GOVERNMENT BILLS

Statutory Resolution Disapproving the Insolvency and Bankruptcy Code (Amendment) Ordinance, 2017*
and
The Insolvency and Bankruptcy Code (Amendment) Bill, 2017*

DR. T. SUBBARAMI REDDY (Andhra Pradesh): Sir, I move:

That this House disapproves the Insolvency and Bankruptcy Code (Amendment) Ordinance (Ordinance No. 7 of 2017) promulgated by the President of India on 23rd November, 2017.

Sir, I have moved the Statutory Resolution. But, I would like to say that it is well-established that Ordinance route can be taken up under Article 123 only in extraordinary circumstances.

On 23rd November, 2017, hon. President had given his consent for the Ordinance. When, from 15th December, 2017, we were to have the Winter Session of Parliament. So, I would like to know where the urgency is. There is just three week's time between the date of Ordinance and the date of commencement of Parliament. So, I would like the hon. Minister to explain the objective behind issuing this Ordinance.

Secondly, hon. President of India has reminded several times that Ordinance shall be promulgated only in extraordinary and compelling circumstances. Everybody accepts that only in extraordinary, urgent and emergent circumstances Ordinance has to be issued. So, I would like to know whether there was any urgency to issue this Ordinance. What was the urgency to promulgate this Ordinance when the Session was just three weeks' away? So, I would like to know this from the hon. Minister.

MR. DEPUTY CHAIRMAN: Now, Mr. Jaitley to move the Bill for consideration.

THE MINISTER OF FINANCE (SHRI ARUN JAITLEY): Sir, I move:

That the Bill to amend the Insolvency and Bankruptcy Code, 2016, as passed by Lok Sabha, be taken into consideration.

The questions were proposed.

SHRI P. CHIDAMBARAM (Maharashtra): Mr. Deputy Chairman, Sir, this House and the other House passed the Insolvency and Bankruptcy Code. This was a reform recommended by the Financial Sector Legislative Reforms Commission and we were

† Original notice of the question was received in Hindi.

happy that the Government had brought this Code and this Code was passed by both the Houses. Subsequently, the Government noted that there are some deficiencies in the Bill and they promulgated an Ordinance. I welcome the Ordinance. And, my party, broadly, supports this Bill which will replace the Ordinance.

Sir, I will be very brief, because the purpose of my intervention is to point out that the Ordinance and the Bill that replaces the Ordinance throws up some more anomalies. I am pretty sure, sooner than later, the Government would have to come back to the House to remove those anomalies.

Thousands of pages have been written on this Ordinance. I don't share all those views. But, I think, it is important that the hon. Finance Minister takes note of a few suggestions that I wish to make now and reflect on them whether somewhere, in the course of drafting, the amending Bill has not become 'over-inclusive' and may, in fact, become counterproductive to the object of going through the insolvency resolution process.

Sir, let me point out just a few aspects of the Ordinance and the Bill that is proposed to replace the Ordinance.

Firstly, under Section 29A, the Ordinance and the Bill keep out a large number of people from becoming resolution applicant. I think that is correct. Any person cannot become a resolution applicant and some people would have to be excluded from the resolution process. But while doing so, the following people have been excluded. Firstly, a person convicted for any offence punishable for imprisonment for two years or more. This could be a completely non-financial crime or this could be some other crime, which has nothing to do with financial matters, and you are keeping him out. It can be argued that any one who has been convicted should be kept out. But I think the purpose of this Bill is not to enforce a general rule of morality. The purpose of this Bill is to ensure that resolution takes place of a company that has become insolvent. I think this is over-inclusive. This should have been confined to crimes arising out of certain specific acts, particularly, the acts which pertain to finance and economy.

Secondly, under sub-clause (f), you are keeping out persons prohibited by the SEBI from trading in securities or accessing the securities market. Now, we know that the SEBI prohibits people for six months. The SEBI may prohibit access for one year. Literally read, this section means, if you are prohibited, you are kept out. You are not kept out only for the period of prohibition, you are kept out just because you are prohibited. I think this, again, is over-inclusive.

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Clause 8 says that a person will be excluded if he has executed an enforceable guarantee in favour of the creditor or the corporate debtor who is subject to insolvency. At first blush, it may seem that not only the corporate debtor should be kept out, but the person who has executed an enforceable guarantee should also be kept out. There may be any number of cases where the guarantor may resile for good reasons. The guarantor may revoke the guarantee. The guarantor may say you have not complied with certain conditions, hence my guarantee is not enforceable. Merely because he has executed an enforceable guarantee, — he is not the insolvent, he is not the corporate debtor— if you keep him out, I am afraid you are inviting litigation even while you are keeping out a large number of potential investors. The most over-inclusive provision is sub-clause (j). I am sure the hon. Finance Minister's attention has been drawn to this by a number of professionals that this is over the top. Who have you kept out? You have kept out any person who is connected to the applicant under clauses (a) to (h). So far so good. But who is the connected person? A connected person under explanation (i) is a person who is a promoter or in the management or control of the resolution applicant. That is correct. But, then, clause (ii) says, any person who shall be the promoter or in management or control of the business of the corporate debtor during the implementation of the resoltuion plan. How is this possible? When I want to be a resolution applicant, I cannot be a resolution applicant if I have a connected person. But if I have become an applicant, my application has been accepted, a resolution plan is being implemented, and somebody who is connected becomes a promoter, how will you interrupt the resolution process? I think while (i) is correct, (ii), I think, is badly drafted, or, people have not reflected on the implications of (ii). The most damaging explanation is the explanation (iii). *Prima facie*, it appears correct. 'Connected' person means the holding company, subsidiary company, associate company or related party of a person referred to in Clauses 1 and 2. There is no difficulty with a holding company, subsidiary company or an associate company. But when we go to a related party, this immediately attracts Section 5 (24) of the Act and under Section 5 (24) of the Act, there is a long list of related parties. I am sure, the hon. Finance Minister is aware of that very long list. As a result — maybe, I am making an exaggerated statement — practically, everyone will be excluded. The resolution applicant is excluded. If he is connected to a person listed in the amendment, because of the connection, he is excluded and if the connected party has a relative, and because of the long list of related parties, he is excluded. Practically, every resolution applicant will be excluded. I think, one should have been a little more rigorous in the exclusion clauses. One should have

kept exclusion to a very, very small number which definitely must be excluded. But, I am afraid, by making the clauses so over abroad, so over-inclusive, practically everyone in the financial world is likely to be excluded. And, then the word 'relative party' takes us back to the definition of 'relative' in the Companies Act. So, in a rather circuitous way, a resolution applicant, a connected person, his relative brings in practically everyone because everyone will, in some way or other, be brought under the net. Now what are the consequences of this over-exclusion? There are two consequences.

The first consequence is, very few people in India will be eligible to bid, and this worry has been raised by a number of people. It is quite possible that asset-reconstruction companies and alternate investment bodies registered abroad will turn out to be the bidders. Most Indian companies, which go through a resolution process, will pass from the hands of an Indian management to a foreign management. I have no objection to foreigners coming into India and investing. But I think a level-playing field should have been created for an adequate number of Indian companies, adequate number of Indian investors to bid for these assets rather than excluding them by this very over-inclusive Ordinance which will keep out, in my view, a large number of potential Indian investors. The danger is, most of these companies will go to the control of foreigners or foreign companies or multinationals.

The second danger is, you might end up with no bidder for the company as a going concern and you will end up selling the company in bits and pieces. That will be the worst result of this insolvency code. A company has become insolvent. The bank will take a haircut and a new investor will come and put in money. But for the sake of the economy, for the sake of employment, for the sake of producing goods and services, the company must keep going. But if you find no bidder for a company as a going company — and somebody will run the company — you are going to sell the assets in bits and pieces. Somebody will sell the machinery, one will sell the building, one will sell the adjoining land and the company is dead. ...*(Interruptions)*...

SHRI T.K. RANGARAJAN (Tamil Nadu): It will be handed over to the real estate people.

SHRI P. CHIDAMBARAM: That is not the purpose of this code. The purpose of this is: The current management has driven the company into insolvency, but a new management must step in and continue to revive the company, run the company, so that India's companies run and India's employment is protected. I am afraid, these are the two dangers I see by this very, very over-broad exclusion process that you have brought. And,

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while we would pass the Bill today, I think the hon. Finance Minister should reflect on it. I think the best way to reflect is not to go simply by the advice of his officers, but to invite people from the professional business world, reflect on it and try to see whether this over-broad exclusion can be restricted.

Sir, I have one last submission. Initially, the RBI sent 12 companies to insolvency, then they made a list of about 50 companies and said, by December 31st if these companies do not come out of insolvency or their NPAs issue is not resolved, they would have to be sent to insolvency. I do not know whether it is wise to send so many companies into insolvency in one go. What kind of a message does it give? If a company has become insolvent, or is on the verge of insolvency, yes, it must be sent to the resolution process. But then, so many companies go through the insolvency process. I am told by my friends who practise before the Insolvency Board that the Board is already overloaded. I would like the hon. Finance Minister to tell us how many applications, how many cases, have been referred to the Insolvency Board, by the RBI, by the banks themselves and by individual creditors. Does the number run into a few dozen or does it already run into over a hundred? Where are the insolvency resolution professionals to handle all these companies? Does India have enough qualified, competent and experienced professionals for insolvency resolution, running into hundreds, to handle all this?

Sir, this is my last question: I understand that one company has gone through the resolution process. I would like the hon. Finance Minister to tell us what the haircut is that the bank took in that company. Newspapers are full of stories of bankers, not willing to be named but telling journalists privately, that the haircut has to be 60, 65 or 70 per cent. Well, if the haircut has to be 60 or 65 per cent, so be it, but please understand that these are virtually subsidies that you are giving to a corporate defaulter while you are taking away subsidies for people who want sugar, people who want rice and people who want kerosene. I don't know if any banker is willing to take such a haircut. If the first case has ended in a haircut of 65, 70 or even 75 per cent, as was hinted in newspapers, I think it is wise to go slowly. What does a haircut mean? A haircut means the bank has to take a hit and has to provide the equivalent capital. If a banker takes a haircut of ₹ 5,000 crore, then he has to pump in an additional ₹ 5,000 crore of capital. As it is, the banks are struggling to keep the capital adequacy ratio. The hon. Finance Minister is struggling to provide the capital. And, if you take large haircuts, either somebody has to bring that capital for

the company or the bank has to find the capital to run its business. Now, the Bill that we passed is a good Bill. While I concede that there were some anomalies, [some applicants should have been excluded, and the Ordinance is in the right direction. I think the over-broad way in which the Ordinance has been drafted, the over-inclusive manner in which the Sections have been drafted, I am afraid, throw up new challenges, which I believe the hon. Finance Minister would have to address, if not today, in due course of time.

With these observations, we support the Bill.

श्री भूपेन्द्र यादव (राजस्थान): सम्माननीय उपसभापति जी, सर्वप्रथम मैं Insolvency and Bankruptcy Code बिल में ऑर्डिनेंस के माध्यम से सरकार तुरन्त जो परिवर्तन लेकर आई है, उसके लिए केन्द्रीय कानून मंत्री जी का स्वागत करता हूं। यह इस बात को दर्शाता है कि इस कानून में सरकार कितनी सजगता के साथ सारे विषयों की monitoring कर रही है। एक साल पहले, जब Insolvency and Bankruptcy Code बिल को पारित किया गया था, तो विषय था कि हमारे देश में जो पूंजी बाजार है और जो लोग किसी भी प्रकार का निवेश करते हैं, अगर कोई कंपनी या कोई फर्म दिवालिया होने के कगार पर पहुंचती है, तो उसके पैसे की भरपाई कैसे होगी? पहले जो कंपनी दिवालिया होती थी, उसे लगभग सात-आठ अथॉरिटीज़ से गुजरना पड़ता था। टैक्स अथॉरिटी अलग होती थी, लेबर अथॉरिटी अलग होती थी, कंपनीज़ लॉ में अलग केस चलते थे, चेक बाउंस के अलग केस चलते थे और सिविल डिस्प्यूट अलग चलते थे। फिर BFIR और AAIFR की जो प्रक्रिया थी, वह इतनी लम्बी थी कि बाजार का जो पैसा उसमें लगा होता था, उसका सही समय पर मिलना बहुत मुश्किल होता था। अब इसे एक comprehensive तरीके से Insolvency and Bankruptcy Code बिल के रूप में लाया गया है।

महोदय, जहां तक इस कानून के आने के बाद, इसके प्रयोग का विषय है, पिछले एक साल में ही NCLT में 500 से ज्यादा applications file हुई हैं। इतनी संख्या में जो एप्लीकेशन्स फाइल हुई हैं, यह इस बात को दर्शाता है कि इस कानून की कितनी आवश्यकता थी और इस समाधान के कानून को आगे बढ़ाने के लिए जो एक लम्बे समय से निर्णय लिया जाना था, उसकी कितनी आवश्यकता थी। इसमें भी जो applications आई हैं, उनमें से आधी से ज्यादा applications, Operational Creditors के द्वारा file की गई हैं। यह इस बात को दर्शाता है कि वर्ष 2016 से पहले Operational Creditors को इस प्रकार से जाने का और किसी भी वित्तीय स्थिति में जो दिवालिया होने वाली फर्म है, उसमें उसे अपने लिए जो एक उत्तर मांगने का विषय होता है या समाधान करने की जो प्रक्रिया होती है, उससे वह वंचित थी, लेकिन जो सबसे बड़ा संशोधन हम इसके माध्यम से लेकर आए हैं, इसके लिए मैंने प्रारंभ में सरकार को बधाई दी वह इसलिए कि जो संशोधन लाया गया है, उसका तात्पर्य यह है कि जो भी कंपनी दिवालियेपन की स्थिति में जा रही है, उसमें जो Resolution Applicant है, वह call हो सकता है। अभी जो haircut की बात आई किं कपनी का जो haircut है उसका लाभ उठाने के लिए कहीं वे लोग ही, तो नहीं हैं, जिनके कारण से कंपनी दिवालिया होने के कगार पर पहुंची है या जिसके कारण से कंपनी की ऐसी स्थिति बनी है कि वह कंपनी ऋण के भार से ग्रस्त होकर दिवालिया होने की स्थिति में चली गई है। इसलिए सेक्शन 5, 25 और उसके consequent amendments इस बिल में

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किए गए हैं, वे इसलिए हैं कि वह व्यक्ति जो कंपनी को इस स्थिति में लाने के लिए जिम्मेदार है और बाजार में उसके ऊपर जो ऋण की स्थिति है, उसके बारे में संदिग्धता और प्रश्नचिह्न लगे हुए हैं, कम से कम यदि हमें resolution mechanism transparent करना है या effective करना है, तो Resolution Applicant बनने से उसे रोका जाए। इस कानून के सेक्शन 29 में जो disqualification का प्रावधान रखा गया है, उससे निश्चित रूप से यह सुनिश्चित होगा कि जो व्यक्ति को दिवालिया बनाने के कगार पर ले गया है, वह कम से कम उसका दुरुपयोग करके पुनः उस कंपनी में नहीं जा सके, जिसके कारण उस कंपनी का Non Performance Asset बढ़ा और loan का payment नहीं किया।

सम्माननीय उपसभापति महोदय, यह सच है कि अभी Insolvency and Bankruptcy का जो jurisprudence है, जो कानून है, वह अभी विकसित हो रहा है। इस कानून को जब हम लेकर आए हैं, तो इसे लाते समय भी यह जानकारी थी कि Insolvency Professional खड़ा करना, उसके लिए व्यवस्था खड़ी करना, उसके लिए पद्धति खड़ी करना और एक mechanism को खड़ा करना कि हम एक बहुत छोटे समय के अंतर्गत बाजार में जो पूंजी का प्रवाह है, बाजार का जो ऋण है और जो कंपनी डूबती है, उसे किस प्रकार से बचा सकें। एक वर्ष या अधिक के समय का जो सरकार का अनुभव आया है और जो समस्याएं संज्ञान में आई हैं, उन्हीं के समाधान के लिए सरकार यह वर्तमान ऑर्डिनेंस लेकर आयी है। यह समस्याओं का आना स्वाभाविक है, लेकिन इसका जो त्वरित समाधान सरकार ने किया है, सरकार इसके लिए बधाई की पात्र है। किसी भी कम्पनी के लिए किसी लोन के पेमेंट और रीपेमेंट के नहीं हो पाने की स्थिति में जब इन्सॉल्वेंसी की स्थिति आती है, तो यह देखना बहुत महत्वपूर्ण है कि ऐसी स्थिति में कम से कम व्यवस्था का दुरुपयोग नहीं हो। कानून का उद्देश्य यह है कि बाजार में जो पूंजी का प्रवाह है या कम्पनी में जो निवेश है, वह एक सुरक्षित तरीके से – अगर वह रीपेमेंट नहीं हो पा रहा है, अगर Resolutin Plan नहीं बन पा रहा है या अगर उसमें किसी प्रकार का अन्य कोई समाधान नहीं हो पा रहा है, तो कम से कम उसका जो ऑब्जेक्ट है, उसमें किसी प्रकार का अवरोध उत्पन्न न हो। इसलिए सरकार ने समयबद्ध तरीके से इसको पूरा करने का काम किया है। यह संशोधन, वर्तमान सरकार की कानून के प्रति जो गम्भीरता और प्रतिबद्धता है, उसको बताने का काम करता है। इस समय देश भर में बहुत सारे Insolvency Resolution Plans NCT में समाधान के लिए लम्बित हैं और अगर तत्काल प्रभाव से एप्लिकेंट्स को disqualify नहीं किया जाता, आधे से ज्यादा मामलों में इस प्रकार की दिक्कत सरकार के ध्यान और संज्ञान में आयी थी। इसलिए सरकार ने ऑर्डिनेंस को लाकर बहुत सही समय पर, जो लोग इसके लिए qualify नहीं करते हैं, उनको disqualify करने का काम किया है और जो लोग Resolution Plan दे चुके हैं, वे भी एक उचित सीमा के अंतर्गत अपनी जो overdue राशि है, उसका भुगतान कर सकते हैं।

उपसभापति महोदय, अगर एक उदाहरण से इस बात को हम लोग समझने का प्रयास करें कि किसी कम्पनी अथवा व्यक्ति ने अगर क्रेडिटर से लोन लिया है, तो उसके पास विकल्प है कि या तो पूरा पेमेंट करके अपनी कम्पनी को इन्सॉल्वेंसी में जाने से बचा ले अथवा उसकी ब्याज राशि का भुगतान करके उस अकाउंट को पुनः ऑपरेशनल करा ले। अगर वह इन दोनों में से कोई विकल्प नहीं चुनता है, तो कम्पनी इन्सॉल्वेंसी में चली जाती है। अगर बाद में रिजोल्यूशन एप्लिकेशन देकर वह उस

कम्पनी को बहुत कम राशि में खरीदने का प्रयास करता है, तो यह किसी भी प्रकार से न्यायोचित नहीं कहा जा सकता है। इसलिए सेक्शन 29 में प्रावधान लाये गये हैं कि दिवाला और संशोधन अक्षमता कानून अपने सही उद्देश्यों के साथ लागू हो सके। एक ऐसा व्यक्ति जो अपना लिया हुआ कर्ज वापस देने की इच्छा नहीं करता, उसकी की गई गलती से उसको लाभान्वित होने से रोकना बहुत जरूरी है और इसीलिए क्लॉज़ 5 में भी अमेंडमेंट लाया गया है। यह संशोधन उन लोगों को Company Power Control रोकने के लिए है, जिन्होंने कम्पनी को दिवालेपन के कगार पर पहुंचाया है। इसलिए यह विधेयक Insolvency Resolution Professional की Committee of Creditors के माध्यम से यह अधिकार देता है कि किसके Resolution Plan Submission को वह स्वीकृति दे। हमने यह पूरी व्यवस्था इस पूरे कानून के अन्तर्गत इसलिए लागू की, कि भारत के अर्थतंत्र में पारदर्शी व्यवस्था और कारोबार में सुगमता की दृष्टि से एक बड़ा परिवर्तन हो। आज अगर 'Ease of Doing Business' में, हम लोग देश में, विश्व में रैंकिंग में ऊपर आये हैं, तो उसका एक बहुत बड़ा कारण है कि सरकार ने बहुत दृढ़ता के साथ जो रिफॉर्म्स के इश्यूज़ हैं और कम से कम पूँजी बाजार में जो लोगों की पूँजी की सुरक्षा है, उसके लिए सरकार ने व्यवस्थागत परिवर्तन किये हैं। व्यापारिक व्यवस्था में पारदर्शी तरीके से स्वस्थ प्रतिस्पर्धा का माहौल खड़ा हो, इसके लिए सरकार ने इस प्रकार के कानूनों को बना कर इस दिशा में आगे कदम बढ़ाये हैं। कम्पनीज़ में जिस प्रकार की अनियमितताएँ हैं, भ्रष्टाचार को रोकने के लिए ऑर्डिनेंस एक मज़बूत संदेश देने वाला है। सरकार ने यह ऑर्डिनेंस बहुत छोटे समय में लाकर, इस विषय को एक बहुत ही थोड़े समय में लाकर एक नया रास्ता बनाया है। अगर इस प्रकार का कोई लोन कम्पनी द्वारा लिया जाता है, तो उसकी रीपेमेंट करने के लिए एक पूरी व्यवस्था बनाने का पूरा मैकेनिज्म जो है, वह सरकार ने किया है। लेकिन जो ऑर्डिनेंस आया है, उसमें Resolution Applicant के लिए जो सरकार ने disqualification की सीमाएँ तय की हैं, वह निश्चित रूप से इस कानून को मज़बूती प्रदान करेगा और आने वाले समय में इस देश में insolvency और bankruptcy कानून के माध्यम से हम देश की पूँजी को सुरक्षित करके देश के उद्योग-व्यापार को बढ़ा पायेंगे। हम सब मिलकर इस कानून को, जो एक सही समय पर सरकार संशोधन लायी है, इसको स्वीकृति प्रदान करके इस कानून को उसके उद्देश्यों के अनुरूप चलाने के लिए, हम सब लोग समर्थन दें, यही अपेक्षा है, धन्यवाद।

श्री नरेश अग्रवाल (उत्तर प्रदेश): माननीय उपसभापति जी, माननीय वित्त मंत्री जी जो बिल लाए हैं, हम उसको पास कराएंगे, क्योंकि हम ऐसा कोई संदेश नहीं देना चाहते हैं कि हम सरकार के मार्ग में कहीं रोड़ा हैं। यहां पर भारतीय जनता पार्टी के राष्ट्रीय अध्यक्ष जी बैठे हैं, आप देश को जो संदेश दे रहे हैं कि हम करप्शन खत्म करेंगे और ब्लैक मनी खत्म करके economical reform लाकर इस कंट्री को सुधारेंगे। हम सब इसके पक्षधर हैं, लेकिन मैं देख रहा हूं कि इन सबके बावजूद भी आप जो सोच रहे हैं, क्या वह सोच सही रूप से लागू हो रही है? हम इसके समर्थन में खड़े हैं, लेकिन हम आपसे पूछना चाहते हैं कि जब आपने 23 नवम्बर, 2017 को ऑर्डिनेंस जारी किया, तो आपने दस लोगों की जो एक कमेटी बनाई, उस कमेटी की रिपोर्ट आई या नहीं आई? अगर रिपोर्ट आई, तो क्या रिपोर्ट आई? आज क्वेश्चन ऑवर में नीरज शेखर जी का प्रश्न था कि एनपीए में कितने परसेंट की कमी आई और प्रधान मंत्री जी ने जो कहा कि एनपीए भी एक बहुत बड़ा स्कैम है, तो आखिर वह स्कैम क्या है, यह हम सब जानना चाहते हैं? हम यह भी जानना चाहते हैं कि एनपीए कैसे घटेगा? आज स्थिति यह है कि कोई भी बैंक से पैसा उधार लेने को तैयार नहीं है। अगर बैंक का पैसा इन्वेस्ट नहीं होगा, तो बैंक

[श्री नरेश अग्रवाल]

की आर्थिक स्थिति बहुत खराब होती चली जायेगी। अगर बैंक liquidation के कगार पर खड़ा हो गया, जैसे आप FRDI कानून ला रहे थे, चलिए, अब तो वह सेलेक्ट कमेटी के पास है, लेकिन FRDI कानून लाने की जरूरत इसी कारण पड़ रही थी, क्योंकि बैंक की स्थिति लगातार खराब हो रही है। इसलिए मैं आपसे जानना चाहता हूं कि इस बिल के बाद, क्योंकि आप कह रहे हैं कि जो लोग अपने को दिवालिया घोषित कर देते हैं, उन सब पर लगात लगाने के लिए हम इस बिल को लाए हैं, इस एक्ट को लाए हैं, लेकिन यह तो पहले से लागू था, आप इसमें अमेंडमेंट लेकर आए हैं, फिर भी क्या इस एक्ट के लागू होने के बाद, एनपीए घटेगा, क्योंकि मैं अभी पढ़ रहा था कि नाबार्ड का एनपीए सात परसेंट और बढ़ा, जब कि नाबार्ड विधेयक भी लाना था। सबसे ज्यादा एनपीए भारतीय स्टेट बैंक का है। हिन्दुस्तान में जितने भी बैंक हैं, उनमें से सबसे ज्यादा एनपीए भारतीय स्टेट बैंक का है। हम यह जानना चाहते हैं कि इस बिल के पास होने के बाद उस एनपीए को घटाने में इस बिल से कैसे मदद मिलेगी?

आप तीन-चार चीज़ें लेकर आए हैं, एक तो आपने 'Insolvency Professional' शब्द डाला। हम जानना चाहते हैं कि 'Insolvency Professional' शब्द का मतलब क्या है? कौन Insolvency Professional होगा, क्योंकि उसी के हाथ में सब कुछ है? वह जब चाहेगा, तब बोर्ड के 75 परसेंट मेम्बर्स से राय लेकर कोई प्रपोज़ल दे देगा, कंपनी को समाप्त करने की राय दे देगा। एनसीएलटी को वही सारी राय देगा, तो वह कौन होगा? पहली बात कही गई थी कि सबकी राय पर कोई वकील बनाया जाएगा, जो क्रेडिटर्स हैं, उनकी राय पर बनाया जाएगा, लेकन अब आप किसको बना रहे हैं? हम दूसरी बात यह जानना चाहते हैं किं कपनी के ऐसेट्स की कीमत कौन लगाएगा? आप कहते हैं किं कंपनी को बेच दिया जाएगा, तो बेचने के लिए कंपनी के ऐसेट्स कौन तय करेगा? हमको शक है कि कहीं औने-पौने दामों पर न बेच दिए जाएं। मुझे याद है कि सहारा के केस में सेबी सुप्रीम कोर्ट गई और सहारा की Aamby Valley को बेचने का आदेश हुआ, लेकिन आज तक सहारा की Aamby Valley बिकी ही नहीं। अभी हमारे भूपेन्द्र भाई बता रहे थे किं अब तक 500 कपनियां आ चुकी हैं, तो कहीं ऐसा न हो किं 500 कपनियों के जो एसेट्स हैं, उनको लेने वाला कोई नहीं हो, जैसे चिदम्बरम भाई कह रहे थे कि इसके बहाने कहीं फॉरेन कंपनी को मौका न मिल जाए। अगर आप बहुत कड़ाई करेंगे, तो कहीं ऐसा न हो कि Bitcoin से parallel economy चलने लगे। मैंने उस दिन आपसे कहा था कि यह ठीक है कि फाइनेंस मिनिस्ट्री ने Bitcoin पर एक clarification जारी किया है, लेकिन तो भी Bitcoin अगर कंट्री की एक parallel economy बनती चली गई है और अगर लोग Bitcoin के माध्यम से व्यापार करने लगे, तो आपके इस बिल या इस एक्ट का क्या अर्थ रह जाएगा?

सर, संविधान के Seventh Schedule ने यह राइट दिया है कि देश में parallel economy नहीं चलेगी, तो Bitcoin के माध्यम से parallel economy क्यों चलाई जा रही है? इसे आखिर हम रोकते क्यों नहीं? आज Bitcoins के 5,000 centres हो गए हैं और हिन्दुस्तान में इन centres की संख्या बढ़ती ही चली जा रही है। हजारों के वारे-न्यारे होते चले जा रहे हैं। इसे रोकने का भी आपने कोई प्रावधान किया या नहीं? आपने ineligible लोगों की इतनी categories बना दीं, मुझे नहीं लगता कि हिन्दुस्तान में रहने वाला कोई और उसे खरीद पाएगा। मैं देख रहा था कि आपने कम-से-कम 11-12

categories बना दी हैं और इन categories में आने वाला उस कम्पनी की बोली नहीं लगा पाएगा। यदि उस कम्पनी की बोली वे नहीं लगाएंगे तो बोली लगाने वाला कौन आएगा, कम्पनी के कर्मचारियों की तनख्वाह कौन दिलाएगा - यह भी तो बता दीजिए। जिन 2 लाख कम्पनियों को आपने ban कर दिया, उन 2 लाख कम्पनियों के कर्मचारियों को कौन पैसा देगा? आज वे कर्मचारी मारे-मारे घूम रहे हैं। उन्हें कोई salary भी नहीं दे रहा है। उनकी सुरक्षा का ध्यान कौन रखेगा? क्या NCLT उनकी सुरक्षा का ध्यान रखेगी? यह भी clear हो जाना चाहिए। मैं आपसे फिर कहता हूं कि हिन्दुस्तान में अगर आपने रोज़गार स्थापित नहीं रखा, अगर आपने हिन्दुस्तान में कम्पनीज़ को खत्म करना शुरू कर दिया, तो जिस हिसाब से बहुत से लोग विदेश भाग रहे हैं, अगर हिन्दुस्तान से सारे पूंजीपति विदेश चले गए तो यहां नौकरी या रोज़गार देने का अवसर कौन प्रदान करेगा? फिर विश्व की मार्केट में हम कैसे compete कर पाएंगे? जो लोग इसमें कवर होते हैं, जो insolvent हो रहे हैं, उन्हें आखिर एक मौका तो दीजिए। आप उन्हें बुलाइए। जो सबसे बड़े defaulters हैं, मैं यहां किसी का नाम नहीं लेना चाहता हूं, इस देश में ऐसे बहुत से बड़े लोग हैं, जिनकी तरफ बैंकों के हजारों करोड़ रुपए बाकी हैं, लेकिन उनके बारे में बैंक कुछ नहीं बोल रहे हैं। दूसरी तरफ, गांव के एक छोटे आदमी की तरफ, अगर एक लाख रुपए भी बाकी हो जाता है, तो उसका tractor शाम को तहसील वाले खींचकर ले जाते हैं। आखिर ऐसा क्यों होता है? मैंने बहुत बार कहा कि इस ऐक्ट के साथ ऐसा प्रावधान भी कर दीजिए कि बैंकों का जो भी defaulter होगा, उसका नाम अखबारों में प्रकाशित किया जाएगा। कम-से-कम हम लोग जान तो सके कि देश के कौन बड़े-बड़े लोग NPA का सारा पैसा अपने पास रखे हुए हैं? अगर किसान का नाम लाल रंग से तहसील पर लिखा जा सकता है, तो उन लोगों का नाम क्यों नहीं लिखा जा सकता? मैं यह जानना चाहता हूं और देश को यह जानने का अधिकार है।

मैं आपसे अनुरोध करूंगा कि जहां आप कानून बनाएं, सख्त कानून बनाएं, लेकिन कम कानून बनाइए। एक हफ्ते पहले आपने 200-300 कानून खत्म किए हैं। मैं चाहूंगा कि आप कम कानून बनाइए और जिस तरह रोज़ amendments हो रहे हैं, इन amendments की जगह आप सबको जोड़कर एक बड़ा कानून ले आइए और उस कानून के तहत कार्यवाही कीजिए, जिससे बड़े भी जिन्दा रहें, छोटे भी जिन्दा रहें, देश की अर्थव्यवस्था भी ठीक रहे, हमारी ग्रामीण संस्कृति भी जिन्दा रहे और चीन भी हिन्दुस्तान के बाज़ार पर कब्जा न कर पाए। यह सब हमें देखना चाहिए। मैंने अभी कहा था कि आपने कई items पर Customs Duty बढ़ाई है, MSME sector के जितने भी products हैं, आज कुल्हड़ चीन के हाथ में चला गया, मोमबत्ती चीन के हाथ में चली गई, दिया चीन के हाथ में चला गया, फिर गांव के लोग जो व्यापार करते हैं, MSME sector में 25 लाख तक, उनका उत्पाद खरीदने वाला कोई नहीं रहेगा। आज वे व्यापार नहीं कर पा रहे हैं और जब वे व्यापार नहीं करेंगे तो हमारा ग्रामीण sector इंडस्ट्री से खत्म हो जाएगा, फिर गांव में रोज़गार देने के अवसर आप कैसे प्रदान करेंगे? मैं चाहता हूं कि इन सब चीज़ों पर आप ध्यान दें ...(**समय की घंटी**)...

MR. CHAIRMAN: You have three more minutes.

श्री नरेश अग्रवाल: मैंने सोचा कि आप रोक रहे हैं। हम कभी आपके आदेश की तरफ ताकते नहीं हैं। सबसे लायक हम ही आपके हैं। ...(**व्यवधान**)...

श्री उपसभापतिः आप बोलिए, बोलिए। ...(**व्यवधान**)...

श्री हरिवंश (बिहार): हम बाकी सब लोग भी लायक हैं। ...(**व्यवधान**)...

श्री नरेश अग्रवालः चलिए, हरिवंश जी आज कुछ बोले तो। ...(**व्यवधान**)... हम तो हरिवंश जी से कहते हैं कि आप जे.पी. मूवमेंट से निकले हैं, कभी तो आप सत्य बोल दिया कीजिए। हम तो असत्य बोलने के लिए मशहूर हैं। मैं तो वकील हूं, मैं तो सत्य बोल ही नहीं सकता। वकील होने के कारण हमें तो असत्य बोलना ही है। हमें जिसकी पैरवी करनी है, उसी के पक्ष में बोलना है। हम वकील होने के नाते मजबूर हैं। हमें तो जो फीस देगा, हम उसी की बात कहेंगे। ...(**व्यवधान**)...

श्री उपसभापतिः हां, बोलिए। ...(**व्यवधान**)...

श्री नरेश अग्रवालः वे बड़ी अदालत के वकील हैं, हम थोड़ी छोटी अदालत के वकील हैं लेकिन ज्यादा संबंध हमारा लोगों के साथ रहता है, क्योंकि छोटी अदालतों में ज्यादा लोग आते हैं, जबकि बड़ी अदालतों में तो बड़े-बड़े लोग ही पहुंच पाते हैं। छोटी अदालतों में तो बहुत छोटे लोग भी पहुंच जाते हैं। मैं वित्त मंत्री जी से सिर्फ यही कहना चाहता हूं कि बिल ठीक है, बिल के प्रावधान भी ठीक हैं, लेकिन जैसा कि भूपेन्द्र जी ने कहा कि 500 कंपनीज़ आ गईं, तो आप कम से कम दोबारा यह देख लीजिए कि 500 कंपनियों में से जो कंपनीज़ रिवाइव होने की स्थिति में हों, उनको आप एक बार रिवाइव होने का मौका दीजिए, ताकि ऐसा न हो कि सारी कंपनियां बन्द होने की स्थिति में चली जाएं और हिन्दुस्तान की अर्थव्यवस्था चरमरा जाए। इसलिए मेरा आपसे अनुरोध है कि इन सबको देखते हुए एक बार फिर से रिव्यू करा दीजिए और उसके बाद कार्रवाई करें, तो बहुत अच्छा होगा। बहुत-बहुत धन्यवाद।

MR. DEPUTY CHAIRMAN: Nareshji, I should specially thank you because you had two more minutes. Now, Shri A. Navaneethakrishnan. You have eight minutes.

SHRI A. NAVANEETHAKRISHNAN (Tamil Nadu): All right, Sir. I will not take that much time. I welcome this Bill. It has good intention to prevent defaulters from again becoming owners of the company. It is good. At the same time, the defects or the bad consequences pointed out by the learned senior Member, who is also former Finance Minister, should be looked into. Those are, according to me, valid points. I want to know from the hon. Finance Minister and from the House what is meant by 'haircut'. Why is it so that concept of haircut is not made applicable to agricultural loans and educational loans? In Tamil Nadu, a farmer, who purchased a tractor, was not able to repay the loan. The interest is exorbitant. It is not treated as agricultural loan. It is a commercial loan. A student raised a loan, studied but could not get employment. In Tirunelveli, a student raised a loan from the State Bank of India. It sold the loan to the Reliance company for ten per cent of the loan amount. The poor student was threatened by this company and he committed suicide. Also, there are many suicides by farmers. It is a well-known fact that

it happens because of their inability to repay the loan taken for agricultural purposes and for purchase of agricultural equipment. What is the concept of haircut? Does it have any legal backing? Why is there no transparency in haircut? The senior Member referred to a transaction particular to a company. He's unable to find out the name of the company and the amount involved in the haircut. How much money was not collected or waived?

My humble submission would be this. It is a very serious problem. Small borrowers are harassed by banks because they are not applying the NPA principle properly as laid down by the Reserve Bank of India. In one of the reports, subject to correction, the Reserve Bank of India has condemned the behaviour of the banks because they were not following the guidelines to classify the loans as NPAs.

MSMEs need adequate security. They are not able to run the business. The MSMEs are suffering a lot. I don't want to accuse anybody. But our hon. Finance Minister must give clear-cut instructions to the banks and also to the Reserve Bank of India to issue the circular stating under what circumstances an account can be classified as NPA.

Definitely, I urge and request the hon. Finance Minister to consider this. Educational loans and agricultural loans must be exempted from the concept of NPA. Or, at least, revise the guidelines for NPA as far as educational loans and agricultural loans are concerned. Because once a farmer raises a loan for purchase of a tractor, the entire generation collapses. They are automatically committing suicide because they are not able to repay the amount. They are not able to get anything from cultivation. So, the NPA may be applicable to commercial transactions, that too, to high-value transactions and not to loans to small farmers or students. Further, I would like to urge the Central Government that while borrowing money, applicant's name and amount — suppose the amount exceeds ₹ 1 crore — must be made public. Who is the borrower? Who is in need of money to the extent of ₹ 10 crore or ₹ 50 crore or ₹ 500 crore? It must be made known to the entire world as to why they are raising the funds. Definitely, they are going to misapply the loan or not use for the purpose for which they raised the loan. So, the entire public must know how the transaction is taking place and how the money, which is raised, is applied — whether it is applied for the purpose for which the loan has been raised. Now, one of the former Members is residing in London. He said that our judicial system is biased; our prison system is worst; it is violation of human rights. Sir, kindly take note of it. The educational loans and agricultural loans must be exempted from the concept of NPA and also, the concept of haircut and under what circumstances it would be applicable must be made public. How much money has been wasted because of haircut? Sir, this should not

[Shri A. Navaneethakrishnan]

be applicable to educational loans and agricultural loans. I thank the Chair and also I urge the hon. Finance Minister to have a human consideration with regard to educational loans and agricultural loans. Thank you, Sir.

MR. DEPUTY CHAIRMAN: Thank you, Navaneethakrishnanji. You also concluded your speech within time. You took less than the allotted time. Now, Shri Sukhendu Sekhar Ray.

SHRI SUKHENDU SEKHAR RAY (West Bengal): Sir, so far as this amendment Bill is concerned, we have preferred two amendments. First one is with regard to clause 5 of the Bill, which proposes insertion of Section 29A; and second is to its sub-clause (c), which is very relevant. It disqualifies persons who hold accounts which are classified as Non-Performing Assets and provides that at least one year must have passed between the date of such classification and the date of commencement of insolvency resolution process. Now, Sir, this provision does not take into account the fact that not all bad accounts are wilful. There is a sharp difference between bad loans and wilful defaulters. There are so many bad loans where despite the good intent of the borrowers, they could not pay back the loan because of market factors, unforeseen factors, etc. The Government must take into account the intentions in respect of such bad loans which do not have bad intentions of wilful defaulters. Now, who is a wilful defaulter? The Reserve Bank of India in its Master Circular dated 1st July, 2015 has defined wilful defaulter. It provides for a unit which has obligations to the lender even when it has the capacity to honour the said obligations but has defaulted, a unit which has defaulted and not utilised the finance from the lender for the specific purposes for which the loan was taken, a unit which has defaulted and siphoned off the funds, and a unit which has disposed of or removed the movable fixed assets or immovable property given for the purpose of securing a term loan without the knowledge of the bank. These are the companies or the people who have been characterised as wilful defaulters as per the RBI Act. Now, Sir, this circular of RBI has also advocated penal measures – penal measures against wilful defaulters. Now, नरेश जी बता रहे थे कि RBI has said the lenders, that is, banks, may initiate criminal proceedings against wilful defaulters wherever necessary. I do not know in how many cases penal action or criminal proceedings have been initiated against wilful defaulters or if at all! On the contrary, before the apex court, the Government has given a sealed cover, giving a list of the wilful defaulters with the plea that their identity should not be disclosed. And, for that matter, the RBI

Act of 1934 or the Banking Regulation Act of 1949 have not been amended for disclosure of the identities of such wilful defaulters sorry to say. Therefore, according to us, there should be a difference between the bad loan accounts and the wilful defaulters, which has not been given credence by the Government in the proposed Amendment.

Secondly, Sir, in Section 29A, clause (h) disqualifies persons, who have executed a guarantee in respect of a company against which an application for insolvency resolution has been admitted, from submitting a resolution plan. This provision is also too wide because there are guarantors who have failed to honour a guarantee executed by them. They can be taken into account but those whose guarantee has not been invoked at all, the guarantee given by a guarantor has not been invoked at all, how can they be treated in the same manner against those who have given guarantee and failed to honour that guarantee?

Therefore, my suggestion to the Government is that this provision is too wide and there is no rationale in disqualifying the persons, where I have said, 'two sets of persons'.

Now, the third point is in regard to the homebuyers. That is the perennial problem that the homebuyers are facing. Now, Sir, there is neither a reasonable classification in keeping homebuyers out of the category of operational creditors nor does such a classification have any nexus with the object of the Code. If we go through the parent Code and the Objects and Reasons given therein, there is no nexus with the Objects and Reasons of the parent Code so far as the homebuyers are concerned because they do not fall within the category of secured creditors or operational creditors.

Now, Sir, my suggestion to the Government is that the Government should take note of this that the homebuyers and operational creditors would stand together in queue in case of liquidation of a builder company.

Nowadays, there are so many builder companies which have defaulted. They have not handed over the flats, houses to people who have applied for homes and deposited money with the companies. They are being cheated and in several cases, even the apex court had to intervene that there is no such provision in the Amendment or in the parent Code that the homebuyers should also come under the definition of operational creditors. Otherwise, their interest will be jeopardized. In our country, there are thousands and thousands of homebuyers. Many of them do now know where to go and how to resolve

[Shri Sukhendu Sekhar Ray]

3.00 P.M.

their disputes. Some people are going to the Consumer Forum; some people are going to the different courts and now with the introduction of this Bill and the Amendments thereof, the homebuyers will be *in a soup,* their interest will be compromised.

Finally, before I conclude, Sir, while the provisions of this Bill do not appear to apply to resolutions admitted by the NCLT, this may create a problematic situation for Synergy Dooray case—the famous Synergy Dooray case—where the debtor company was merged with a related party itself, while undertaking a 95% haircut. That is the area where the Government should pay more attention. And, what about the wilful defaulters; why are we not attaching the properties of their group companies? The properties of the group companies of the wilful defaulters should also be attached and their identity should be disclosed. If the Government has good intention to give relief to the people, then, those who have plundered with the public money, they must be brought to book first and, thereafter, certain other categories of people should be taken care of. This is my humble submission through you to the Government. Thank you, Sir.

MR. DEPUTY CHAIRMAN: Thank you. You also took less time. You took only seven minutes in place of eight minutes. Thank you very much. Every Member is now. *...(Interruptions)...*

SHRI SUKHENDU SEKHAR RAY: I ring the bell while sitting there. *...(Interruptions)...*

MR. DEPUTY CHAIRMAN: I did not do that. No, no. I did not want to do that. It is good that every hon. Member is very much cooperating to the extent of speaking less than the time allotted to him.

SHRI TAPAN KUMAR SEN (West Bengal): I will cooperate by taking his time. *...(Interruptions)...*

MR. DEPUTY CHAIRMAN: I have no problem. Next is, Shri A.U. Singh Deo. I hope you will also follow the same example.

SHRI A.U. SINGH DEO (Odisha): Sir, of course, this Bill is to be supported and we support it too. The Amendment Bill 2017 amends the Insolvency and Bankruptcy Code which was enacted to find a time-bound resolution for ailing and sick firms. The enactment of Code in 2016 had bought in very high expectations that things would stabilize, but they

have not. The Indian banking sector has been grappling with the issue of Non Performing Assets and increasing credit costs over the past few years. Sir, according to the RBI's data, NPAs were three per cent of gross advances of all banks in India in 2013.

[THE VICE-CHAIRMAN (SHRI T.K. RANGARAJAN) *in the Chair*]

By 2016, they had grown to 9.3 per cent. The increase was much more for nationalized banks *i.e.,* from 2.9 per cent in 2013 to 13.8 per cent in 2016. As compared to private banks, the NPA raised from two per cent of gross advances in 2013 to 3.1 per cent in 2016. The PSBs have a bad loan ratio. That is almost twice as bad as their private counterparts and has led to contraction in the credit growth of the private sector. Sir, the NPAs of PSBs have increased to 7.33 lakh crores as of June, 2017 from 2.78 lakh cores in March, 2015. Top five banks together— SBI, PNB, BOI, IDBI, Bank of Baroda account for a share of 47.4 per cent totaling to ₹ 393,154 crore. According to CARE ratings, as of end September, 2017, NPAs in the Indian banking system made up around 9.85 per cent of total loans. The pile-up of unsustainable corporate credit is huge. The unprecedented slowdown in credit growth, despite rate cuts, indicates to economic slowdown. The critical element for the economy now is a speedy resolution and how to rectify and bring down the level of gross NPAs. Sir, the Government needs to introspect as to why even after more than a year of its implementation, the Code has not been successful in dealing with growing NPA crisis. The Code is in its early stages of implementation with the first case resolved in August, 2017, for which we all look for details. Institutions under the Code, such as Information Utilities to handle financial information related to debtors are still being set up and insolvency professionals are still being trained. We would still like to know the definition of insolvency professionals, their credentials and what they really need to do. Sir, 300 cases have been registered under the Code as per my information, some of which have been challenged in the High Courts. ...*(Interruptions)*...

THE VICE-CHAIRMAN (SHRI T.K. RANGARAJAN): You can take one minute more.

SHRI A.U. SINGH DEO: Sir, if I have only one minute more, then, I need to cut short my points. Sir, the other Members have brought in aspects of insolvency professionals, people who value companies, and there is a long list of people who are being left out from participating in purchasing new companies. While the intention to exclude such persons is good, all bad loans may not be the result of willful default, diversion or misappropriation of funds in a market. In an economy, there are cases of failure, there are change in the market conditions, severe competition, change in technology and policies of

[Shri A.U. Singh Deo]

the Government. So, we really can't debar everybody from participating in the resolution process like it has been suggested by other speakers before me that the foreign companies would then take hold of what is available in this country. Sir, insolvency resolution is a commercial process and banks and financial institutions and financial institutions should be allowed to take informed decisions keeping the best business interests in mind. They should not be compelled to reject the offer of existing promoters, mainly because under their control the company had defaulted except where there is an allegation of willful default or misappropriation of funds.

Sir, the need of the hour is to amend the law to ensure that only deserving candidates are allowed to bid for stressed assets under the Corporate Resolution Plan. Therefore, I recommend that such restrictions should be applied on a case-to-case basis rather than imposing a general prohibition. The Insolvency and Bankruptcy Board should be empowered to examine such cases where a prohibition is applicable. It can't be a general rule, Sir. We heartily support the Bill. But I do feel that certain amendments are needed to be put in. A larger picture has to be put in place. I hope the hon. Minister, who is very capable, would look into the suggestions made in this august House today. Thank you.

श्री हरिवंश: उपसभाध्यक्ष महोदय, इस सरकार ने पिछले तीन वर्षों में ब्लैकमनी के संबंध में, बैंकों को मजबूत बनाने की दिशा में, इरादतन बैंकों का पैसा डुबाने वालों के खिलाफ जो कानून बनाए हैं, मैं उनका स्वागत करते हुए यह मानता हूं कि यह कानून भी उसी दिशा में एक महत्वपूर्ण कदम है, इसलिए मैं इसके समर्थन में खड़ा हुआ हूं।

महोदय, मैं उल्लेख करना चाहूंगा कि मैं एक वकील के रूप में नहीं - क्योंकि गांधी जी मानते थे कि जिस समाज में वकील या डॉक्टरों की संख्या अधिक है, उनके बारे में नए ढंग से सोचना चाहिए, कुछ नया प्रयास होना चाहिए। मैं जेपी आन्दोलन से जुड़ा रहा, मैं उसी अर्थ में इसके बारे में बात कर रहा हूं। यह बिल या जो ऐसे बिल आए हैं, मैं मानता हूं कि इसके पीछे की स्पिरिट बहुत महत्वपूर्ण है, हमें उस पर गौर करना चाहिए। Institutions और खास तौर से financial institutions की credibility को restore करने, जो credibility पिछले कई दशकों में कम हुई थी, उसको ठीक करने का एक गंभीर प्रयास है, कैसे? पिछले कुछ दिनों से भारत में Bitcoin की बड़ी चर्चा है। मैंने इस बारे में सदन में भी सुना है, इससे संबंधित सवाल सुने हैं और बहस में भी इसके बारे में सुना है। इसका जन्म कैसे हुआ है और यह किस तरह से थ्रेट है, जिसको हमें एड्रेस करना चाहिए, मैं उस पर संक्षेप में दो चीज़ें कहना चाहूंगा। 2008 में जो दुनिया में credit crisis हुआ, जिसमें Lehman Brothers डूबे, तो पूरी दुनिया में एक तरह की financial अराजकता पैदा हुई। उस वक्त लोगों ने कहा, "Trust of millions in various traditional institutions is finisher." तब पांच लोगों ने कोशिश की और 2008 में लोगों ने digital currency बताया। उनमें से एक सज्जन Nakamoto थे। उन्होंने 2008 में software रिलीज किया सिर्फ

Self-contained Monetory System called Bitcoin. आज उसका कलैक्शन 19.4 billion dollars है। हम यह समझें कि इसके पीछे का इरादा क्या है? सर, मैं तीन दिन पहले का 'न्यूयार्क टाइम्स' quote कर रहा हूं कि ये लोग टेक्नोलॉजी के माध्यम से क्या करना चाहते हैं, जिसके बारे में हम सबको मिलकर सजग होना चाहिए। They force human societies to question the utility or the need of trusted third parties such as banks, governments, newspapers, brokers, centralised exchanges, regulatory agencies etc.

इस तरह से सरकारों से लेकर बाकी institutions की credibility को कमजोर करके कैसे टेक्नोलॉजी एक दूसरी दुनिया बनाना चाहती है, जिस पर कुछ ही लोगों का आधिपत्य होगा, वैसी चीज़ों को खत्म करने का काम, वैसे रिसोर्सेज़ को restore करने का काम यह बिल करता है, मैं इसलिए इसके समर्थन में खड़ा हुआ हूं।

महोदय, मैं यह कहना चाहूंगा कि यह बिल क्या एड्रेस करता है, पहले से स्पष्ट है कि जिन भारतीय प्रमोटर्स ने अपनी कम्पनियों का बहुत खराब ढंग से प्रबंधन किया, फिर भी वे उन पर नियंत्रण नहीं छोड़ना चाहते। एक के बाद एक-एक कानूनी दांवपेच से वे अपनी पुरानी सम्पत्ति पर कब्जा जमाए रखना चाहते हैं। इस कानून से यह खराब इरादा-मोटिव रखने वाले लोगों पर पाबंदी लगेगी। इस कानून के बाद एक प्रमोटर ने, मध्यम वर्ग के एक प्रमोटर ने ट्वीट करके कहा, जिसको मैंने अखबार में पढ़ा कि doubtful promoters को अपने पुनर्वास के लिए भी rehabilitation की योजना प्रस्तुत करने का अवसर नहीं दिया जाना चाहिए। यह Insolvency and Bankruptcy Code का दुरुपयोग होगा। बोली की प्रक्रिया को भी बोली आमंत्रित करने से पहले स्पष्ट किया जाना चाहिए। यह कानून का काम कर रहा है, इसलिए हम इसके समर्थन में खड़े हैं। मैं यह स्पष्ट करना चाहूंगा कि सिद्धांत एवं व्यवहार में कानून का मकसद क्या है? कानून का मकसद है कि ये जो आदतन कानून तोड़ने वाले लोग हैं, उनमें कानून का भय पैदा हो। इस मुल्क में क्या हो रहा था? हम अपने फाइनेंशियल इंस्टीट्यूशन्स को किस रास्ते पर ले जा रहे थे? चार्वाक का जो दर्शन है, "ऋणं कृत्वा पिबेत्", लोग बैंकों का सार्वजनिक पैसा ले रहे थे और सरकारें पैसा दे रही थीं। मैं अनेकों उदाहरण गिना सकता हूं कि कैसे चेयरमेन्स की नियुक्तियाँ होती थीं, कैसे सरकारी या राजनीतिक हस्तक्षेप से बड़े घरानों को पैसे दिए जाते थे। इसमें bank officials, wilful defaulters, ये सभी लोग शामिल थे। अभी माल्या के केस में भी सेबी पर जाँच के दौरान एसएसआईओ की जो एक रिपोर्ट आई है, उसमें Serious Frauds Investigation Agency में साफ दर्ज है कि कैसे पोलिटिकल इंटरवेंशन्स से लोन दिए जाते थे और ये पैसे डूबते थे। इन कानूनों से कम से कम यह स्थिति बने कि लोगों में यह भय पैदा हो, जो wilful defaulters हैं, उनमें भय पैदा हो।

महोदय, आज से पाँच वर्ष पहले, 2012 में यह स्पष्ट हो गया था कि विजय माल्या, किंगफिशर एयरलाइन्स के लिए कर्ज़े चुकाना संभव नहीं है, यह भी क्लियर हो गया था कि ये धंधा चलाने की स्थिति में नहीं हैं, कुछ समय बाद यह भी निर्णय हो गया कि बैंक विजय माल्या की संपत्ति नीलाम करके अपना बकाया वसूल कर सकते हैं, लेकिन ये पैसे नहीं आए। उन पर 9000 करोड़ रुपये बकाया थे, आज यदि उनमें interest जोड़ दें तो पता नहीं कितने करोड़ रुपये होंगे? एक्सपर्ट्स कह रहे हैं कि कुल 300 कंपनियों में से 200 कंपनियों के बंद होने का खतरा है, 12 बड़ी कंपनियां हैं, जो आज

[श्री हरिवंश]

दिवालिया होने की प्रक्रिया से गुजर रही हैं, उन पर 2.5 लाख करोड़ रुपये बकाया हैं। जिन छोटी कंपनियों को लेकर चिंता हो रही है, उनके बारे में कानून के विशेषज्ञ कहते हैं कि छोटी, मंझोली कंपनियाँ दिवालिया कानून के ...(**व्यवधान**)... बस एक मिनट। वे पुनर्गठन के दूसरे तरीकों का सहारा ले सकती हैं। इसमें Scheme for Sustainable Structuring of Stated Assets हैं।

महोदय, मैं अंत में दो-तीन बातें कहना चाहूंगा कि भारतीय उद्यमी कर्ज़ लेकर खा जाने, जिस कंपनी के नाम पर कर्ज़ लिया, उसे दिवालिया बना कर कर्ज़े को चुपचाप ज्यादा फायदे वाले धंधों में डाल देने का काम कर रहे थे। आरबीआई और केन्द्र सरकार ने जो कदम उठाए हैं, वे हिस्टॉरिक हैं। यह फॉरनर्स को आमंत्रित नहीं करता, बल्कि निजी क्षेत्र में जो कुछ खास परिवार ...(**व्यवधान**)... ऐसी संपत्ति को डुबाते थे, उनको बंद करके प्रोफेशनल्स को आमंत्रित करता है। ...(समय की घंटी)... इसलिए हम इसके समर्थन में खड़े हैं, धन्यवाद।

SHRI TAPAN KUMAR SEN: Mr. Vice-Chairman, Sir, at the outset, I would like to make two comments. In 2016, we adopted the Insolvency and Bankruptcy Code and not even one year is over, again, you came for an Amendment. I don't agree with the perception of Bhupenderji, my friend here that that reflects how the Government is closely monitoring. No, it reflects an over-haste by the Government without due diligence in handling such a crucial issue where public assets are being frittered away by big corporates; we need to think on how to arrest such a situation. I think, the Insolvency and Bankruptcy Code is one of the important legislative instruments. Much more due diligence was required.

I don't object to the very purpose which is written in the Statement of Objects and Reasons, to prohibit the unscrupulous persons being benefited at the cost of creditors. You want to prevent that. So, you have kept a negative list of those who can't be resolution applicants. I think, this is the major purpose. You have inserted that in Section 29A. Again, the point of absolute absence of due diligence is reflected. My previous speakers have already detailed it out and I don't like to repeat and waste the time.

I want to deal with two major issues. Those aspects need to be taken into account so that while making a negative list, it should not be such that you don't get an appropriate resolution applicant or invite unnecessary litigation in delaying the entire resolution process to the detriment of everybody's interests. And also the money will not flow in. My main concern on this, that the whole Insolvency and Bankruptcy Code procedure in the background of FRDI Bill that is already in the domain that this haircut concerns me very much. The banks and financial institutions money is put in certain enterprises and it fails. The banks are not getting their money. This is public money. Here whenever this

whole concept of haircut comes and when I hear and see media reports that haircut goes to the extent of 75 per cent in certain cases, then the whole intention, the whole purpose as written here to prevent the unscrupulous to get benefit at the cost of creditors, becomes a total suspect. I think the Government must rescue us from such suspicion that that is not the intention. Where does remain the question of prohibiting unscrupulous persons when you are keeping it a guarded secret, the list of willful defaulters whose character has already been defined by the Reserve Bank of India? Definition has already been defined. If you keep that a guarded secret and, at the same time, you are telling that our purpose is to prevent the willful defaulters, the purpose becomes a suspect. I think that needs to be cleared and clarified. This is number one. Number two, why should there be a haircut? Why at all should there be a haircut? After all public money has been taken; public money has come back to the source. Sir, who failed, they must be punished. In whatever way, they should be punished and, at the same time, the venture can again be revived and revitalized. That can be altogether a separate exercise and for that existing legislative instruments are there. The whole financial system and the whole credit system are already there to take care of that aspect. There cannot come any point of sacrifice on the part of the creditors, mainly the financial institutions. Unless that is ensured, I think the credibility of the whole exercise is put thoroughly at stake and ultimately what is written here that to prohibit the unscrupulous persons being benefited at the cost of creditors, while writing that as objects and reasons, the exercise is exactly...

THE VICE-CHAIRMAN (SHRI T.K. RANGARAJAN): Please conclude.

SHRI TAPAN KUMAR SEN: I am just concluding. I think these aspects must be made very clear. If it is not done with an apprehension that if company will close, people will lose jobs, I think companies will continue to be closed and banks, will also continue to lose their money and public, whose money is in the banks will continue to suffer. This is the pattern of entire economic philosophy which was being developed the previous regimes. ...*(Time-bell rings)*... In the context of this, the efficacy of this particular legislative instrument has to be understood and, accordingly, it should be duly amended, duly corrected to take care of the apprehensions that have been expressed by us here. Due corrections are required here. It must be time bound. I think this Bill itself should ensure it and I request our Finance Minister to ensure a concrete clause to prevent any kind of haircut on the part of the banking financial institutions. They are all public sector institutions. No private company is suffering like that. I think that must be ensured. With these words, I conclude my observation on this Bill. Thank you.

श्री सतीश चन्द्र मिश्रा (उत्तर प्रदेश): सर, हमें तीन मिनट का समय देना, ऐसा लग रहा है कि अगर किसी वकील को और वह नेता हो, उसको अगर सबसे बड़ी पनिशमेंट देनी हो, तो यह देनी चाहिए कि वह तीन मिनट में अपनी बात खत्म कर दे।

SHRI T.K. RANGARAJAN: You take five minutes.

श्री सतीश चन्द्र मिश्रा: यह सबसे इम्पॉसिबल चीज़ होती है, जो करने के लिए कहा जाए।

THE VICE-CHAIRMAN (SHRI T. K. RANGARAJAN): You can take five minutes.

SHRI SATISH CHANDRA MISRA: That is what I am seeing over here. But still, looking into the time-frame, I will straight away flag certain things for the consideration of the hon. Finance Minister and for clarification, if required, while stating in the beginning itself, that we are supporting the Bill and we want the Bill to be passed. I was in the Select Committee also. We had gone through the entire process of the drafting of the Bill. Several issues came up. It was also contemplated that certain issues of this nature can come. But it was not thought that there will be a situation where persons, who are disqualified, who are siphoning off the money, taking away thousands of crores of money come from another gate by wearing a different gown and they want to take over the company again. This Bill probably seeks to prohibit such persons, but at the same time, there are certain provisions which I would like to be highlighted before the hon. Finance Minister. I will not be repeating what has already been clarified very eloquently by the ex-hon. Finance Minister. Those issues would be definitely requiring certain clarifications, but if Clause 5 (d) is seen, it says, "has been convicted for any offence punishable with imprisonment for two years or more;". Now this does not deal with what type of offence he has committed for which he has been punished. If it is read along with Clause (i), it further says, "has been subject to any disability, corresponding to clauses (a) to (h), under any law in a jurisdiction outside India;" So, under any law inside or outside India, if two years' punishment for any offence is given, whether it is financial or it is for any other offence that is mentioned there, it needs to be considered whether for two years' punishment can be given for any minor offences and which are subsequently set aside and which has nothing to do with the company or has nothing to do with the financial activities, whether certain clarification in the provisions requires to be given or not, should be looked into. Sub-clause (e) says, "is disqualified to act as a Director under the Companies Act, 2013;" Now, disqualification under Companies Act as a Director can be for several reasons. Now, if a person has been disqualified and he can get qualified as Director immediately thereafter, even then

he is disqualified from becoming an eligible Director under Section 29A. For example, recently 300 Directors and a list of several Directors has been floated that they are not eligible for being Directors for default on various occasions or for various reasons. Then, a condonation provision has been brought by means of which they can file application, they can get the delay condoned and file application and they can again become eligible directors. So, if the directors can become eligible immediately thereafter and then become ineligible for certain faults, which are not major faults, but then that is also to be looked into and that needs to be kept into consideration. Now, Explanation to this, Sub-Clause (ii) says, "Any person who shall be the promoter or in management or control of the business of the corporate debtor during the implementation of the resolution plan;" Now if it is read with Section 29A itself, it says, "A person shall not be eligible to submit..." Now, if he cannot submit a resolution under Section 29A, the word, 'shall' is not understandable because this says, 'any person who shall be the promoter.' It is something for future. In future, since it is being brought under Sub-Section 2 that if he shall be promoter, he is also ineligible. Section 29A itself says, 'he cannot submit'. He is not eligible even for submitting the application for resolution. Then, there is a conflict in 'shall be a promoter'. It requires to be clarified or considered by the hon. Finance Minister. Then, if we come to the provisos of Section 30, the second proviso says, "provided further that where the resolution applicant referred to in the first proviso is ineligible under sub-section (c) of section 29A, the resolution applicant shall be allowed by the committee of creditors such period, not exceeding thirty days,.." So, thirty days are being granted to those persons who can make full payment and become eligible. Why only thirty days? Why not even a single day more? If thirty days are given, I want to ask why not a 'reasonable period' is given. Sir, if thirty days is considered to be 'reasonable', then the entire amount has to be paid within thirty days.

Lastly, I come to Section 235A which deals with penal provisions. It says,

"If any person contravenes any of the provisions of this Code or the rules or regulations made thereunder for which no penalty or punishment is provided in this Code, such person shall be punishable with fine which shall not be less than one lakh rupees but which may extend to two crore rupees."

Now, Sir, 75 per cent of creditors approve the resolution. If resolution is found to be not correct due to certain reasons, does it mean, the 75 per cent creditors will have to pay penalty. If it is not so, who will be punishable? The Section is too vague. So, this also requires to be looked into.

With these observations, we support the Bill since the intention of the Bill is good. Thank you.

SHRI ANIL DESAI (Maharashtra): Hon. Vice-Chairman, Sir, I rise to support the Insolvency and Bankruptcy Code (Amendment) Bill, 2017.

At the outset, I congratulate the hon. Finance Minister for bringing this important and much required piece of legislation to give a further push to the Indian economy.

Of late, we have been witnessing that banks, especially banking industry, have been facing a lot of difficulties on account of the NPAs. These NPAs have come up not because of the 'other operations.' But, a very few industrial houses belonging to a very few people taken advantage of avenues available to them and ultimately a stage has come that the NPAs, which were around ₹ 2.5 lakh crores, have gone up to ₹ 7 or 8 or, maybe, 10 lakh crores or so.

Sir, RBI, time and again, as a regulator, as a bankers' bank, did evolve mechanism to check the flow of NPAs and instructed, on many counts, banks to take action against the NPAs.

The hon. Finance Minister has replied many supplementary questions in reply to many Starred Questions on various issues in the morning. Now, this is the time that willful defaulters have done whatever they want and it is the time now for the people of the nation to know who these defaulters are. Regulations and legislation are made time and again to check the menace of these kinds of activities. But, they should be taken to task. Their names should be made public, so that this works as a deterrent for the rest of India.

Under the proposed Bill, there is a time-bound programme. Resolution mechanism will take place. As has been mentioned by Shri Chidambaram, I wanted to know the people to be excluded. Of course, there is a lot of debate on that. I think, hon. Finance Minster will take note of it. The resolution mechanism will work to their advantage. It is apprehended today that banks' haircut would go to an extent of 60 to 65 per cent which will not be a thing in practice. A lot of care will be taken to see that people's money, the creditors' money is not wasted that way.

What is happening today is that ARCs are taking advantage of NPAs. They are buying assets the way they want and taking advantage of it and making a lot of money out of it. The main purpose what this legislation envisages should not be so that it is also flawed. In the units which will undergo resolution mechanism, there will be staff working there, who would have really sweated for the uplift of the company, but, unfortunately, the way things have gone, tomorrow, when they will be under resolution mechanism,

what will happen to those jobs? The Government should give a serious thought on that count also so that fruits of the outcome reach the people who had really worked for that unit. It should not be so that when these units go for liquidation process, they will be out and lose their jobs. So, it is the Government's duty to ensure that those jobs are not lost.

Sir, nowadays, another issue that is coming up is this. In the print media and also in the electronic media, we have seen that there are 10 to 12 houses which are facing the threat of undergoing this very strict mechanism. They are trying to play various tricks available with them. The Government should come heavily on these elements. They have a fear that the things will not remain under their control. They want things to be under their control. If the defaulters, who have really looted the company or looted the units, are trying to make their ways, I think the Government is taking a good note of it and they will ensure that this kind of practices are put to halt. With these words, again, we support this Bill. Thank you.

THE VICE-CHAIRMAN (SHRI T. K. RANGARAJAN): Thank you very much. Now, Shri D. Raja.

SHRI D. RAJA (Tamil Nadu): Mr. Vice-Chairman, Sir, last year, the Government brought an Ordinance. Later on, the Banking Regulation Act was amended in order to empower the Reserve Bank to advise banks to take recourse to insolvency proceedings against the loan defaulters. This is the position. Even at that point of time, it was pointed out in the very same House that this amendment is not going to help the banks to recover the huge bad loans due because they are from big corporate companies. Sir, the Finance Minister, the Leader of the House, is sitting here. He knows what is the amount of bad loans today in the country. It is estimated to be around ₹ 10 lakh crores. If I am wrong, the Finance Minister can correct me, but this is what the estimate available is. The Government, I think, is not serious to recover these loans from the corporate companies. I do not know why the Government of the day should be afraid of corporate companies. This is the issue common people are asking. Many eminent lawyers participated in the discussion. I am raising these questions from the point of common people. They want to know why the Government is afraid of these corporate companies. Sir, the Bill was passed in a hurry last time. Now, you have come up with this another Bill, because the same defaulters are coming for the action and to settle their dues for a small amount. This is what the common people understand. Recently, one borrower who had taken almost ₹ 950 crores of loan, it was sold to his own subisdiary for ₹ 54 crores under the same insolvency case. That means, banks got ony 6 per cent of the loan by recovery and the

[Shri D. Raja]

balance amount was written off. So, there was objection. The Finance Minister must know this. There was an objection. Now, you want to plug this loophole. Sir, the Bill is before us. We will have to pass this Bill, and, definitely, we are going to pass this Bill. I agree that the defaulters should not be allowed to buy back his company. I agree with you and I agree with Government but somebody will buy at cheaper rate. Ultimately, the banks are losing the money. That is the reality. That is the fact. Already, the RBI has asked the banks to be ready for 'deep haircut'. This 'deep haircut' has been raised by many speakers and they gave several interpretations. But according to common people, 'deep haircut' means write-off huge loans of big corporate companies. That is what the people understand. What do you mean by 'deep haircut'? You write-off the big loans of big corporate companies. That is what you mean. Sir, how long this appeasement to corporate houses can go on in this country? Your Government or, for that matter, every Government talks big, big things. But, finally, are you in a position to take tough action against these corporate companies which are wilful defaulters? Sir, the major bank union, AIBA, has been demanding criminal action on these defaulters. In the morning also, I raised this issue during Question Hour. It is a criminal offence as many eminent lawyers pointed out. Why don't you publish their names? What prevents you? What is the confidentiality involved? What is the secret involved? Why is there this secret? Why can't you publish their names? When you can publish the students' names, when you can publish the farmers' names who have taken loans and which have led to several consequences, including suicides, why can't you publish the names of corporate houses? What prevents you? Why are you afraid of these corporate houses? After all, the banks are giving loan out of people's money. It is people's money. These are public sector banks. It is people's money. They take loan and they don't pay the loan. Why are you afraid of these corporate companies? ...*(Time-bell rings)*... The nation should know who the defaulters are. The Parliament should know who the defaulters are. In the morning also, you said, the bank gives the names. There are proceedings. But why can't you publish their names? Let the people know. Let the nation know that these are the defaulters.

THE VICE-CHAIRMAN (SHRI T. K. RANGARAJAN): Please conclude.

SHRI D. RAJA: So, the Parliament should know who the defaulters are and the Government should take action against these defaulters. So, Sir, these are the issues which common people raise. These are the questions which common people ask. I hope the Leader of the House, the Finance Minister, will respond positively.

With these words, I conclude. Thank you very much.

श्री अजय संचेती: उपसभाध्यक्ष महोदय, यह जो The Insolvency and Bankruptcy Code Bill है, ...(**व्यवधान**) इस बिल को बनाने के लिए जिस कमेटी का गठन किया गया था, उस कमेटी में हमारे साथी सांसद भूपेन्द्र यादव जी के साथ मुझे काम करने का मौका मिला।

सर, आज बहुत से दोस्तों ने, बहुत से साथियों ने अपनी-अपनी बातें रखीं। Former Finance Minister श्री चिदम्बरम जी ने भी अपनी कई बातें रखीं, लेकिन more or less सभी लोग इस बात से सहमत हैं कि this is need of the time, this Amendment Code is need of the time. यह कोड जिस इंटेंशन या जरूरत की वजह से लाया गया है, वह बहुत जरूरी है। देश में कई कम्पनीज़ की आर्थिक स्थिति ठीक नहीं है। वे loans नहीं चुका पा रही हैं, ब्याज बढ़ता जा रहा है, एनपीए हो रही हैं, हो चुकी हैं। ये circumstantial NPAs हैं या wilful हैं, यह एक अलग जाँच का विषय है। सरकार इसमें अपना काम कर रही है। सर, IBC को इसलिए लाया गया था कि जो कम्पनीज़ asset-worthy हैं, जिनके पास assets भरपूर हैं और लोन नहीं चुका पा रही हैं, NPA हो गयी हैं, अगर प्रमोटर्स अपने आपको insolvent declare करते हें और IPR के प्रोसेस के द्वारा नये इन्वेस्टर्स लाकर उस कम्पनी को टेकओवर करना चाहते हैं, चलाना चाहते हैं, इसका सरकार समर्थन करती है, इसको कराना चाहती है, इसीलिए इस कोड को लाया गया। सर, इससे सबसे बड़ी बात यह होगी कि देश की economy तो ठीक रहेगी और employment भी बरकरार रहेगा। सारी दुनिया में जो Insolvency and Bankruptcy Code है, वह एक well defined and well established process है। सर, इस प्रोसेस के दौरान यह देखने में आया कि कुछ कंपनियां, जिन्होंने अपने आपको insolvent declare किया, उन्होंने बाद में कुछ इन्वेस्टर्स को साथ में लेकर सामने लाकर, उनकी खुद की कंपनियां, जिनको वे insolvent declare कर चुके हैं, उनको टेकओवर करने का प्रयास कर रहे हैं। यह एक बड़ी चिंताजनक स्थिति उत्पन्न हो गई थी। सर, इससे doubts create हो जाते थे। यह एक पूरा sequence है, इसको ध्यान से देखना होगा। पहले लोन लिया, repay नहीं किया, insolvent declare कर दिया और बाद में नए इन्वेस्टर्स को साथ में लेकर खुद उसी कंपनी को फिर से टेकओवर करने का प्रयास किया जा रहा है। सर, यह एक systematic deliberately लोन न चुकाते हुए अपनी कंपनी को एक हेयरकट के माध्यम से खुद के कंट्रोल में रखने का प्रयास है।

सर, मैं बहुत technical details में नहीं जाऊंगा कि किस सेक्शन में क्या प्रोविज़न है। जब माननीय वित्त मंत्री जी अपना जवाब देंगे, तो उसमें ये सारी चीज़ें विस्तार से आ जाएंगी। सर, इस समस्या को रोकना बहुत जरूरी थी, इसलिए यह अमेंडमेंट ऑर्डिनेंस के द्वारा तुरंत लाया जाए।

(**उपसभापति महोदय** *पीठासीन हुए*)

सर, इसमें साफ कहा गया है कि आपकी कंपनी जो एनपीए हो चुकी है, उसे आपको टेकओवर नहीं करने दिया जाएगा और अगर आपको टेकओवर करना है, तो पहले आप उसका जो overdue interest है, उसको पे कीजिए, बैंक अकाउंट regularize कीजिए। इससे आपकी intention साफ दिखायी देगी कि नहीं, हम लोग इस कंपनी को वास्तव में चलाना चाहते हैं, हेयरकट के माध्यम से अपनी कंपनी को कब्जा करने का हमारा कोई इरादा नहीं है। सर, इससे फिर से जो प्रमोटर्स बिड करना चाहते हैं, उनकी intention काफी साफ नजर आ जाएगी।

[श्री अजय संचेती]

सर, कई वक्ताओं ने अपनी बात में कहा कि छोटे लोगों को इसमें छोड़ देना चाहिए, लेकिन चाहे बड़ा defaulter हो या छोटा defaulter हो, कानून उनमें distinguish कैसे कर सकता है, यह मेरे समझ के बाहर की चीज है। सर, मोदी सरकार की स्पष्ट नीति है कि support the needy and punish the guilty, इसी भावना को ध्यान में रख कर इस ऑर्डिनेंस को लाया गया था और इस अमेंडमेंट बिल को लाया गया कि गरीबों के खून-पसीने का जो पैसा है, उसकी जो कमाई है, वह गलत हाथों में न चली जाए। इस ऑर्डिनेंस के आने के बाद अगर हम लोग कुछ पुरानी चीज़ों पर ध्यान दें, तो इससे बैंकों की स्थिति बहुत मजबूत हुई है। शेयर मार्केट में बैंकों के शेयर्स का जो प्राइस है, वह जिस दिन से यह ऑर्डिनेंस लाया गया और बाद में अमेंडमेंट बिल लाने की चर्चा की गई, उसके बाद से उनके शेयर्स के प्राइस में लगातार वृद्धि हो रही है। लोगों में एक डर भी बैठ गया है, जिसको हम fear of God कहते हैं कि अगर हम लोग गलत तरीके से काम करने जाएंगे, तो हमको इस तरह से खुद की कंपनी को टेकओवर करने नहीं दिया जाएगा।

सर, मैं किसी का नाम नहीं लेना चाहता हूं, लेकिन हम अखबार देखें, तो आज ही के अखबार में लिखा है कि देश का एक बड़ा कॉरपोरेट हाउस, जिसका इस देश की economy में एक समय बहुत बड़ा योगदान भी रहा है, उन्होंने यह कहा कि नहीं, हम खुद की कंपनी को फिर से टेकओवर करने के लिए बिड करना चाहते हैं, insolvent कंपनी को लेना चाहते हैं, लेकिन हम पहले interest भरने को तैयार हैं और हम उसकी व्यवस्था कर रहे हैं। यह दिखाता है कि वह अपने ऐसेट्स को फिर से regularize करना चाहते हैं।

सर, जब IBC को लाया गया था, तब देश की economical condition को ध्यान में रखते हुए सभी दलों ने इस भावना के साथ इसको पास किया था कि इससे हमें आर्थिक मजबूती मिलेगी। मैं आज आपके माध्यम से सारे सदन से, सभी पार्टियों से अपील करता हूं कि इस अमेंडमेंट कोड को भी उसी भावना के पास पास करें और देश की अर्थव्यवस्था को मजबूत करने में योगदान दें, बहुत-बहुत धन्यवाद।

SHRI JAIRAM RAMESH (Karnataka): Sir, I rise obviously to support the Insolvency and Bankruptcy Code (Amendment) Bill, which replaces an Ordinance that was issued on 23rd of November, 2017, although I must point out that there is a small difference between the Ordinance and the Bill. Normally, the Bill is a replica of the Ordinance. But in certain extraordinary circumstances the Bill is different from the Ordinance. The Ordinance was issued on the 23rd of November and thereafter, I assume, the Finance Minister would have got some feedback from market participants and he has introduced a slight relaxation in the criteria for promoters and management in the Bill which is welcome. I am sure that this is not the first Amendment Bill that he will be coming forward with because we are in unchartered territory. For the first time, we have an Insolvency and Bankruptcy Code and we are learning doing and I am sure over the

next few months there will be more such Ordinances and more such amendment Bills. Sir, I have three very specific pointed questions. The Finance Minister is laughing. I just want to say that in the time remaining for him as Finance Minister, he will come forward with more amendment Bills. ...*(Interruptions)*...

MR. DEPUTY CHAIRMAN: Jairam Rameshji, the only question is: Will you not give suggestions?

SHRI JAIRAM RAMESH: Sir, I have three pointed questions to the Finance Minister. The first question is related to what my very distinguished senior Member, the former Finance Minister, has raised. There is a very ugly word that has now become popular. It is 'haircuts'. So, my first question to the Finance Minister is on haircuts. Sir, I have been tracking the cases that have been referred to the Insolvency Board. From the information that I have been able to put together I find that, and the Finance Minister can correct me if I am wrong, in the first case the haircut is 76 per cent, in the second case the haircut is 74 per cent and in the third case the haircut is 80 per cent. Sir, I would like the Finance Minister to take us into confidence. Is this an acceptable situation where we are going to see haircuts in excess of 70-75 per cent? Are these aberrations or are these going to be the norms? We need to debate on this issue. Is a situation where 75 per cent is going to be virtually written-off going to be an acceptable situation in the large number of cases that have been referred? I hasten to add that these are only from three cases that I have monitored but it is somewhat worrying and somewhat disturbing that the haircuts are in excess of 75 per cent. Sir, my second question to the hon. Finance Minister is this. Is he worried that by the definitions of those who are allowed to submit resolution plans we are laying the seed for oligopolies to emerge in these industries? Sir, I am not actually worried about oligopolies emerging because to deal with oligopolies we have the Competition Commission and trade policies but it seems to me that in the steel industry, in the chemical industry and in the telecom industry we are going from a situation of free competition to consolidation in which the market is going to be controlled by two or three large players. Is the Finance Minister actually worried? Maybe this is a pre-matured worry, but we need to start thinking whether by imposing so many restrictions on people who can actually bid and submit resolution plans we are not creating conditions for only a few players to emerge in these industries. There are ways of dealing with this situation but again, as I said, Sir, I would like the hon. Finance Minister to have some loud thinking with us on this issue. My third and final question to the Finance Minister deals with the MSME sector. Sir, there have been some worries that have been expressed by the same

[Shri Jairam Ramesh]
market participants who meet the Finance Minister and who also meet the former Finance Minister and also meet me that in the MSME sector it is really the promoter himself who is in a position to submit a resolution plan. Now, will the Finance Minister take us into confidence on this? Is there going to be differentiated criteria in the Bankruptcy Code between the MSME sector and the large sector? This is, I think, very important because in totality, the MSME sector may not account for a very large proportion of the NPAs, but in numbers, obviously, they run into thousands, if not lakhs. So, I would like the hon. Finance Minister to share with us his thinking on how he is going to deal with the specific problem of the MSME sector because this is the sector that really creates employment. This is the creator that leads to regional development and this is the sector that also leads to exports. So, if you want revival of exports, if you want revival of regional development, if you want revival of employment, you have to revive the MSME sector, and for reviving the MSME sector, regarding the criteria, that are present today in the Code and the Amendment Bill, will the Finance Minister think of some special dispensation?

Sir, these are the three questions that I had and I request the hon. Finance Minister to address them in the same constructive spirit with which we are extending our support to this Amendment Bill.

MR. DEPUTY CHAIRMAN: So, you have only questions; no suggestions. Now, Shri V. Vijayasai Reddy.

SHRI V. VIJAYASAI REDDY (Andhra Pradesh): Mr. Deputy Chairman, Sir, I thank you for giving me this opportunity. Sir, on behalf of my Party, I rise to support the Bill. This Insolvency and Bankruptcy Code (Amendment) Bill, or the original Act of 2016, was the result of consolidation of insolvency-related laws and provides for time-bound process for resolving the insolvency and bankruptcy issues.

When we compare the provisions of this Ordinance with those of the Bill that is placed on the Table of the House now, there are two improvements, in the original Ordinance, the person, whose accounts have been treated as NPAs, has been treated as ineligible person. Now, in the Bill, an opportunity has been given. Now, the person, who is identified with the NPA accounts, can regularise the accounts, and within 30 days, he can participate and then file the petition. So, that is one improvement. That is a good improvement.

Secondly, I come to the definition of 'connected persons'. Under the definition of 'connected persons', when we compare the original Ordinance with this Bill, the Scheduled

Banks, Asset Reconstruction Companies and Alternate Investment Funds are excluded from the definition. This is also a good improvement.

However, I draw the attention of the hon. Finance Minister in respect of three issues. The first issue is that in Section 29(A), sub-section (D), a person, who has been convicted of an offence for more than two years, is treated as an ineligible person. Now, what is the definition of 'conviction'? A person may be convicted by the lower court and subsequently may be acquitted by the High Court or the Supreme Court later, or, a person may be acquitted by the lower court and the acquittal may be reversed and then maybe convicted by the High Court or the Supreme Court. So, what is the definition of 'conviction'? That has to be clarified. It is always better to define the word 'conviction'. My suggestion is that unless and until, a case attains the finality, and finality by the Supreme Court, and once the Supreme Court delivers a judgement, that becomes the conviction, and until then a person, who is convicted by the lower court or the High Court, cannot be treated as a 'convicted person'.

The second concern that I would like to bring to the notice of the hon. Finance Minister is: it is all well-intended and decrease in. the competition. Sir, in disqualification clause, by widening the definition of 'disqualified persons' or 'connected persons', you are reducing the competition. When competition is reduced, what is the result of it? The result is that the value that the asset fetches will substantially come down. Therefore, I request the hon. Finance Minister to look into these two concerns and address them.

When it comes to liquidation, the BHI prohibits the liquidator from selling the assets of the company to any person eligible. It is a welcome step. It also prevents the promoters from deliberately running down the company to buy its assets at a lower price. These two are the welcome steps but I would request the hon. Finance Minister to respond to the two points towards which I have drawn his attention. Thank you.

SHRI T. K. S. ELANGOVAN (Tamil Nadu): Mr. Deputy Chairman, Sir, I thank you for giving me the opportunity to speak on this Bill. Sir, this Bill is the need of the hour. Even though there may be different opinions in various sections of the House, my view is that we are strengthening the cause for an increase in the NPAs and bad debts. Sir, the human element is missing right from the beginning in all these Bills which related to borrowings from the banks. I can quote a few examples. In Tamil Nadu, during 2015, there were floods in Chennai. More than 100 small- scale units were inundated and could not work for around six months. The NPA rule says that if there is no repayment for three months, the account becomes an NPA. The human element is missing. In case of non-

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repayment, no Bank Manager goes to the small-scale units, finds out the reasons and tries to help them. If that human element is present, the NPAs will come down to half and there would not be this much of NPAs in the country.

So, Sir, my view is that the absence of human element, and, the passage of more and more laws like SARFAESI Act or this Act will lead to an increase in the NPAs.

Sir, around 30 to 35 years back, I have worked in a bank and I know whenever there was no repayment from a borrower, the bank manager used to go there, talk to him, help him and get back the money but that is not happening now. Every work is done in the books. If there is no repayment for three months, it is treated as NPAs and, so, the NPAs are increasing. So, Sir, there should be a system whereby the Bank Manger should be made personally responsible to recover the dues from the borrowers, and, if need be, the borrower should be helped so that he is able to repay the amount properly. For an individual, who runs the MSME or small scale industries, it is his life. He earns from there; he does not want to close it down but because of certain other things, for example, the policies of the Government, if he could not run the factory, there should be some way to help him so that he repays his borrowings. So, Sir, in that way, there should be some changes in the basic Acts like the SARFAESI Act and others, and, also in the rules pertaining to NPAs and bad debts. If that is done, I think, this Act will not have much relevance. With these words, I conclude. Thank you.

MR. DEPUTY CHAIRMAN: Thank you. Now, Dr. Subbarami Reddy. Would you like to say something as the Mover of the Resolution?

DR. T. SUBBARAMI REDDY: Sir, so many hon. Members have spoken on this issue. However, I would like to draw the attention of the hon. Finance Minister to one important aspect. It is in the interest of the economy, it is in the interest of the banks and it is also in the interest of the financial system. As per the NCLT, there are two ways. To protect the financial creditors and operational creditors, this Bill has come now.

The financial creditors means banks. There is no problem. The banks will be looked after. Regarding operational creditors, if any industry is having creditors of, say, ₹ 1 lakh or ₹ 5 lakh or ₹ 10 lakh or so, any one creditor can move to the NCLT Board and get the resolution. Of course, they have to give 15 days' notice. If, by chance, they do not get a proper reply from any industry or any company within 15 days, they have

a right to go to NCLT Board and get the resolution. Once the resolution is passed, they will appoint an interim insolvent expert to completely monitor the management. They have been given sweeping powers. Now, who is this interim observer? He is nothing but a Chartered Accountant. A Chartered Accountant is appointed by the NCLT Board on behalf of a small creditor of, let us say, a company of ₹ 10,000 crores. For a company of ₹ 10,000 crores, if a creditor of ₹ 5 lakh or ₹ 10 lakh moves and gets the power and then gets an interim observer appointed, who will be a Chartered Accountant with sweeping powers, he will first of all dissolve the Board. Once he dissolves the Board, he will have full control of the management. So, I would like to know what he knows about the company, about the management. Then, if the company is not properly managed, how will the banks get back their money? So, banks will suffer. This is a loophole in this Bill, Sir. So, the Finance Minister should apply his mind and examine this issue thoroughly. For a company worth ₹ 10,000 crores, there should be some limit. Simply a creditor of ₹.1 lakh or ₹ 10 lakh cannot go and smash the company completely. So, there should be some system. This is actually meant for the financial operators, that means, banks. Other operators, the operational creditors, are only creditors who supply the material, who is having ₹ 5 lakh or ₹ 10 lakh or ₹ 20 lakh business with an industry of ₹ 10,000 crores, where thousands of people work. So, one man cannot finish a company. With this rigid law, sweeping powers are given by the Law Board. I have seen examples in Hyderabad, Mumbai and Delhi where big companies were simply shaken. Of course, they were saved in the appeals. Otherwise, if the appeals are not successful, the company will be smashed. If the company is smashed, all the banks will be finished. Their money will get stuck. Therefore, I want a reply from the hon. Finance Minister on how you can give sweeping powers to a small creditor who will give notice for 15 days. If he does not get a reply from the company, he has the power to go to the NCLT Board and get appointed an interim observer with sweeping powers and remove the Board and take the management. I want these clarifications while actually moving this.

SHRI ARUN JAITLEY: Mr. Deputy Chairman, Sir, I am extremely grateful to all my friends who have participated in the discussion on this Bill which was initiated by Mr. Chidambaram. I must also express my gratitude to all the Members who have broadly supported this Bill while raising certain issues, which I take it are in the nature of well-intended suggestions which have been made. Keeping that spirit in mind, I would like to respond to some of the issues which are being raised. Sir, it is true, as Mr. Jairam Ramesh has mentioned, it is only in the recent years that we have chartered into this area of insolvency and bankruptcy. Therefore, for all of us, it is a learning experience.

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We encounter situations that we had not anticipated earlier, and as we move further, we will certainly require evolution as far as our laws and procedures are concerned. We may even learn from our mistakes and correct them. I think since it is a new area that we have chartered into, it is quite likely to happen. Therefore, I take the suggestion that he made in the right spirit. And I do hope that we don't have to come back to this House very frequently. But if we do, certainly, it would be with the best of intentions, so that we are able to resolve this problem which is confronting this country.

What is the essence of this problem? If we just detach it from the political arguments which, on both sides, we are frequently advancing and just look at it from this point of view. You need a strong banking system in order to support growth. You need banks which are able to lend money to large industries, infrastructure projects, small industries, students for educational loans, farmers, etc. This is all part of the management of the economy that we need a robust banking system which will do that. There was a period in our economy where banks, and if I assume an argument in their favour, probably, for some reason, thought that these are some of the expanding sectors and therefore they can afford to lend in those areas. They have heavily lent in certain areas and it is here that we must understand this problem of haircuts. When they lend in certain areas, what are the kind of companies that they lend to? There are functional companies which own large assets. These are large companies with large factories and therefore those loans are guaranteed by a certain amount of asset backing which is there. There are trading companies which only had receivables and those receivables have not come. There are EPC contractors who were dealing in areas where we encounter business difficulties or some other factors impacted on their business or maybe their own mistakes. There were no large assets, except the projects they were undertaking. Therefore, we are confronted — at least for me, it is a legacy issue — with a situation where banks have lent to a large number of companies. Some have assets or securities to back that up and some have very little or almost negligible. How do you then resolve this problem? Under our old system, which was the conventional system, the banks would go to a civil court and file a suit which would take an indefinitely long time. Then DRTs were created which became the alternative forum. Then we experimented with SICA. It worked to some extent and didn't work significantly. Then we tried laws like SARFAESI which did have some effective implementation. But notwithstanding all that, this regime was considered to be insufficient. You had insolvency provisions or provisions relating to commercial insolvency which was spread over various laws. For private individuals or partnerships, you had Provincial

Insolvency Acts in several States which were almost non-functional. SICA had almost reached a deadlock situation. It was not moving forward. The Companies Act had a provision where in cases of inability to pay debt, a commercial insolvency would be presumed and people who had filed petitions either get paid or the company will go into a winding up process where, as Mr. Chidambaram said, the company would be sold in bits and pieces and you receive very little. Therefore, we conceived of this Insolvency and Bankruptcy Code which was more comprehensive. The object really is that once there is a commercial insolvency created, either a commercial operating creditor or a bank or the RBI could direct the bank or the debtor himself could move the National Company Law Tribunal pleading commercial insolvency. And for that commercial insolvency, an insolvency professional would be appointed to take over the company. He would then weigh the assets and liabilities and thereafter a resolution would be attempted. And in that resolution, as Mr. Naresh Agrawal said, the first effort would be to resolve and preserve the assets so that the country does not lose a plant, a factory or a company. If a resolution is not possible, then you go in for the ultimate remedy of dissolution. This is the situation. We have now started that resolution process and in certain big cases. We wanted to know how many cases are there. There are several hundreds of them and almost more than 500 have been disposed of. As Mr. Chidambaram would know, a lot of creditors used to use even the commercial insolvency procedure in the Companies Act; similarly, they are using this procedure. They will file a petition if there is no repayment of debt, and once a settlement takes place, the petition is disposed of. So, over 500 petitions have also been disposed of with these kinds of settlements. So, really, numbers will not be material. Now, broadly, you have, if I may say, two categories of cases. I am referring to the big cases and not the small ones. I will deal with small cases of MSME which Mr. Jairam Ramesh mentioned. I may just mention that what Mr. Ramesh said, the point is real and I take that suggestion. We are seized of it. What do you do with the MSME sector? With regard to the MSME sector, the Insolvency Legal Committee has already been looking into this issue as to whether we require a separate set of regulations to deal with them. They have been asked to give the report within three months and once that recommendation comes, we will apply ourselves to it and if necessary, come back to this House if any changes are required to deal with the MSME sector. This is so much so the MSME sector.

With regard to these large cases, which are pending, they are broadly in two categories. These are companies which own large assets, functional plants and factories which are functioning. And there are those companies which were either trading companies or EPC contractors who have very little assets and very little securities to back this up with.

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There may be virtually no takers for a number of them. Or if somebody else comes and takes it over, he may just like to take it for a very low price and if we impose the kind of conditions, as were suggested, that you must pay the full amount, then nobody will come and buy those companies itself. Now, the object really is that as far as these asset-owning companies are concerned, we must fetch the best possible price. What was the object behind this amendment? Effectively, what was going to happen in the bidding process? We looked at global models; both kinds of models exist in other parts of the world. Here is the management of a company; they may be guarantors; they may be corporate debtors; there will be people who are in charge of the management. Some may even be accused of having siphoned off money. The company has gone into insolvency. Once the bidding starts, the same promoters come back and want to bid again to get the company. Here, not only the banks but the commercial creditors and unsecured creditors also may take some haircut and the same management would come back into management. The same set of people would come back into management. Nothing would change. Those who ran the company down to the ground and to insolvency would be back in management after paying 40 or 50 or 60 or 70 per cent of the amount. Nothing would change except that the creditors have taken a haircut. Now, is this kind of a system to be permitted in the Indian insolvency proceedings? I am glad to know that not one person in this House has said that this should be permitted. This House, in one voice, has said that these people should be excluded. Now, if we have to exclude these people, there was no ineligibility condition. So, when we started in putting the ineligibility conditions, there is a point which has been made by Shri Chidambaram and some others that some of these conditions are a bit too wide. For example, a two year conviction; there is the conviction clause existing in Section 164 of the Companies Act and that is six months. Therefore, a person who has been convicted for a period of six months or more can't even be a Director of a company. And, once he can't be a Director of a company, I don't see any reason why he should be allowed because these are all conditions which have been taken out as far as various comparative provisions of various Acts are concerned.

Now, Clause (f), the word is, "is prohibited by the Securities and Exchange Board of India." I think, Shri Jairam Ramesh, the word in the Ordinance was, "has been prohibited". So, from the Ordinance, it has been changed to "is prohibited" which means that the tenure of prohibition must be currently on. The Ordinance was a little too wide that if you have once been prohibited, you are lifelong prohibited. That we have changed. I think the spirit of what Shri Chidambaram tried to suggest has been captured by making this particular change itself.

With regard to the corporate guarantors, clause (h) is that you have given a guarantee in a case wherein an insolvency petition has already been admitted. So, you are already before the NCLT in another insolvency case.

You are facing an insolvency proceeding. You are before the tribunal and, therefore, you start bidding either for the same company or for another company. Now, would we allow people with such questionable credentials to come in having had such a bitter experience of how these NPAs themselves have been created and allow people with this kind of a doubt?

Now, as far as connected people are concerned, I agree that when you go to Clause 5, Section 29 A and its sub-Sections, the related party definition is fairly lengthy. But, an exception has been carved out, in the Section itself that scheduled banks, asset recreation companies, reconstruction companies and alternative investment funds, these are all being excluded and, therefore, these would continue to bid. I am quite sure and let us see the experience of these 12 companies which, in the first instance, have now come up before the Board. In any case, there is a corresponding amendment to Section 30 which is also being made that the Committee of Creditors is not bound to accept any and every bid. If they find that the universe of bidders has been narrowed down and in this narrowed down universe of bidders, adequate bids are not coming, a viable bid is not coming then Section 30 has also been amended that any bid which is not viable or feasible can be rejected by the Committee of Creditors. Ultimately, it is the creditors who have to decide what their future is. Whether they want a particular haircut or they don't want a particular haircut, whether a bid is viable, reasonable or not. It is the creditors who are going to decide under this Act.

Therefore, my suggestion is, let us see the experience of this and if we find that there is an adequate number of bidders who are coming and I do hope that, particularly, in relation to the asset owning companies, that is, the steel companies and other factories etc., which have real assets on the ground, which are functional mills, there is no reason why we should not get people to bid. But, as far as trading companies are concerned...

SHRI ANAND SHARMA (Himachal Pradesh): Haircut should not become a head shave. That is of concern.

SHRI ARUN JAITLEY: Anandji, I put a caveat in the beginning that since everybody has supported this and expressed concerns; I don't want to be sounding adversarial. I think, one of the lessons for us—when I say, 'for us', it is for the banking system in India

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in particular—is, when large amounts are given, this is a decision, consideration they will have to keep in mind at that time. Did the bankers at that time think, when they were giving it to these EPC contractors and trading companies that without any security on the table you are giving hundreds and thousands of crores to those people? And ultimately, if those companies don't function and they go into insolvency, what will the potential buyer buy? Is he only buying a corporate entity or is he buying a corporate entity with a running business or is he buying a corporate entity with certain kind of assets? There is no bank guarantee. There is no guarantee of properties. There are only personal guarantees of insolvent persons.

श्री नरेश अग्रवालः उनको बैंक से लोन कैसे मिल गया?

श्री अरुण जेटलीः नरेश जी, यह सवाल तो उस वक्त बैंकर्स के दिमाग में होना चाहिए था। मैं उम्मीद करता हूं कि भविष्य में बैंकर्स का यह जवाब रहेगा कि यह कंपनी लिक्विडेशन में चली जाए, तो क्या हेयरकट होगा और क्या मिलेगा? यह तो लोन देते वक्त ...(**व्यवधान**)...

श्री नरेश अग्रवालः हेयरकट की परिभाषा बता दीजिए, यह मैं बड़ी देर से सुन रहा हूं। ...(**व्यवधान**)... यह बार-बार कहा गया है। यह शब्द कहां से आया है? इसको भी आप हाउस को बताइगा। हम हिन्दी वाले नहीं समझ पा रहे हैं।

श्री अरुण जेटलीः इस हेयरकट का बड़ा सरल अर्थ है, जो आप पुराना सोचते थे, जब कोई व्यवसाय या बिजनेस या दुकान, जिसका दिवालिया हो जाता था, तो रुपए में चार आने मिलेंगे, रुपए में छह आने मिलेंगे, तो जिसको चार आने मिले, उसके बाकी बारह आने का हेयरकट हो गया। यह इसकी सरल भाषा में परिभाषा है, यह इसका अर्थ है। इसलिए किस को मैं उधार दे रहा हूं और किस आधार पर दे रहा हूं, यह तो उधार देने वाले को सोचना चाहिए था। आज कहना कि यह पैसा लेकर सस्ते में चला गया, तो उस वक्त क्या सिक्युरिटी लगी थी? मैं समझ सकता हूं कि कोई बड़ी भारी कपड़े की मिल है, स्टील की मिल है या कोई बहुत बड़ा उद्योग है, तो कम से कम उसकी कोई जमीन थी, फैक्टरी थी, एसेट्स थे, प्लांट था, लेकिन जिनका कुछ नहीं था और जब आज वह बिकेगी, तो केवल उसका दफ्तर, किताबें और कार्पोरेट एंटिटी बिकेगी, थोड़ा बहुत कुछ ...(**व्यवधान**)...

श्री अमित अनिल चन्द्र शाहः कटे हुए बाल होंगे। ...(**व्यवधान**)...

श्री नरेश अग्रवालः यह बड़ा टिपिकल वर्ड है।

SHRI ANAND SHARMA: Arunji, you were just referring to the loans which were given to the EPCs or to the trading companies. That is fairly understandable and it is also fair that if they rtave no assets or personal guarantees, then what can be realized by the Committee of Creditors? But the lists of these first twelve companies which have been sent to the IBC and which is as per the order dated 13th June, 2017, where the RBI has

sent these companies; these all are companies with tangible assets. These are major steel companies, power companies and of the total NPAs of ₹ 9 lakh crores, ₹ 3,13,000 crores are of these companies. Is there any benchmark or any limit that how big should be haircut for those who have the assets, whether 50 per cent realization should be there or the bids? Because, though the money belongs to the banks...

SHRI ARUN JAITLEY: Anandji, this decision is neither taken by the Government nor by the bureaucracy, nor by the political establishment. This has to be taken by the creditor. Therefore, these commercial transactions, whether the creditor must allow hundred per cent of it to go down the drain— if I may use that word—or recover 70 per cent or 80 per cent or 60 per cent, the Committee of Creditors will decide this. And if the bid is inadequate, then Section 30 now says that it has to be feasible and viable. If the creditors feel that some bid is exceptionally low, the creditor will say, "Sorry, we are going for re-bidding". They probably may change some criteria, etc. That is why I said that I am not taking this debate to be either political or adversarial because it is a problem facing the banking system, which we have to resolve. It is a learning experience for us. Let us see what experience we have in these cases and once we have that experience, the banks would then recover the best that they can recover, not only the banks, the other creditors also, so that the assets itself are saved and the jobs itself are saved. It is this object that we have in mind. With regard to MSME, I have already said that we are separately looking at it. As far as the Ordinance is concerned...

DR. T. SUBBARAMI REDDY: Just a minute, hon. Finance Minister. I am talking about Section 17. When an interim observer is appointed with sweeping powers for any small creditor in a big company, that fellow would freeze that company and banks would lose their money. That is the biggest loophole in the Bill. It is very important. There have been many cases where a person who has credited just ₹ 10 lakhs for a company....
SHRI ARUN JAITLEY: I would certainly examine this point, but since it is at a preliminary stage where....

DR. T. SUBBARAMI REDDY: Let me tell you that this is a very important point. Please examine this and see if this provision could be deleted.

SHRI ARUN JAITLEY: Sir, as far as the Ordinance is concerned, *...(Interruptions)...*

DR. T. SUBBARAMI REDDY: Sir, under Section 17, even a small creditor who has invested just ₹ 10 lakhs in a company could smash the company by getting appointed an interim observer with sweeping powers. How are you going to set this right?

SHRI ARUN JAITLEY: Dr. Subbarami Reddy, I think that provision is in the Act itself because in the Act, if somebody has run the company down to this extent and the company has gone into insolvency, then, is it desirable or not for the management to continue to rip off the assets of the company?

DR. T. SUBBARAMI REDDY: Sir, this is a very serious matter. This would affect the economy. I am also an economist and I am aware of the details. I have got an experience of 55 years of having worked in the economy. ...*(Interruptions)*...

SHRI ARUN JAITLEY: Sir, as far as the Ordinance is concerned, since some of these important cases are reaching a stage where resolution proposals were to come, and the resolution proposals had to introduce this inevitability criterion, it was extremely important that the Ordinance be brought in at that stage so that the process is not delayed further. The Act itself says that we must endeavour to complete it within 180 days and that was the necessity as far as the Ordinance is concerned.

With these observations, I commend this Bill to the House.

SHRI TAPAN KUMAR SEN: Sir, I have a small point. I think we are collectively learning on an unchartered path. Out of the two categories of debtors, the first one being those who have sufficient landed assets. Now, there the haircut is 75 per cent-plus. What is the justification? Should there not be any benchmark for that also, even in companies with sufficient assets? That is the point, and that is the worry.

SHRI ARUN JAITLEY: If the offer is low, it is for the creditors whose money is there to say no to that offer!

SHRI TAPAN KUMAR SEN: The creditors are mainly public sector banks. ...*(Interruptions)*...

MR. DEPUTY CHAIRMAN: That is fine. I shall now put the.. ...*(Interruptions)*...

DR. T. SUBBARAMI REDDY: But he has not replied to my question.

MR. DEPUTY CHAIRMAN: He has replied. ...*(Interruptions)*... He gave a reply. I heard the reply. ...*(Interruptions)*... He replied to you. Therefore, Dr. Subbarami Reddy, are you withdrawing the Resolution? He has replied.

DR. T. SUBBARAMI REDDY: Sir, before my decision, he was about to say something. I am interested in some more points. Please ask him why an Ordinance was brought and, then, I would tell you about my decision.

MR. DEPUTY CHAIRMAN: He has already told you that.

DR. T. SUBBARAMI REDDY: Let him answer the point on the Ordinance. Sir, I have got the right to ask questions as a Member of Parliament.

MR. DEPUTY CHAIRMAN: You have asked; the Minister has explained.

DR. T. SUBBARAMI REDDY: No, Sir. I am on some other point. I didn't ask him about the Ordinance. Now I am asking that.

MR. DEPUTY CHAIRMAN: He said why an Ordinance was brought.

DR. T. SUBBARAMI REDDY: Sir, he didn't; he was about to talk about the Ordinance, but then I diverted the subject! Please let him talk about it....*(Interruptions)*...

MR. DEPUTY CHAIRMAN: Okay. ...*(Interruptions)*...

DR. T. SUBBARAMI REDDY: Sir, let him answer my question on the Ordinance route. Why is the Chair not allowing me to hear from him? I will have to ask the House. ...*(Interruptions)*...

MR. DEPUTY CHAIRMAN: I am not objecting to anything. ...*(Interruptions)*...

DR. T. SUBBARAMI REDDY: Sir, I am not raising objections; I am supporting the Bill. I want to know why the Ordinance was needed. ...*(Interruptions)*...

MR. DEPUTY CHAIRMAN: That is what I heard too. ...*(Interruptions)*... I also heard him explaining. I heard it.

DR. T. SUBBARAMI REDDY: Sir, if the House is satisfied with the hon. Minister's reply, then I would withdraw the Resolution.

MR. DEPUTY CHAIRMAN: Dr. Subbarami Reddy, the Chair is satisfied. The House is also satisfied. ...*(Interruptions)*... So, the Statutory Resolution, which was moved, is being withdrawn. So, are you withdrawing it, Dr. Reddy?

DR. T. SUBBARAMI REDDY: Yes, Sir. ...*(Interruptions)*...

MR. DEPUTY CHAIRMAN: He said, he is withdrawing it; I heard it.

The Statutory Resolution was, by leave, withdrawn.

MR. DEPUTY CHAIRMAN: I shall now put the motion regarding consideration of the Insolvency and Bankruptcy Code (Amendment) Bill, 2017.

The question is:

> That the Bill to amend the Insolvency and Bankruptcy Code, 2016, as passed by Lok Sabha, be taken into consideration.

The motion was adopted.

MR. DEPUTY CHAIRMAN: We shall now take up Clause-by-Clause consideration of the Bill.

Clauses 2 to 4 were added to the Bill.

MR. DEPUTY CHAIRMAN: In Clause 5, there is one Amendment (No. 1) by Dr. T. Subbarami Reddy.

DR. T. SUBBARAMI REDDY: Sir, regarding the Amendment, I would like to say that punishment with imprisonment for two years or more is very vague. It is better to stick to the specific period of two years or another specific period. Please bear this in mind and I am not moving my Amendment.

MR. DEPUTY CHAIRMAN: Amendment not moved. There are two Amendments (No. 4 & 5) by Shri Sukhendu Sekhar Ray. Are you moving, Mr. Ray?

SHRI SUKHENDU SEKHAR RAY: Sir, I am not moving.

MR. DEPUTY CHAIRMAN: Amendment not moved. So, I put Clause 5 to vote.

Clause 5 was added to the Bill.

MR. DEPUTY CHAIRMAN: In Clause 6, there is one Amendment (No. 2) by Dr. T. Subbarami Reddy.

DR. T. SUBBARAMI REDDY: Sir, this is important. You have given the time for payment of the overdue amount as thirty days. It is too little a time. The time is too short because the company will be under stress. Therefore, you may give fifty days. Please bear this in mind and you may examine this. I am not moving the Amendment.

MR. DEPUTY CHAIRMAN: Amendment not moved. So, I put Clause 6 to vote.

Clause 6 was added to the Bill.

Clause 7 was added to the Bill.

MR. DEPUTY CHAIRMAN: In Clause 8, there is one Amendment (No.3) by Dr. T. Subbarami Reddy.

DR. T. SUBBARAMI REDDY: Sir, in this, I would like to say that the fine of ₹ 2 crore provided is disproportionate to the offence which the person may have committed in contravention to the code or regulations. I want the Minister to bear in mind these things because for each violation, you have not defined the quantum of penalty. You are simply providing a general clause. Therefore, the fine should not be more than one crore rupees as maximum. The Minister may bear this in mind. I am not moving my Amendment.

MR. DEPUTY CHAIRMAN: Amendment not moved. So, I put Clause 8 to vote.

Clause 8 was added to the Bill.

Clauses 9 and 10 were added to the Bill.

MR. DEPUTY CHAIRMAN: In Clause 1, there is one Amendment (No. 6) by Shri Arun Jaitley.

Clause 1

SHRI ARUN JAITLEY: Sir, I move:

(6) That at page 1, line 3, *for* the figure "2017", the figure "2018" be *substituted*.

The question was put and the motion was adopted.

Clause 1 as amended was added to the Bill.

The Enacting Formula and the Title were added to the Bill.

SHRI ARUN JAITLEY: Sir, I move:

That the Bill, as amended, be passed.

The question was put and the motion was adopted.

MR. DEPUTY CHAIRMAN: My special thanks to everybody because we completed it in two-and-a-half hours. Thank you.

Now, Shri Rajen Gohain to move the Resolution of the Railway Convention Committee.

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