई बाहर है और हमें अमरीका से किसी की प्रॉपर्टी अटैच करके उस पैसे को देश में वापस लाना है, तो जब वह पैसा वापस आता है तो वह किस तरह सबको मिलेगा, वह तय हो चुका है। अगर वर्कमें हैं तो वे पहले आएंगे, अनसिक्चर्ड हैं तो थोड़ा बाद में आएंगे। वह वाटरफॉल के तहत आएगा।

SHRIMATI KAVITHA KALVAKUNTLA: Sir, I just wanted to know whether the information utility is a real time institute. Will a particular bank know it before lending the money? It is because, people take the same property to different banks and keep getting loans repeatedly on that.

Apart from that Mahtabji never spoke on this. I thought, you are very attentively listening to all of us.

SHRI JAYANT SINHA: I stand corrected. Mahtabji did not speak on this issue. But we are so used to his advice and sage guidance. Of course, he was in the Committee. But you are right, of course, there will be this information available almost in real time. Not in real time for a loan that is going to be a new loan but it will be available in real time for all previous loans that you have taken. So, your credit history will be available for inspection and investigation. Just like when you are taking a loan right now from a credit bureau and your financial institution can look up your credit history from credit bureau in real time and then ascertain whether to give a loan or not, in the same way, when it is a large corporate borrower, their credit history will be available through these information utilities and the financial institution can look it up.

The other thing as the hon. Finance Minister is pointing out to answer the previous question is that in the waterfall you cannot actually cherry-pick. Everybody who is *pari passu* at the same level will *pro-rata* get the proceeds that are come in.

KUMARI SUSHMITA DEV : We have understood your clarifications. It is pretty clear as to why the information utilities are there. But the scheme of the legislation seems to be that someone can apply to provide that utility. For instance, we have the ROCs. There is one single agency that gives you information about a company. Like in a State you can have plenty of them. Will it not create multiplicity?

SHRI JAYANT SINHA: We do not need to be unnecessarily prescriptive here. Market forces will determine which kinds of information utilities are able to deliver and supply valuable information. If we look to the credit bureaus as an analogy, typically what we find around the world and in India as well that there are two or three credit bureaus that effectively are able to aggregate information and be able to supply it in a way that is valuable to all the players in the market. So, we suspect in this case as well what will happen and as has happened in other markets such as in the United States and in the UK and elsewhere. There will be two or three major suppliers of information that will aggregate all kinds of information from many different sources not just necessarily from the financial institutions but also from utility companies and so on so that the overall credit history and the payment record of these companies come to light. So, we will expect market forces to be able to deliver and tell us as to who is going to be able to deliver the most valuable information.

PROF. SAUGATA ROY: As has been stated by the Minister, several new institutions will come into being like Insolvency Professionals, the Insolvency

Professionals' Companies, NCLT and, as he just mentioned, the information utility companies. The SARFAESI Act created a new entity called the asset reconstruction company. The asset reconstruction companies were supposed to rebuild the sick companies. We have now allowed 100 per cent FDI in asset reconstruction companies. The Finance Minister has given several concessions in his Budget. How do you see the role of the asset reconstruction companies after this Insolvency and Bankruptcy Code is passed? Will they have the same role or will they change it?

SHRI JAYANT SINHA: The ARCs will be a valuable element of this eco-system of resolution that is being put together. Of course, they will be able to procure assets from the SARFAESI and the DRTs as well as from the Bankruptcy Board. But they are basically buyers of distressed assets. They will be able to play across the eco-system and find appropriate assets to procure at an appropriate return.

SHRI GAURAV GOGOI: Thank you hon. Chairman, Sir. Mr. Minister, I am grateful for your answers and specifically one related to jobs although your Government data shows the opposite.

My specific question is this. You are almost creating a new professional sector and people requiring new professional skills. There would be insolvency professionals and there would be bankruptcy and insolvency adjudicators as well. Has there been any sectoral study done, from the human resource point of view, as to how many jobs you are creating through this new law? What kind of skills do you require? Is our educational set up or our professional education set up geared to meet the demand for jobs that this new law will create?

SHRI JAYANT SINHA: Sir, to the best of my knowledge, I have not received a report that would try and estimate job creation potential from this legislation.

श्री जय प्रकाश नारायण यादव (बाँका) : सभापति महोदय, मैं माननीय मंत्री जी से जानना चाहता हूँ कि बड़े-बड़े उद्योगपति और औद्योगिक घराने, एक उद्योग के लिए कई बैंकों से विभिन्न नामों से फर्जीवाड़ा कर के ऋण लेते हैं और एक ही सम्पत्ति की गारंटी को दिखाते हैं, क्या उस पर क्लोर कार्रवाई करने के लिए विशेषारूप से ध्यान दिया जा रहा है या कानून में कोई ऐसा प्रावधान किया जा रहा है?

श्री जयंत सिन्हा: माननीय सभापति महोदय, माननीय सांसद ने जो पूछा है, उस पर हम लोगों ने आलेखी कार्रवाई वातू कर दी है, क्योंकि आर.बी.आई. का एक फिजिकल डेटा बेस है, जिसमें जितने भी लार्ज कोर्पोरेट बॉरोअर्स हैं, उनके बारे में जानकारी रहती है तथा संपूर्ण सूची रहती है कि उन्होंने क्या-क्या गारंटी दी है, किस प्रकार से गारंटी दी है, उनकी कौन-कौन सी कंपनियां हैं, ये सब उस डेटाबेस में है। इसकी हम लोग मॉनीटरिंग अभी से कर रहे हैं। जब ये कानून लागू हो जाएगा और हम लोगों की इन्फर्मेंशन सूटीलिटीज आ जाएंगी, तो ये इन्फर्मेंशन सूटीलिटीज भी इस प्रकार की सूची को एग्जिट कर के पारदर्शी तरीके से बाजार में जरूर बेवेंगे।

SHRI KONDA VISHWESHWAR REDDY (CHEVELLA): Sir, I have one related question. In order for the information utilities to work effectively, we need to have a system of cataloguing and classifying the assets. Now, if the shares are pledged, that too listed shares, there is no problem. Once it is pledged, you cannot pledge the same. In case of other class of assets, the same assets can be pledged again because the records of classification and cataloguing of the assets are not there. For example, take the case of real estate asset. If the collateral is a real estate, then you can actually give it to multiple banks the very same piece.

SHRI JAYANT SINHA: Hon. Chairperson, Sir, as the hon. Member who is a very eminent business person himself knows well that anybody who is going to be taking loans of a certain size is going to have audited books. In these audited books, you obviously have auditors who go through and look at the value of different assets. In many cases they also look at them at fair market value and particularly, if you are borrowing a large loan and you are pledging some of your assets, typically the auditors are going to come up with what the fair market value of those assets are. Once that is done, that will be reported to the information utilities and there will be good knowledge on what collateral is being pledged and what is the actual net worth and the book value of various borrowers.

HON. CHAIRPERSON : The question is:

"That the Bill to consolidate and amend the laws relating to reorganization and insolvency resolution of corporate persons, partnership firms and individuals in a time bound manner for maximization of value of assets of such persons, to promote entrepreneurship, availability of credit and balance the interest of all the stakeholders including alteration in the order of priority of payment of Government dues and to establish an Insolvency and Bankruptcy Board of India, and for matters connected therewith or incidental thereto, as reported by the Joint Committee, be taken into consideration."

The motion was adopted.

HON. CHAIRPERSON: The House shall now take up clause by clause consideration of the Bill.

The question is:

"That clauses 2 to 255 stand part of the Bill."

The motion was adopted.

Clauses 2 to 255 were added to the Bill.

The First Schedule to the Eleventh Schedule were added to the Bill.

Clause 1, the Enacting Formula and the Long Title were added to the Bill.

HON. CHAIRPERSON: Now, the hon. Minister may move that the Bill be passed.

SHRI JAYANT SINHA: I beg to move:

"That the Bill be passed."

HON. CHAIRPERSON: The question is:

"That the Bill be passed."

The motion was adopted.

-