DR. T. SUBBARAMI REDDY: I am not moving the Amendments, Sir.

Clause 21 was added to the Bill.

Clauses 22 to 30 were added to the Bill.

MR. DEPUTY CHAIRMAN: Now Clause 31. There is one Amendment (No.5) by Dr. T. Subbarami Reddy. Are you moving your Amendment?

DR. T. SUBBARAMI REDDY: Sir, I am not moving it.

Clause 31 was added to the Bill.

Clauses 32 to 44, the First Schedule and the Second Schedule were added to the Bill.

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

MR. DEPUTY CHAIRMAN: Now, Shri Anurag Thakur to move that the Bill be passed.

SHRI ANURAG SINGH THAKUR: Sir, before I move, I would like to thank Dr. T. Subbarami Reddy for not prossing the Amendments and also all the Members for supporting the Bill.

Sir, I move:

That the Bill be passed. …*(Interruptions)*..

MR. DEPUTY CHAIRMAN: You are not permitted, Mr. Rangarajan. You are a senior Member. You have no permission to speak. It will not go on record. Motion moved that the Bill be passed. The question is:

That the Bill be passed.

The motion was adopted.

The Insolvency and Bankruptcy Code (Amendment) Bill, 2019

MR. DEPUTY CHAIRMAN: Shrimati Nirmala Sitharaman to move a motion for consideration of the Insolvency and Bankruptcy Code (Amendment) Bill, 2019.

THE MINISTER OF FINANCE AND THE MINISTER OF CORPORATE AFFAIRS (SHRIMATI NIRMALA SITHARAMAN): Sir, I move :

"That the Bill further to amend the Insolvency and Bankruptcy Code, 2016, be taken into consideration."

MR. DEPUTY CHAIRMAN: If you want, you can speak. You can speak a few lines if you want.

SHRIMATI NIRMALA SITHARAMAN: Should I do it now or after the debate?

MR. DEPUTY CHAIRMAN: Even now if you want to say something, you can say.

SHRIMATI NIRMALA SITHARAMAN: All right, Sir.

Sir, thank you for giving me this opportunity. I will just make some introductory remarks as to why we have to consider this Amendment to the Insolvency and Bankruptcy Code.

Sir, till before the Insolvency and Bankruptcy Code of 2016 was brought in, the Insolvency Framework itself, the Insolvency Resolution Framework, was all scattered and fragmented leading to sub-optimal realization or outcome of the intended legislative intent of the Bill itself. So, the average time taken for any resolution of insolvency was almost like 4.3 years, and that kind of a time also involved cost, nearly nine per cent resolution cost, and recovery rate was only about 26 per cent.

Just going back a little, we also saw earlier a regime where you had the Sick Industrial Companies (Special Provisions) Act of the 1985 vintage, and that also failed to produce the desired results. The SICA regime created lot of protective wall against recovery and the perpetual control of the management responsible for the mismanagement. Later, unlike the SICA regime, in this particular Insolvency Code which is passed, we have a greater opportunity for resolving in favour of the financial creditors. The debtors in the SICA regime had further control even after the Sick Industrial Companies Act had been invoked but the debtors continue to keep hold and possession of the properties. Now, further, if you were to look at the SARFAESI Act, you saw a regime where the focus was on recovery of debts, and, in contrast, the object of the Code is for rescue of the company so that even if it is in difficulty, the problems are minimized and the losses are fairly distributed and the financial burden is not on any one particular individual or particular category of creditors. So, the last resort, in a way, for the Code was liquidation, and given this kind of a progressive feature, the Insolvency and the Bankruptcy Code acquired a great importance and post the passing of this, there has been a lot of sense of relief among the companies which even probably had the chance of becoming a 'going concern' rather than leading to liquidation. So, the 'World Bank Ease of Doing Business for India' improved post the bringing in of the Insolvency and

Bankruptcy Code. The ranks improved for India, gave a lot of hope for industries that if they really do want to have the process of liquidation brought in, there is an amicable way of coming out of it and also without any black mark on them.

So, as this was going on, we also, within two-and-a-half years of this Code, realized that there are certain areas in which for want of clarity, the interpretation given by various courts or even by the NCLT led to a very vital question that if the legislative intent of the IBC was itself becoming weakened just for want of clarity. So, today, as we are coming here with an Amendment Bill, it is only to make sure that each of these amendments which are being brought in are brought in for greater clarity which is required so that no grey area prevails, no interpretations which are going against the original intent of the Act are still prevalent. So, you find that in this particular Amendment, set of amendments that we are bringing in, of the seven –you can say eight amendments that we are bringing in –four are explanatory in nature and any additional amendments that we are talking about are more to ensure that interpretation is given for time which is required and a particular time that has got to be laid before for the Resolution itself. We are not leaving it open-ended. We are not giving it longer, unending time, and, therefore, bringing clarity in terms of time-bound decisions that are essential to keep the legislative intent. So, in a way, the Code is also being monitored by a Central Government Expert Committee and amendments which are being made are made after due stakeholder consultations. A lot of discussion has been happening through the media and also industries have been approaching the Government stating the urgency with which the set of amendments need to be brought in, because courts are also waiting. I can, in fact, give a list of the number of cases which are pending even at the application stage. Very many big insolvency cases are waiting for resolution. The balance of interest of all the stakeholders was becoming an issue. Therefore, we have brought in this set of amendments for the consideration of the House.

I hope Members would have gone through the papers to see why it is so urgent, why, because of the various interpretations which are coming through the tribunals and courts, there is a fear that the original intent with which this Parliament passed the Insolvency and Bankruptcy Code is probably getting diluted. We should not allow the dilution just for want of clarity. Therefore, I appeal to hon. Members that this Bill may be looked at in that perspective. Of course, we are here to respond to any questions

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that the Members would ask, but the need is to have this passed so that there is clarity for all the businesses that are seeking the Insolvency and Bankruptcy Code to give them a solution.

Thank you, Sir.

The question was proposed.

MR. DEPUTY CHAIRMAN: Motion moved. There is one amendment by Shri Binoy Viswam for reference of the Insolvency and Bankruptcy Code (Amendment) Bill, 2019 to a Select Committee of the Rajya Sabha. Shri Binoy Viswam, you may move the amendment with a list of names for the proposed Committee.

SHRI BINOY VISWAM (Kerala): Sir, just one sentence –it is a matter of principle, and it has been raised in the House many times. I don't wish to repeat it. I shall speak on the Bill later.

MR. DEPUTY CHAIRMAN: Since you have not given any names of Members for the proposed Select Committee....

SHRI BINOY VISWAM: Sir, that is the reason.

MR. DEPUTY CHAIRMAN: So, you are not moving the amendment. The motion for consideration of the Insolvency and Bankruptcy Code (Amendment) Bill, 2019 is now open for discussion. Shri Kapil Sibal.

[THE VICE-CHAIRMAN (DR. SATYANARAYAN JATIYA) *in the Chair*]

SHRI KAPIL SIBAL (Uttar Pradesh): Sir, I rise to participate in this discussion, but before I proceed with my observations, I would like to make a statement that I have been appearing in many of these cases. It is not that I have any deep or personal interest in any client, but I have certainly represented several stakeholders in litigations before the court as well as the NCLT. So, I wanted to disclose my interest.

Now, Sir, I think that this is a well-conceived legislation. The whole IBC Code was the crying need of the hour and we didn't have a resolution process or a bankruptcy process in this country. I commend the Government for having started that process way back in December, 2015 and for having brought this legislation sometime in May, 2016.

The process started somewhere in December, 2016, formally. But this is a very complicated law. As the Finance Minister was saying, we wanted to clarify several issues and I think this is an amendment Bill that seeks to clarify some of those issues. In fact, since its inception, there have been about 27 amendments in this Bill. This has been a work in progress because as and when issues crop up, the Government thinks of those issues and brings forward the amendments. But, Sir, I want to make a broad comment before I go into the amendments. That is that our economy is going through some very difficult times. Our manufacturing sector is in doldrums. In fact, just the other day there was a report saying that Maruti Suzuki has had a revenue dip of about 16 per cent; Tatas have a revenue dip. In fact, there are cars that are lined up without getting sold; two-wheelers and three-wheelers have not been sold because there is no demand in the market. The steel industry is in difficult times. The real estate sector is in very deep trouble. In fact, 20 per cent of all the insolvencies are in the real estate sector itself. You have the FMCG sector which is also in difficulty. That is why the IMF has said that our growth in 2019-20 is going to be about 7 per cent. These are not good signs for the economy, especially when you say that we are going to be a five trillion dollar economy by the time we reach 2024. But, be that as it may, the worry that I have is that while you solve this problem, you are going to create a lot of unemployment in this country. And I tell you why that worry is there. Which are the sectors that generate maximum employment in this country? Real estate is one of those sectors. Then you have, of course, the retail sector, the manufacturing sector, textile sector and leather sector. So, all of these sectors are in great difficulty today and most of the resolutions that are taking place or insolvencies that are taking place are, in fact, in these sectors. Remember, the backbone of the Indian economy is the MSME sector. That is the maximum employment sector for this country. Maximum people are employed in the MSME sector. Now, if you look at the insolvency proceedings, you will find that only 94 petitions have been resolved thus far and there are 383 that have become insolvent. I am talking of results as of today and I have got the figures with me here. These are official figures: 94 have ended in approval for resolution plans and 378 have ended in commencement of liquidation. That means, out of every five petitions that are filed, one succeeds and four fail. In other words, four companies are going into liquidation. If four out of five companies go into liquidation, you can realise what impact it has on the employment sector. When these small companies go into liquidation, all the people who are employed will be unemployed. So, you are, on the one hand, seeking to resolve these matters and, on the other hand, you are

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creating huge unemployment issues. There are, in all, about 14,000 applications that have been filed. Out of those 14,000 applications, 1,858 applications have been admitted. So, if there are 14,000 applications and most of them belong to these sectors and if they are all going to insolvency, the impact of this on employment will be mind-boggling. That is why they say that unemployment rate today is the highest in the last 45 years and you are going to have more and more unemployment as we move forward. Forty-two per cent of the cases filed are from manufacturing sector covering industries like steel, fast moving consumer goods, chemical products, electrical machinery, basic metals and twenty per cent are in the real estate sector. The Finance Minister should tell us that there is no resolution plan in the real estate sector at all. Not a single person has come forward to say that I am a resolution applicant; I want to resolve this. The reason is very simple. The reason is that in the real estate sector when all these builders build these huge apartments, there is a conflict because they cannot deliver on time. Since they cannot deliver on time, the home buyers go to Court. The Supreme Court has said that the home buyers are financial creditors; they have a role to play in the proceedings in the CoC; they have a vote; they can exercise their right to vote. One of the amendments that has come forward is that if 50 per cent of the home buyers authorise a particular person to vote and that person's vote represents the entire sector, that is a welcome suggestion. But the fact is that this is not going to resolve the issue because in the real estate sector there are any number of group companies that build these towers. There is no resolution for group companies that we have so far. The Government has not provided any solution for that. I just want to point out one fact to you so that you just know what the figures are. As per the study published in a newspaper, as many as 220 projects launched in 2013 have 1.7 lakh homes that are stalled in seven cities in this country worth Rs.1.77 lakh crores. Out of this, the NCR itself has 1.18 lakh units worth ₹ 82,000 crores which are stalled. There is no resolution process available under the IBC to resolve this issue. There is not a single resolution applicant that has come forward. What will happen to this? And, these are all group companies. Now, under the IBC, you can move against one company but you cannot move against group companies because there is no process to move against group companies. So, the Finance Minister must tell us as to how you are going to resolve this particular issue of home buyers and how you are going to get the resolution applicants because nobody wants to invest in the real estate sector any more. Either the Supreme Court says, 'you prosecute them',

or the, Supreme Court says, 'you give back the money'. We are happy. We are for the home buyers. They must get their investment back. But, the fact of the matter is that there must be a process, which is why the distinguished Member said, 'Why are you bringing this Bill to be passed right now? These are very serious issues that could have been discussed in the Select Committee. We could have all applied our minds and decided as to how to move forward. And, you know, this particular sector represents 1.20 per cent of the entire GDP of this country. For the last three years, the real estate sector projects have been struck and we are sitting here with closed eyes, not knowing what to do. There is no solution in sight. All these carry the risk of liquidation. If these are liquidated, what is going to happen to employment; what is going to happen to the investment made by the home buyers; what is going to happen to those who have invested? Remember, the maximum cost in real estate is the cost of land. Now, if you buy land at a heavy price and you don’ t get your approvals in time, and you can't build in time, the home buyer comes after you, and rightly so. So, the Finance Minister must tell us that by this amendment which is an amendment under Clause 25 (a) where you have added 3 (a), where you are saying that the representative of the home buyers will be entitled to vote on behalf of all the home buyers, how is it going to solve the problem? This Amendment does not deal with the problem at all. This problem would have been solved had you agreed to refer this matter to the Select Committee. We don't know how these loans are going to be serviced. Now, don't laugh because I know there is a study group that is looking at group resolution. There is already a study group looking at group resolution but that is not part of the solution here. Here you are only giving the right to the home buyers to represent themselves. See, all this national wealth is stuck. These are half-finished projects and we don't know how to finish them. So, the home buyer issue, I think is a very, very important issue. The other thing that you have mentioned in your opening remarks was that some very big ticket items are being resolved. Actually there are only 12 big ticket items and of the 12 big ticket items, only 6 seem to have been resolved. Let me just give you the figures because it will give an idea to this House as to what is the amount that the secured creditors are getting back. Take for example - Electrosteel. That has been resolved and the realisation of that resolution is only 40.38 per cent of the amounts that were due to the secured creditors. Sixty per cent haircut! In other words, the secured creditors give us 60 per cent haircut. And, who buys it? A big multi-national. Vedanta buys the same asset at 40 per cent of the price, and, will get the same loan from the same bank who will finance this project.

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This is what is happening. I will give you another example. Bhushan Steel, there, the realisation is 63 per cent. Monnet Ispat, the realisation is 26 per cent. In other words, there is a haircut of the secured creditors of more than 70 per cent. And, who gets it? Consortium of JSW. So, these people buy these assets at 30 per cent of the value and get loans from the same bank to finance it. What kind of resolution is this? Then, Essar Steel. Because that is not yet decided, that matter is pending in Supreme Court. Then, Alok Industries, 17 per cent, 83 per cent haircut! In other words, the Reliance Industries will get these assets at 17 per cent of its outstanding value. Can you imagine what you are doing? You are creating an oligopoly in this country. You are having a few players in this country because nobody else has the capital to buy off these assets. The only entities that have the capital are the big players, and we know who the big players are. So, those four or five big players are buying the precious silver of this country at throw away prices. That is your great resolution process. Of course, this is better than the liquidation value. It is twice as much as the liquidation value. So, if it had gone into liquidation, certainly, it would have got half the price. But, this is no real resolution. There is another company called Jyoti Securities, which has gone for 50 per cent. These are the six cases that have been resolved. There are six others that have not yet been resolved. And, I don' t know how much time that is going to take. So, the point that I was making is that this resolution is in favour of the big players who are getting the silver of this country at throw away prices.

The second point that I wish to make is that, I think, through these Amendments, you are blaming the Court for dilatory tactics because you say that if the NCLT does not decide on the default within 14 days, then the NCLT has to pass an order to say as to why it did not decide within 14 days. The Minister knows that till now, many of these NCLTs were not even manned. There are only two people who are appointed there. They meet twice a week. So, don' t blame the judiciary, don' t blame the NCLT for the fact that you have yourself not appointed the appropriate number of people to deal with this issue. Now, on 25th of July, you have created more NCLTs and you want to man them, but you can' t blame the judiciary that they must give a reason as to why they did not decide within 14 days. Then, the other Amendment, that you have moved, is that the total resolution process cannot go beyond 330 days. Now, this is very strange to my mind because when you say that it can' t go beyond 330 days, you are saying

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that the Court has no right to stay the matter. You are saying that the Court has no right to pass an order. In fact, you say in your Statement of Objects and Reasons, that if it is not done within 330 days, the company will go into liquidation. The Finance Minister and distinguished Members of this House know very well that Article 226 is part of the basic structure of this Constitution. If you, through legislation, tell the Court that they have no power under Article 226, and that if 330 days are over, the matter will go into liquidation, even though the matter is pending before them, that is not something that will stand in a court of law. I can tell you that it will be struck down. That is why, when these kinds of Amendments are moved without thinking about them, without sending them to the Standing Committee or a Select Committee, this is going to be the result of that. So, you can' t bind the Court and say in respect of all those matters that are pending, which are beyond 270 days, you are now saying that if those matters are not concluded, which are pending matters, in 90 more days, the company will go into liquidation. How can you say that about the matters which are pending hearing in the Supreme Court?

The last point I wish to make is a very disturbing point. You have, through Clause 30, attempted to resolve a dispute which is pending in the judiciary through legislation. There is an appeal that is pending in the Supreme Court. I won' t go into the merits of the matter. That appeal is to be heard on the 7th of next month. You have brought a legislation deciding the rights of parties while the matter is pending in the Supreme Court. How can the legislation attempt to resolve a judicial dispute? That dispute will be decided by the Court. And, you have given this legislation a retrospective effect. I am really surprised. You say that this is deemed to be the law since when the Code was passed by the Parliament. How can you say that that this is always supposed to be the law? And, how can you resolve disputes in which the Government is directly interested? The nationalised banks are known to you. The nationalised banks are owned by you. The nationalised banks are to be benefited by this legislation. You decide for the nationalised banks and you decide what they are going to get when the matter is pending in the Supreme Court. I have never heard a Government, through legislation, determining a judicial dispute which is pending in Court in its own favour.

In other words, in favour of the nationalized banks that it owns. ...*(Time-bell rings)*... This will not stand in a court of law. While, some of these amendments, of

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course, are salutary and the direction is right, but, I do not think that these kinds of legislations should be decided and bulldozed through Parliament without referring the matter to the Select Committee. Thank you very much.

श्री भूपेन्द्र यादव (राजस्थान) : सम्माननीय उपसभाध्यक्ष महोदय, कभी-कभी देश में जो नए कानून बनते हैं और जब हम उन कानूनों के तर्कों को सुनते हैं, तो इस सदन को और इस देश के जनमानस को एक विषय तय करना चाहिए कि हम देश में जो कानून बना रहे हैं, उन कानूनों की दिशा litigation-free society की होनी चाहिए या litigant society की होनी चाहिए। हम तय क्या करना चाहते हैं? हम तय करना चाहते हैं कि ऐसे कानून आएं, जो हमें litigation-free society की ओर लेकर आएं। इससे पहले देश में क्या होता था? पहले किसी कंपनी में स्थिति खराब होती थी, तो AAIFR में चले जाते थे, BIFR में चले जाते थे, Company Act में अलग केस जाते थे, कंपनी की जो लेबर बी, वह Labour Court में जाया करती थी, कंपनी के जो छोटे, कर्जदार जिनको कंपनी की रिकवरी करनी होती थी, वे Recovery suit में जाते थे। हमने वर्ष 1993 में DRT Court स्थापित की थीं, बाद में SARFAESI ले आए, तो बैंक अपना ताला लगा देते थे और जो सरकार की एजेंसियां थी, चाहे Sales Tax हो, Income Tax हो, वे अपना ताला लगा देती थीं। किसी को कुछ नहीं मिलता था। यह Insolvency कानून लाने के बाद पहली बार यह सरकार कह चुकी है कि हम दो साल के अंदर तीन लाख करोड़ रुपये वापस लाए हैं। यह इस कानून की उपलब्धि है। इसके लिए will-power चाहिए। Will-power इसलिए होनी चाहिए, क्योंकि देश के लॉ कमीशन ने वर्ष 1960 में रिपोर्ट दी थी कि आप Insolventy and Bankruptcy का कानून लेकर आएं। यह देश इंतजार करता रहा। इस बात का जवाब तो देना ही पड़ेगा कि वर्ष 2009 में देश में कॉरपोरेट पर 12, 13 या 18 लाख करोड़ रुपये का जो बकाया था, वह पांच साल के अंदर 58 लाख करोड़ रुपये कैसे हो गया? यह बुक से बुक की जो adjustment होती रही और देश के जो बड़े कॉरपोरेटिव, जिनका अभी सिब्बल साहब नाम ले रहे थे, बहुत सही नाम ले रहे थे, चाहे Bhushan Steel का मामला हो, चाहे बाकी के जितने भी उन्होंने नाम लिए हैं, उनकी बात हो, क्यों उनका book adjustment होता रहा, क्यों बैंकों का एनपीए बढ़ता रहा? सर, पूरे देश में एक ऐसी व्यवस्था का अभाव था, जिसमें हम सब चीज़ों को एक छत के नीचे लाकर और समस्या का एक सही तरीके से समाधान कर सकें। मैं मानता हूं कि देश में हमने आर्टिकल 226 में रिट की पावर दी है। मैं आपसे पूरी तरह सहमत हूं। मैं यहां विनम्रता के साथ कहना चाहता हूं कि मैंने Insolvency and Bankruptcy Code में समिति के चेयरमैन के नाते काम किया, बाद में हम इसके समान दो कानूनों में जो सुधार लेकर आए, DRT Court के बैंक के रिकवरी सूट में समाधान लेकर आए, SARFAESI में समाधान लेकर आए। सारे बैंक्स कहते थे कि रिकवरी में बहुत बड़ी समस्या है। रिकवरी की सबसे बड़ी समस्या है कि आर्टिकल 226 में रिट पड़ती है, stay होता है और बाद में सारी प्रोसिडिंग्ज़ रुक जाती हैं और आगे कुछ नहीं बढ़ता है। हमने insolvency code को लाने के बाद यह तय किया है

कि अगर एक बार Insolvency का प्रोसेस शुरू होता है, तो बाकी जितने भी न्यायिक केसेज़ हैं या उसके संबंध में, वे सब एक बार रुक जाएं और रुकने के बाद यह कहा जा सकता है कि कैसे... आप एक तरीके से तो देश की अर्थव्यवस्था को सुधारना चाहते हैं। आप यह चाहते हैं कि Ease of Doing Business के मामले में आपका देश आगे बढ़े। आप यह चाहते हैं, हम सब यह चाहते हैं कि हमारे देश में जो पूंजी लगाए, उसकी पूंजी की सुरक्षा हो। हम यह सब चाहते हैं कि जो व्यापार करना चाहते हैं, उस व्यापार का एक स्थायी तरीके से, एक निश्चित समय में समाधान हो। इसका समाधान करने के लिए ही, इस देश की संसद में एक निश्चित समय में कमेटी के अंतर्गत विचार करके हम Insolvency and Bankruptcy Code को लेकर आए हैं। इस कोड को लाते समय सरकार ने... किसी भी औद्योगिक संस्थान, औद्योगिक इकाई जब Insolvency Code में आता है, तो उसका waterfall mechanism कैसे होना चाहिए? उसमें हमने सबसे पहले श्रमिकों और कर्मचारियों के हितों को प्राथमिकता दी और सबसे बाद में सरकार की अपनी रिकवरी आई है। इसलिए मैं यह कहना चाहूंगा कि यह सच है कि यह नया कानून है, इस कानून को लाने के बाद देश में और दुनिया में हम ease of doing business में आगे गए हैं। अभी इसका जो amendment लाया गया है, यह amendment मुख्यतया तीन बातों को लेकर लाया गया है।

पहला विषय यह है कि एक समय-सीमा को बांधने का प्रयास किया गया है। कपिल सिब्बल जी ने सही कहा है कि हमने 330 दिनों की समय-सीमा में न्यायिक निर्णय को भी बांधा है। यह सच है और यह एक ऐसा न्याय परिवर्तन है कि अगर इस देश को आप औद्योगिक रूप से, आर्थिक रूप से सामर्थ्यवान बनाना चाहते हो, तो आपको यह तय करना होगा, अदालतों को भी समय-सीमा की मर्यादा में बंधकर निर्णय करना होगा, यह आवश्यक है। इसलिए इस Insolvency Code के जो संवैधानिक प्रावधान हैं, उन संवैधानिक प्रावधानों को जब सर्वोच्च न्यायालय में चुनौती दी गई थी और यह कहा गया था कि insolvency and bankruptcy के जो संवैधानिक प्रावधान हैं, वे प्रावधान भारत के संविधान के अनुसार *ultra vires* हैं या नहीं हैं, जब उनको चुनौती दी गई थी, तो मुझे बड़ी विनम्रता के साथ यह कहते हुए खुशी है कि सर्वोच्च न्यायालय ने जो अपना निर्णय दिया था और उस निर्णय को देते समय सर्वोच्च न्यायाल ने कहा था कि एक ऐसा कानून आया है, जिससे देश में डिफॉल्टरों के दिन खत्म हो गए हैं। This is an end of defaulters' paradise. यह कोर्ट के जजमेंट की पंक्तियां हैं। इसलिए जब न्यायालय के द्वारा इस कानून के बारे में कहा गया है और जो लोग भी देश के पैसे के साथ या गरीब के पैसे के साथ खिलवाड़ करने का काम करते हैं, उनके खिलाफ अगर निर्णय देना होगा, तो यह इस संसद का दायित्व नहीं है, इस देश की संसद से लेकर न्यायालय तक सबका दायित्व है कि देश की आर्थिक सुरक्षा के लिए एक समय-सीमा में इसका निर्णय किया जाए। इसके लिए यह परिवर्तन लाया गया है। Corporate Insolvency Resolution की प्रकिया को निर्धारित समय यानी 330 दिनों में पूरा करने का जो संशोधन लाया गया है, मेरा यह मानना है कि यह एक उचित संशोधन है, लेकिन ऐसा होता है कि कभी-कभी कुछ आवश्यक स्थितियां इस प्रकार भी निर्मित हो जाती हैं कि उस समय-

[श्री भूपेन्द्र यादव]

सीमा के अंदर अगर वह प्रक्रिया पूरी नहीं होती है, तो इसी संशोधन में 90 अतिरिक्त दोनों का भी प्रावधान किया गया है।

दूसरा जो सबसे बड़ा विषय है, वह होम बायर्स का विषय है। हम भी जानते हैं कि सर्वोच्च न्यायालय में लंबे समय तक इस विषय को लेकर जितनी भी लिटिगेशन्स आई हैं, वे real estate companies की आई हैं। हमको यह भी समझना होगा कि पिछले पांच सालों में भारत को काले धन की अर्थव्यवस्था से निकालने के लिए हमने एक समयबद्ध तरीके से विभिन्न कानूनी प्रक्रियाओं में व्यवस्थागत सुधार किए हैं, जो भारत में एक लंबे समय से अपेक्षित थे। हम Insolvency कानून को लेकर आए, आर्थिक भगोड़ा कानून को लेकर आए, बेनामी संपत्ति कानून को लेकर आए। इन सब कानूनों को लाने का उद्देश्य क्या था। Real esate sector में RERA का कानून भी कानून भी हमारी सरकार लाई थी। क्यों लेकर आई थी? क्योंकि पूरे देश में जिस प्रकार का real estate विषय था और real estate जो कारोबार होता था, उसमें जिस प्रकार से काले धन का निवेश था, उस व्यवसाय को एक सही तरीके से, पारदर्शी तरीके से चलाया जाए और जो उपभोक्ता, जो छोटा आदमी अपनी बचत के माध्यम से, अपनी नौकरी में से पैसे निकालकर, अपनी मेहनत के पैसे निकालकर, अगर वह आशियाना लेने की सोचता है, तो नियमों की पारदर्शिता वहां पर रखी जाए। Insolvency कानून के अंतर्गत भी, जब सर्वोच्च न्यायालय के समक्ष यह विषय आया, घर के खरीददारों का विषय आया, तो सरकार ही 2018 में एक संशोधन लेकर आई थी। वर्ष 2018 में जो संशोधन हम लोग लेकर आए थे, उसमें जो home buyers थे, उनको हमने आर्थिक रूप से पैसा लेने का अधिकारी बनाया, क्योंकि हम यह जानते थे कि home buyers इससे पहले वित्तीय लेनदारों की सूची के अंतर्गत नहीं थे। इसके अलावा एक व्यावहारिक समस्या है और वह व्यावहारिक समस्या यह है कि CIRP के अंतर्गत जब Insolvency की प्रक्रिया चलती है और operational creditors में भी home buyers की संख्या इतनी ज्यादा होती है, प्रारम्भ में तो 75 प्रतिशत के मतदान से आज Insolvency का जो resolution process था, उसमें प्रारम्भ में यह रखा, बाद में 66 परसेंट रखा था। अब इसको रिड्यूस करने का कारण यह है कि जब आपने home buyers को इस category के अंतर्गत ला दिया, तो insolvency resolution का जो process है, वह process सही तरीके से चले। कंपनियां सीधे दिवालिया होने के बजाय, उनके resolution process को मजबूती मिले, इसीलिए सरकार ने इस विषय को लेकर इसमें जो दूसरा संशोधन किया है, वह दूसरा संशोधन भी स्वागत योग्य है।

उपसभाध्यक्ष महोदय, एक तीसरा विषय है, जो operational creditors के जो छोटे-छोटे लोग हैं, उनके हितों के संबंध में हैं। इसीलिए जो छोटे operational creditors हैं, उनके हितों के संबंध में भी सरकार ने insolvency में और bankruptcy में यह अधिकार प्रदान किया है कि resolution plan में यह सुनिश्चित करना होगा कि operational creditors को एक निश्चित राशि प्राप्त हो, इसीलिए ये तीनों संशोधन आए हैं। यह सच है कि insolvency resolution plan

को और इस संशोधन को करते समय, देश में एक बड़ी आवश्यकता थी और इसीलिए हम insolvency law लेकर आए हैं। हमें NCLT की ज्यादा benches बनानी होंगी, NCLT में ज्यादा जजों की नियुक्ति करनी होगी, जिस प्रकार से इस क्षेत्र में ज्यादा विवाद बढ़ने वाले हैं। जो insolvency professionals हैं, हमें उनको ज्यादा प्रशिक्षित करके, ज्यादा professionals को लाना होगा। मैं इस कानून की प्रक्रिया को लगातार दो साल से देख रहा हूं और अब मेरा यह अनुभव बनता जा रहा है कि हमारे देश में, हम लोगों को अगर भारत की आर्थिक ताकत को बढ़ाना है, तो इन नये कानूनों के साथ अपने आपको एडजेस्ट करना होगा। जब शुरू में यह विषय आया था कि 180 दिन के अंदर जो insolvency का resolution plan है, इसको आप कैसे निर्धारित करेंगे? हम सब लोग आज digitally आगे बढ़े हैं। हिन्दुस्तान की अदालतों की जो सबसे बड़ी समस्या है, वह यह है कि अगर कोई भी केस डाला जाता है, तो जिसके खिलाफ केस डाला है, उसको summon रिसीव कराकर अदालत में लाया जाए कि आपके खिलाफ यह रिकवरी मांगता है, आपको अदालत कह रही है कि आप आइए और अदालत में अपना जवाब दीजिए। जब यह Code आया, तब भी यह तय किया गया कि इस प्रकार की प्रक्रिया में आप कानून को इस प्रकार से बनाइए, ताकि जितना भी काम है, उसे हम digitally पूरा कर सकें। उस digital प्रक्रिया में, जितने भी प्रकार के summons जाने हैं, नोटिस जाने हैं, प्रक्रिया होनी है, उन प्रक्रियाओं को एक निर्धारित समय-सीमा के अंतर्गत पूरा किया जाए। इसको पूरा करने में यह कानून काफी सक्षम सिद्ध हुआ है। यह एक ऐसा कानून है, जो वास्तव में, हमारे सिब्बल साहब बैठे हैं, बाकी बड़े वकील बैठे हैं, यह एक ऐसा कानून है, जिसमें हमको यह पहले से तय करना चाहिए और देश की अदालतों को भी काम करते समय, मुझे ध्यान है कि सर्वोच्च न्यायालय में एक न्यायाधीश सेवानिवृत्त हुए थे, उन्होंने वकीलों के बीच में कहा था कि 70 साल के, इस आज़ादी के दौर में हमने अदालतें तो बनाई हैं, परन्तु हमको यह तय करना पड़ेगा कि ये जो अदालतें हैं, ये for corporate person बनेंगी or for common man बनेंगी। कई बार common man को न्याय दिलाने में देरी होती है, लेकिन जो corporate insolvency है, इसके कारण जो common man की जिंदगी में तकलीफ आती है, जो समस्या आती है, बड़े-बड़े उद्योगों के कारण उसका resolution plan नहीं बन पाने के कारण, उसकी पूंजी का सही समय पर, सही तरीके से resolution plan नहीं बनने के कारण, जो समस्याएं आती हैं, उसका एक समय-सीमा के अंतर्गत हमें समाधान करना होगा। महोदय, इस देश में इन्सॉल्वेंसी और बैक्रप्सी कानून, इस मामले में बहुत बड़ा सुधारात्मक कानून बना है और ये जो तीनों संशोधन आए हैं, फिर चाहे वह समय-सीमा के संबंध में हो, चाहे ऑपरेशनल क्रेडिटर्स के संबंध में आया हो और चाहे उनके वोटिंग पैटर्न के संबंध में, 50 प्रतिशत की सीमा को निर्धारित करने के संबंध में आया हो। यह नया कानून है, जिसे लागू करने के बाद हम देश में व्यापार में ईज़ ऑफ डूइंग बिजनेस में आगे बढ़े हैं। मुझे लगता है कि समय पर लाए गए ये तीनों संशोधन भी आने वाले समय में ईज़ ऑफ डूइंग बिजनेस में आगे बढ़ेंगे और केवल हम ही नहीं, बल्कि हम और अदालतें, सब मिलकर के भारत में, कम से कम आर्थिक क्षेत्र में परिचालन की जो गतिविधियां हैं, वहां एक ट्रांसपेरेंट सिस्टम को खड़ा करने में, हम सब अपना योगदान देंगे, ताकि सही समय

[श्री भूपेन्द्र यादव]

पर इन विषयों का समाधान होकर देश की पूंजी की सुरक्षा हो सके, देश में रोजगार बढ़ सकें और भारत इस प्रकार से एक अच्छे पारदर्शी माध्यम से, जो लक्ष्य हम लोगों ने तय किया है- दुनिया की तीसरी सबसे बड़ी अर्थव्यवस्था और तीसरी सबसे बड़ी महाशक्ति, फाइव ट्रिलियन डॉलर की इकॉनोमी, उस लक्ष्य को प्राप्त कर सकें, धन्यवाद।

कुमारी शैलजा (हरियाणा) : माननीय उपसभाध्यक्ष महोदय, मैं श्री भूपेन्द्र यादव जी को बीच में टोकना नहीं चाहती थी, इसलिए मैं अब बता रही हूं कि उन्होंने कहा कि RERA कानून उनकी सरकार लाई। मैं स्पष्ट करना चाहती हूं कि उनकी सरकार नहीं, बल्कि हमारी सरकार लेकर आई, लेकिन पारित अभी हुआ।...**(व्यवधान)**...

उपसभाध्यक्ष (डा. सत्यनारायण जटिया) : जब आपकी तरफ से प्रवक्ता बोलेंगे, तब यह बात आ जाएगी।...**(व्यवधान)**...

श्री भूपेन्द्र यादव : महोदय, RERA कानून आया था। यहां सेलेक्ट कमेटी बनी थी। श्री अनिल माधव दवे जी उसके चेयरमैन बने थे। आपने शुरुआत की, लेकिन पूरा हमने किया।...**(व्यवधान)**...

उपसभाध्यक्ष (डा. सत्यनारायण जटिया) : इसमें रेरा, क्या मेरा और क्या तेरा...**(व्यवधान)**...श्री मनीष गुप्ता जी।

SHRI MANISH GUPTA (West Bengal): Sir, I rise to support this Bill. We all agree that a time comes in the economy of the country, in the lives of men and institutions, when we need to take steps to correct the legal system where it is required. Sir, unfortunately, although I rise to support this Bill, I am constrained to point out that the parliamentary procedures, which are required to give legislative legitimacy to any law or amendment, has not been followed in this case. This is most unfortunate because the Honourable speakers, who have spoken before me, have pointed out certain lacunae in the Bill and, therefore, it would have been advantageous to send this Bill to a Select Committee for a short and fixed time so that more minds could be applied to amend this Bill. The point is, when you create a law and when you keep on amending it from time to time, it becomes a boring process. Sir, wisdom is available and the legal records and case laws also are available. That needs to be incorporated into this Bill, which has not been forged in a scientific and structured manner.

Sir, the present situation in the country is that the economy is in the doldrums. Our obsession with fiscal policy, our obsession with banks and financial institutions, our obsession with stock markets, our obsession with farmers, etc. has not been

reflected in the Budget. Sir, the credibility of banks is at a low ebb. We have noticed that this Bill or this law, the Insolvency and Bankruptcy Code, has helped in resolving certain debts that the companies have acquired. Now, this law has been enacted to resolve NPAs. The total NPA today in this country is ₹ 10 lakh crore, as stated by the Government. But, the ground reality is that an amount of more than ₹ 3 lakh crore to ₹ 4.5 lakh crore has not been declared as NPAs by banks and it seems that the general business community is of the view that there are thousands of such cases which can become NPAs.

Sir, this Legislation has only taken care of a part of the problem likened to the tip of the iceberg. That is why a more comprehensive law would have been useful. I think, we need to look at the ground realities. On 12th February, last year, the RBI had issued a circular for solving the problem of stressed assets. Later, they modified it. The Supreme Court had ordered and they modified it. The RBI's directions and the RBI's responsibility has only resulted in a mixed bag. This has, in fact, slowed down the process of resolution. This needs to be rectified. Sir, we have always said, we all believe, that MSMEs are the future of our economy. Several States have made very good progress in this respect. West Bengal is one among them; Tamil Nadu and many other States are there. When the NABARD Act was amended in 2017, a Section was inserted there for special status for MSMEs so that banks could be refinanced by NABARD when they loan the MSMEs. Even at that time, it was an inadequate provision. I am surprised to see that in this Code also, a certain concession has been given to MSMEs but the entire problem which the MSMEs face and will face if this Code is used against corporate debtors, will affect them adversely. So, the MSME provision in this Act needs to be amended. …*(Time-Bell rings)*…

SHRI DEREK O'BRIEN: There are four minutes to go. …*(Interruptions)*…

THE VICE-CHAIRMAN (DR. SATYANARAYAN JATIYA): There is one more speaker. …*(Interruptions)*…

SHRI DEREK O'BRIEN: No, Sir, there is only one speaker. …*(Interruptions)*…

THE VICE-CHAIRMAN (DR. SATYANARAYAN JATIYA): If one speaker, then, it is all right. Go on. …*(Interruptions)*…

श्री देरेक ओब्राईन : सर, संस्कृत में बोल दीजिए।

उपसभाध्यक्ष (डा. सत्यनारायण जटिया) : निरंतर कुरु।

SHRI MANISH GUPTA: Sir, in the IBC, in this Code, more clarity is required. The Hon' ble Minister has stated that engagement of stakeholders, creditors, bankers etc. is being done but banks have taken a very large haircut in some cases. The role of the banks is not very clear. Once they have taken the haircut, they disappear. They are not involved in the actual resolution process. It is a kind of escape hatch, which the banks are using. This needs to be plugged. Banks have to be involved till the end of the resolution so that they can contribute usefully to the economic situation. Sir, Section 240A, as I have said, looks into the MSME problem but it has not been fully addressed. There are several other issues but time does not permit. In the process which is followed by NCLT, we find that the courts are giving much more time. Bank chairpersons or PSUs have become new power centres. This is like crony capitalism. This Code has enabled this kind of a situation to develop. If it becomes more broad-based, the entire purpose of the Code will be defeated. So, there are specific cases which I am not going into in which the courts have ordered extra time. There is a sixty days limit, we have seen, which is an additional time frame. This is not required. We feel that this should be dispensed with. The sixty day additional time frame only delays the process. The main issue is infrastructure. Infrastructure constraints have not assisted the Code. The 330 day limit, apart from the inherent power of the court which you cannot wish away. There is Article 226. Apart from that, courts have an inherent power. So, this 330 day limit itself is not getting this resolution process anywhere. The Government needs to take a fresh look at this as to how to maintain the integrity of the court as well as to see that this process has some impact on the economy. This has not happened. There are still cases as others have pointed out.

Sir, one of the main issues is that, in this Code, we need not only to look at infrastructure, we need to look at the bandwidth of the legal system. Otherwise, for the resolution process, the quality of resolution professionals is very important and is not specified in the Code. Who decides as to who is a good professional? Who decides the quality of the professionals? So, there is a dearth of this. There is a lack of application on this. And, Sir, most importantly, as in advanced countries....

THE VICE-CHAIRMAN (DR. SATYANARAYAN JATIYA): Please conclude.

SHRI MANISH GUPTA: Sir, one minute. In advanced countries, they have a mechanism by which they attend to corporate debts before the resolution process so

that they don't have to go the IBC. We don't have any such mechanism in this country. I would beseech the Minister to kindly look into this issue. One of the worst situations is the alarming aspect of lose of livelihoods; livelihoods of workers, small businesses and suppliers, etc., who are dependent on this.

THE VICE-CHAIRMAN (DR. SATYANARAYAN JATIYA): Please conclude.

SHRI MANISH GUPTA: Sir, one minute. Out of every four cases, only one case is resolved and the rest die or they go into litigation; more litigation and then go into liquidation. The aspect is that to what extent the resolution process will help the total number of such cases that will be filed in the courts. Thank you, Sir.

श्री रवि प्रकाश वर्मा (उत्तर प्रदेश) : सर, आज हमारी अर्थव्यवस्था जिस दौर से गुजर रही है, उसे उससे बाहर लाने के लिए Insolvency कानून में amendment लाया गया है, लेकिन यह जो दवा है, यह मरीज को ठीक नहीं करती, हमें ऐसा लगता है। पूरे विश्व में अर्थव्यवस्था मंदी में है, हिन्दुस्तान भी उससे प्रभावित हुआ है। कल कोई कह रहा था कि अर्थव्यवस्था की मंदी के आसार अब दिखने लगे हैं। अभी हमारे पूर्ववर्ती वक्ता सिब्बल साहब चले गए, उन्होंने बड़ी गहराई से इस बात को कहा कि इस एक्ट के बनने के बाद, इस एक्ट के कामयाब होने के बाद भी जो समस्याएं आने वाली हैं, वे देश के लिए बड़ी चुनौती बनने वाली हैं। दरअसल होना क्या चाहिए, अभी जब मैं कल पढ़ रहा था, तो कोई बता रहा था कि पिछले 50 दिन में शेयर मार्केट में लोगों का लगभग 12 लाख करोड़ रुपए का नुकसान हो चुका है। अर्थव्यवस्था को इतना बड़ा झटका लग रहा है। ठीक है, हम लोग यह कानून बना रहे हैं, बैंकों का, financial institutions का भी लगभग 12-13 लाख करोड़ फंसा हुआ है, जिसको निकालना जरूरी है, लेकिन हुकूमत के तौर पर लाज़िम क्या है, कहां देखना चाहिए, क्या करना चाहिए, यह देखने की आवश्यकता है। मुझे लगता है कि लगभग आर्थिक आपातकाल जैसे हालात हैं, जिस पर संसद को, सत्ता पक्ष को और पूरे विपक्ष को मिल कर बहुत गहन चर्चा और अध्ययन करने की जरूरत है कि आखिर इस अंधेरे में से निकलें कैसे। यह 130 करोड़ लोगों का देश है, यहां पर employment बहुत बड़ा issue है। कुछ परिवार, 2-4-10-50-100 बड़े उद्योगपति या बड़े सक्षम लोग मिल कर इस पूरे देश को आगे नहीं बढ़ा सकते हैं। जिस तरीके से घटनाक्रम जा रहा है, अभी मुम्बई के एक बड़े उद्योगपति हैं, वे बता रहे थे कि अगर आपस में शको-शुबहा और ये दूरियां ऐसे ही बढ़ती रहीं, तो हमारे कोई भी आर्थिक लक्ष्य पूरे नहीं होंगे। अगर आप चाहेंगे, तो हम आपको बाद में नाम बता देंगे। अखबार में खबर छपी थी, मेरे पास उस चीज का रिकॉर्ड है। यह जो कानून बनाया गया है, उस वक्त मैं भी आदरणीय भूपेन्द्र यादव जी के साथ था। इस पर NPA के बारे में बहुत गहरी चर्चाएं हुई थीं। अभी उन्होंने जिक्र किया कि हमें problems के साथ में रहना है या समाधान के साथ में रहना है? यह सच है कि यह निर्णायक स्थिति है, लेकिन निर्णय किस दिशा में होने हैं, इस बात से बहुत फर्क पड़ता है।

[श्री रवि प्रकाश वर्मा]

सर, बहुत सी बातें कही जा चुकी हैं, जिन्हें मैं दोहराना नहीं चाहता, लेकिन जो समस्याएं सामने आ रही हैं, मैं केवल उनकी बाबत बताना चाहता हूं। जितनी बड़ी तादाद में मामले NCLT की कोर्ट में आर रहे हैं, उस अनुपात में न तो जजेज़ हैं, न trained insolvency professionals हैं और न ही विशेषज्ञता रखने वाली agencies हैं। सर, मेरे पास कुछ सूचनाएं हैं कि वहां पर बहुत बड़े पैमाने पर bungling है। एक वकील साहब मुझे बता रहे थे कि वहां एक professional वकील थे, जो उसमें negotiate करवा रहे थे। उन्होंने काम रोक दिया। जब जज ने उनसे पूछा कि आपने काम क्यों रोक दिया, तो वे बोले कि अभी तक मेरी payment नहीं की गई है। उन्होंने पूछा कि आपकी payment कितनी है, तो वे बोले 1 करोड़ रुपया है। जज उससे बोले कि तुम दवा हो या खुद ही एक बड़ा मर्ज़ हो। जब business को dissolve किया जा रहा है, तो उससे अगर 1 करोड़ रुपया आप ही ले लोगे, तो बाकी लोगों को क्या मिलेगा? सर, वहां पर ये चीज़ें चल रही हैं, आप इसकी समीक्षा करवाइए। जितना healthy atmosphere वहां होना चाहिए था, वह नहीं है, ताकि पूरे देश के businessmen, economists और बाकी सब लोग उन पर trust कर पाते कि यहां पर सब ठीक होगा। जो जल्दी वाला इश्यू है, जिसके साथ time constraint जुड़ा हुआ है, वह distress sale के लिए बहुत बढ़िया mechanism है। एक बार पहले भी मैं यह बात कह रहा था। जो स्थिति वहां बनी हुई है, उसके संबंध में मेरे पास कुछ चीज़ें लिखी हुई हैं। ' However a different kind of buyer is finding the circumstances attractive. These are experts in distressed assets, who know how to play the waiting game. Today, however, there are too many deals chasing too few buyers.' यह locked है। हमने सोचा क्या था और निकाला क्या? जब हम जल्दबाज़ी में, hassle में कानून बनाएंगे, तो कोई न कोई पहलू तो छूट ही जाता है।

सर, हो सकता है कि कुछ बड़ी-बड़ी कंपनियों को, resolution process के माध्यम से, उनके जो stressed assets थे, उनको unlock किया गया हो। लेकिन मुझे यह भी पता लगा था कि एक स्टील कंपनी एक लाख करोड़ रुपये की थी और उसमें 94% haircut हुआ। इसमें किसका पैसा गया? ये जो consortium बने हुए हैं, जो शिकारी हैं, वे यही ढूंढ रहे हैं कि हमें कहां पर इस टाइप की कंपनियां मिलें। इनका syndicate है, ऐसा नहीं है कि यहां syndicate नहीं हैं। जो बड़े-बड़े financial hubs हैं, उन्हीं के साथ में काम करने वाले ये लोग हैं, जो professionals हैं। ये हर चीज़ को manage कर देते हैं। अब यह सोचना पड़ रहा है कि मरने में फायदा है या इलाज कराने में फायदा है? आखिर इस प्रकार काम कैसे चलेगा?

सर, जैसा अभी जिक्र आया, infrastructure की बड़ी shortage है। बहुत सारे केसेज़ लगातार आ रहे हैं। आपने प्रावधान किया है कि इसका टाइम थोड़ा और बढ़ाएंगे, लेकिन आप देखिए कि 180 दिन में भी ये नहीं हो पाए थे, 270 दिन में भी नहीं हो पाए थे और 330 दिन में भी ये नहीं पाएंगे। यह इतना sluggish process है और commitment की कमी है, फिर

इसमें अलग-अलग से varied interests भी हैं। अगर समय रहते इनका disposal नहीं होगा, तो आपकी समस्याओं का समाधान नहीं होगा। जो distressed companies थीं, मार्केट में उनके जो business थे, बैंकों के माध्यम से 1,03,000 करोड़ रुपये का तो उनका realisation हुआ है, जो लगभग 40%-42% के आस-पास हुआ है। यह बहुत आश्चर्यजनक उदाहरण है, लेकिन अनुकरणीय नहीं है। अगर इसी तरीके से पूंजियां बरबाद होनी हैं, तो उसके बहुत सारे दूसरे रास्ते भी हैं, लेकिन यहां जिस चीज़ को हम समाधान बनाने जा रहे हैं, वह चीज़ तो मर्ज़ बनती चली जा रही है। आपको इस बात पर गहराई से गौर करना पड़ेगा। मुझे कोई doubt नहीं है। आपको बहुत ही जल्दी यह realize हो जायेगा कि आपने जो amended कानून बनाया है, यह भी inadequate है। चूंकि जो हालात सामने आ रहे हैं और जिस दिशा में हम जा रहे हैं, उस दिशा में challenges बहुत ज्यादा बढ़ रहे हैं।

चूंकि समय पूरा हो गया है, इसलिए मैं ज्यादा बातें flare नहीं करूंगा। मैं सिर्फ इतना निवेदन करना चाहता हूं कि इस कानून के ऊपर आप लोग पुनर्विचार कर लीजिए और बेहतर होगा कि इसे Select Committee में दोबारा भेज दीजिए, नहीं तो हम वहीं पर खड़े होंगे, जिस अंधेरे से निकल कर हम बाहर आये थे। बहुत-बहुत धन्यवाद।

THE VICE-CHAIRMAN (DR. SATYANARAYAN JATIYA): Now, Shri N. Gokulakrishnan.

SHRI N. GOKULAKRISHNAN (Puducherry): Mr. Vice-Chairman, Sir, thank you for giving me an opportunity to speak on the Insolvency and Bankruptcy Code (Amendment) Bill, 2019. The Government has introduced the Insolvency and Bankruptcy Code (Amendment) Bill, 2019, wherein eight amendments under various sections have been incorporated. The Bill deals with three issues mainly. First, it strengthens the provisions related to time-limits. Secondly, it specifies the minimum payouts to operational creditors, in any resolution plan. Thirdly, it specifies the manner in which the representative of a group of financial creditors, such as, home-buyers, should vote.

This Bill supports financial creditors and spells out concerns over extensive litigation, causing undue delays in settling insolvency proceedings. The delay caused by extensive litigations goes against the spirit of the Code. It may hamper value maximization. The Bill also includes suggestions by various stakeholders. If the creditors, who have different pre-insolvency entitlements, were treated equally, then it would adversely impact the cost and availability of credit.

Sir, now it is the need of the hour that all creditors are treated fairly, without unduly burdening the Adjudicating Authority whose role is to ensure that the resolution plan complies with the provisions of the Code.

[Shri N. Gokulakrishnan]

Sir, the Bill has proposed a time limit of 330 days for completion of the resolution process, including litigation. If it is not completed within the time frame, the Bill proposes to pass "an order, requiring the corporate debtor to be liquidated under Clause (a) of sub-section (1) of section 33". According to this amendment, the rule- making power enshrined in Section 30 of the Code, would be limited, as it is a matter of procedure and administration, and thus, indirectly falls out of the scope and ambit of the Code. Further, the amendment specifies that those cases which are pending beyond 330 days should be disposed of within 90 days. This will be a great relief to the appellants.

Sir, it is clarified that the resolution plan will be binding on all stakeholders, including Central and State Governments or local authority to whom a debt is owed. This is created to bring an effective mechanism for dealing with non-performing assets. The Information Utilities Regulation enacted in the IBC Code 2016 should be implemented effectively. By doing so, the information relating to the default of a registered user, will be processed quickly and the status communicated to the registered users expeditiously.

The amendment stresses that the operational creditors receive an amount which should not be lesser than the amount they would receive in case of liquidation. This is a welcome Clause as it protects the interests of the operational creditors, who now like home buyers, become financial creditors.

Sir, many experts view that the said amendments will bring confidence among the lenders. The amendment is in favour of banks since they are secured lenders and will have primacy in the resolution process. Sir, as for as the admission of insolvency cases initiated by the lenders, the National Company Law Tribunal must determine the existence of default within 14 days of receiving a resolution application. Based on its finding, NCLT may accept or reject the application. In case the NCLT does not find the existence of default and has not passed an order within 14 days, it must record its reasons in writing. Thereafter, a Committee of Creditors consisting of financial creditors will be constituted for taking decisions regarding insolvency resolution. The Committee of Creditors may either decide to restructure the debtor's debt by preparing a resolution plan, or liquidate the debtor's assets.

Sir, the Bill also states that this provision would also apply to insolvency processes in the following cases. The first is those that have not been approved or rejected by

the National Company Law Triubunal. The second is those that have been appealed to the National Company Appellate Tribunal or Supreme Court. The third is where legal proceedings have been initiated in any court against the decision of the NCLT. More flexibility is ensured for applicants seeking resolution. It allows them to include corporate restructuring programmes including mergers, demergers and amalgamation as part of their resolution plan. Such restructuring would not come under the scanner of tax authorities.

Sir, through these eight amendments, the Government aims to fill the critical gaps in the corporate insolvency resolution framework as spelt out in the Code. Simultaneously, this also maximises the value from the Corporate Insolvency Resolution Process. It also ensures maximization of value of a corporate debtor, adhering to strict time-lines. The overall objective of the Government is to achieve the outcomes envisioned in the Insolvency and Bankruptcy Code. It seeks to ensure speedier resolution of cases involving corporate debtors.

Sir, the Bill also enhances the powers of the Committee of Creditors to decide on how the claims will be distributed on the basis of commercial consideration. Under the Code, as of now, there is no clarity on distribution to creditors other than the financial and operational creditors. The Bill would also empower the Committee of Creditors to decide the distribution to such creditors on the basis of commercial consideration.

Sir, before I conclude, I would like to highlight two issues in this Bill. The first is, it is yet to formulate and notify rules for proprietorship and partnership firms. That means, over 97 per cent of MSMEs are excluded from this vital reform, which allows an orderly resolution of failed firms and an honourable exit for an entrepreneur.

Sir, the second issue is, as per the Corporate Insolvency Resolution Process, the MSME suppliers are categorised as 'operational creditors'. Because of this, they are excluded from participation in the entire process under IBC. There is no statutory protection of their payments under the resolution plan which is guaranteed to the MSME under MSME Development Act. The unfortunate fallout of this anomaly is that not only the corporate NPAs, along with them a plethora of MSME NPAs will also emerge. The Government may please examine this. With this, I support the Bill on behalf of my party. Thank you, Sir.

SHRI AMAR PATNAIK (Odisha): Sir, admittedly, this IBC is designed to bring about a paradigm change in the way business is done in India. There is no doubt that, as has been discussed, it would improve the credit culture; this would also, probably, unlock the capital; the capital which was getting locked in NPA, it is going to unlock it and spur the economic activity. So, like chicken and egg story, if you leave things like that, probably, some of the employees would continue to remain but they remain stretched all over because the company itself is in doldrums. But, you should revive the company. The main purpose or the intent of the Bill is continue having it as a going concern.

The activity that would probably happen afterwards would give rise to more investments coming into these companies or coming into new companies and more employment taking place. These are very laudable, positive points in IBC. As far as NPAs are concerned, we used to have about one lakh crore NPAs every year from 2000 to 2016 and it has decreased definitely because of the IBC. It has brought in accountability for promoters and for the home buyers; the Amendment has brought in a separate provision which is really praiseworthy. The most significant thing is that here the responsibility for keeping the company alive is shifted from the equity shareholders to the creditors. Now, this particular Act basically tries to bring the divide between the financial creditors and the operational creditors as everybody has discussed and by giving primacy to the financial creditors over the operational creditors it would further improve the credit culture. The banks would start lending, the off take of loans will take place, new businesses would probably come about and more jobs would be generated, employment would improve. As far as home buyers are concerned, the issue is very complex. It cannot be settled in this particular Bill itself. RERA would continue to remain and has to remain as the primary Act for solving the problems of home buyers. So, this is one area where the RERA and the Government have to probably look into it and try to bring about a situation in which the real problem of the home buyers is solved because as you know, Sir, there are a number of cases of the home buyers still pending in the Supreme Court. This particular Act and the amendments which have come in, as has been discussed, bring flexibility in the insolvency plan, it brings mergers, amalgamation, demergers. It clarifies that particular position and the most important thing is that it takes care of the delay aspect. I would come to the challenges while talking about the delay aspect. It, of course, helps to take care of even the fair and equitable distribution of the proceeds that comes out of a resolution process, but the challenges are very important.

The challenge is, following the due process of law. The due process of law is enshrined in our Constitution. The due process of law has to be followed in all cases. Natural justice has to be followed. So, how do you take care of this even if you prescribe a 330 days' or 270 days' limit? That's something that the Government has to grapple with. The tribunals have been set up in India basically to make the justice system faster. Even in the Central Administrative Tribunals the delay has been there before. Initially the period was shorter, but after that there have been delays. There is statistics to say that in the initial period there was a spurt in companies trying to go for the resolution process. Now it has decreased. In the last two years it has decreased. The amendments, whether they can address this particular issue, is something that one has to think about. There are also concerns relating to the small operational creditors having less than ten per cent of the total. What happens to them? But the most important question is, this law that we are talking about, Sir, is like the gardening work. It is cleaning up things, but we have to plant trees. For that you have to have capacities. The capacity of the resolution advisors have to improve. The capacity of the NCLT judges has to improve. The capacity of the NCLT judges has to improve. I know of cases, I will not name the Bench where the judge himself told the advocate, who was a friend of mine, that I don't know about all these. So, this capacity building work has not taken place and that may actually come in the way of resolving these cases within the time-frame that the Amendment has brought in. Thank you, Sir.

DR. BANDA PRAKASH : Sir, I welcome the Bill which envisages eight amendments to the IBC Code. The amendments aim to fill a few critical gaps in the corporate insolvency resolution framework under the Code, while maximizing value from the corporate insolvency resolution framework process. The intention is to ensure maximization of value of corporate debtor as a growing concern, while simultaneously adhering to strict timelines.

Sir, the amendments will provide clarity on allowing comprehensive corporate restructuring schemes such as mergers, demergers, amalgamations, etc., as part of the resolution plan. There will be a greater emphasis on the need for a time-bound disposal at application stage. It will also provide a deadline for completion of CIRP within an overall limit of 330 days, including litigation and other judicial process. We also appreciate for including the long-pending demand of home-buyers in the Bill. The Government also addressed their problem by including non-delivery of flats. After bringing this Code, the

[Dr. Banda Prakash]

workload has become enormous and day-to-day cases are increasing. Sir, between January, 2017 and March, 2019, 1,859 companies have been admitted to the corporate insolvency resolution process. Out of this, 715 have exited the process; 378 have been liquidated; and, 337 withdrew or accepted the resolution plan. Secondly, Sir, there are around 12,000 insolvency petitions –a majority of which is yet to be admitted by the NCLT. After that, the RBI has taken a decision last year and due to this decision many cases have been referred to the resolution process. Thirdly, they have identified bad loans to the tune of ₹ 1.3 lakh crores as of May, 2019. Out of these, ₹ 8,000 crores are from the SBI; ₹ 3,300 crores are from the Central Bank of India; ₹ 6,000 crores are from the Bank of Baroda; ₹ 15,000 crores are from Essar Steel. And, Sir, other banks like, Andhra Bank and Dena Bank have put up their cases for resolution of bad loans.

(MR. DEPUTY CHAIRMAN *in the Chair*)

Sir, earlier, we had only limited Benches. There were only eleven Benches of the NCLT. Apart from cases under the IBC, they also have to adjudicate other cases. It seems that the Government of India has recently sanctioned two more Benches and the tally comes to 24 or 26. But, these Benches are not sufficient to deal with cases that are piling up. This is the major hurdle being faced in resolving the cases under the IBC. Since there are not enough NCLT Benches to cater to a large number of cases, there are delays in deciding cases. Sir, so many cases are still pending before the NCLT. Sir, another reason for large backlog of cases under the Code is this. As per the Code, the NCLT should, within 14 days of receipt of an application for initiating a corporate insolvency resolution process, admit or reject the application. Due to the large number of cases pending before the NCLT, the timeline mentioned in the Code is rarely being adhered to.

MR. DEPUTY CHAIRMAN: Dr. Banda Prakash, please conclude.

DR. BANDA PRAKASH: Sir, there are so many limitations in the Code. We have to think about timelines. We also have to think about several other limitations. In spite of this, this is a good move. We have to learn so many things and adopt the timelines. Thank you.

SHRI K.K. RAGESH (Kerala): Mr. Deputy Chairman, Sir, I rise to raise certain serious concerns relating to amendments proposed in the Bill.

Sir, as per the claim made by the hon. Minister sitting here, the proposed amendments provide for a time-bound resolution process.

But, Sir, in the IBC itself it has already been stipulated that after receiving a resolution application, the NCLT must determine the existence of default within fourteen days. However, irrespective of such a provision, a large number of applications are pending for admissions. An average time, which the NCLT takes, ranges from three to six months. And, in many cases, it is more than a year. In my opinion, merely fixing a time-frame in the law will not resolve the real problem. We will have to identify the real reasons. There are many reasons behind this, like, lack of infrastructure, as pointed out by many other hon. Members; lack of adequate number of judges; lack of expertise to deal with new law; multiple litigations, and so on and so forth. So, Sir, unless and until these issues are addressed, the exercise that we are doing is going to be in vain.

The bankruptcy law has got two components: One, the insolvency of corporate establishments; and, second, the insolvency of corporate persons, including personal guarantors, promoters, etc., etc. Insolvency dealing with corporate establishments was notified in December 2016 itself, which means immediately after the enactment of the Code. But, I want to know from the hon. Minister whether the insolvency dealing with corporate individuals, which is mentioned under Section 60 of the principal Act, is also being notified. I would like to know from the hon. Minister why one part of the Code has been notified and why the other part, which is in fact the soul of the Code, has not been notified. It is really very strange. It creates serious obstructions in initiating insolvency proceedings against corporate individuals. At present, the bankers can initiate insolvency proceedings only against corporate establishments. They cannot initiate insolvency proceedings against corporate individuals. In fact, they are the real culprits who took huge loans from the banks and diverted the funds in their sister establishments and also utilized funds for their personal gains. ...*(Time-bell rings)*... So, why has it not been notified? Yes, Section 60 of the Code talks about insolvency resolution to proceed against individuals. But, at the same time, what is the liability of a corporate person, in the event of a successful resolution plan? …*(Interruptions)*…

MR. DEPUTY CHAIRMAN: Please conclude. …*(Interruptions)*…

SHRI K.K. RAGESH: Sir, please give me just two more minutes. …*(Interruptions)*…

MR. DEPUTY CHAIRMAN: No; no. Just take one minute more because you have already taken one minute extra. …*(Interruptions)*…

5.00 P.M.

SHRI K.K. RAGESH: It has already been discussed here that these resolution plans are accepted with huge haircuts and banks are compelled to accept these resolution plans. If you take the example of allied industries, the total debt was ₹ 40,000 crores. But, what was the approved plan? It was only ₹ 5,000 crores. That means, eighty-five per cent of the total loans was written off due to the resolution plan. So, what would be the responsibility of the corporate individual who had taken huge loans? Then, the banks are compelled to accept the resolution plan. They had incurred a loss of 85 per cent of the total loan amount. In such a situation, what is the liability of the corporate individuals? I think, the law is silent on this point. I would request the hon. Minister to take this issue very seriously because there is already a provision, under Section 60, to initiate insolvency proceedings against the individuals. …*(Interruptions)*…

MR. DEPUTY CHAIRMAN: Thank you, Mr. Ragesh. You have already taken two minutes extra. …*(Interruptions)*…

SHRI K.K. RAGESH: In the event of successful resolution plan, what would be the liability of a corporate individual?

Thank you, Sir.

PROF. MANOJ KUMAR JHA (Bihar): Mr. Deputy Chairman, Sir, thanks to Indian Parliament! Before coming here, in the name of company, I only knew friends' company. Now, I have read very much in the last six or eight months about companies, the making of companies and the crashes of companies. Through you, Sir, to the hon. Minister, I would like to say that जब कंपनी बनाई जाती है, तो कई stakeholders और कई समेकित सोचों के साथ बनाई जाती है। आम तौर पर किसी भी कंपनी के निर्माण से पहले उसके अवसान की तिथि अपने ज़ेहन में नहीं रखते हैं, यह हम सब लोगों का संदर्भ होना चाहिए। यहां एन.पी.एज. के बारे में बहुत बात हुई है। बैंकिंग सेक्टर का अगर आरबीआई के आधार पर मैं देखूं, तो there is bad loan of ₹ 10,00,000 crores, which is much more than the paid-up capital of these banks. अभी SARFAESI के बावजूद हमारे senior colleague श्री कपिल सिब्बल जी 70 परसेंट, 63 परसेंट, 80 परसेंट 'हेयरकट' की बात कर रहे थे। सर, यह तो पूरा का पूरा मुंडन है, यह हेयरकट नहीं है। अगर 80 परसेंट बाल उड़ाए जा रहे हैं, तो बचा ही क्या? यह तो complete मुंडन है। इसमें सबसे बड़ा नुकसान इन बड़ी कंपनियों का नहीं होता, बड़े ओहदेदार लोगों का नहीं होता है। कंपनी के मध्य में जो छोटे-मोटे निवेशकर्ता होते हैं, उनके ऊपर इस मुंडन की सबसे बड़ी मार पड़ती है।

सर, मैं मंत्री जी से एक चीज़ और भी जानना चाहूंगा कि पावर सेक्टर में आई.बी.सी. की क्या हालत है? What is there in power sector? Is there not so a hidden hand operating in power sector? That I think should come from the hon. Minister. सर, सेक्शन 12 और सेक्शन 30 में लिटिगेशन की हालत, I think hon. Minister is familiar with it. How are we going to address these issues, particulary, shadow litigation की भी संभवना बनती है। मेरा अपना अध्ययन कहता है।

Finally, Sir, अभी वायरल चला हुआ है। जैसे सर्दी symptom है। सर्दी की दवा से वायरल ठीक नहीं होता है। What I have been pleading in this House, many times lonely, is that these are not the aberrations; this is a pattern kind of disease, but a predictable disease produced by capitalism. You will be surprised to know, Sir, that in 1848, Communist manifesto was produced. Ten steps were talked about if I am correct. One of them was centralisation of credit in the hands of the State. Today, we might not discuss it. Tomorrow, we will have to go back to some of these basics, which are very, very important. Sir, there was a theory of crisis. In 1970s, it was a very popular thing coming from the Marxist ideas. As a State, as people from the Treasury Benches, from the Opposition Benches. ...*(Time-bell rings)*... सर, आप मुझे एक मिनट का समय और दे दीजिए, मैं अपनी बात समाप्त करता हूं। I think there is no harm in revisiting some of our macro-economic policies and priorities. Why I say this is because world over, there is a discussion. Communist parties might have lost election; Marx has not lost election. In that context, I would like to quote Paul Krugman. He is a Noble Prize winner. He said it very clearly and I quote so that I don' t misquote him. My quote is: " In the last 30 years, development in macroeconomic theory has at best been spectacularly useless or at worst directly harmful. What we are dealing with is the consequences of the kind of policies we have adopted or we were forced to adopt since the 1990s. Every time there is a possibility of cross correction. Why not today? Pre-legislative scrutiny probably would give us...(Time-bell rings)... Thank you, Sir. Jai Hind!

SHRI T.K.S. ELANGOVAN (Tamil Nadu): Mr. Deputy Chairman, Sir, at the outset, I want to say that the problem of insolvency or bankruptcy is created by the Governments in power. The change of policies has affected most of the industries here. I don' t have to mention that the change in the economic policies of the Government within the last two, three years, has affected many sectors. I would like to quote one example. In Chennai alone, there are 4,50,000 flats which were constructed but could not be sold. Earlier it was growing like anything. There was a boom in the housing sector. But now

[Shri T.K.S. Elangovan]

4,50,000 houses could not be sold because of the change in the economic policy of the Government. So, the problem was created by the Government and the Government is trying to seek resolution of the problem. That is the reason for these amendments. I don't want to go much into it. I will quote one or two things from the Amendment and I will ask the Government to look into it.

The amendment to Section 31 of the IBC provides that the resolution plan that is approved under the IBC binds all Governments, including the State Governments. The 'resolution plan' is approved by the Committee of Creditors comprising financial institutions. Thus, power is being conferred on a private body, that is, the CoC of a company, to determine and undermine the interests of the State, including its revenue. This is wholly unconstitutional as the interests of the State, cannot, in any manner be relegated for favouring private interests, including those of financial institutions. The Government should understand this.

The second thing is, the amendment also seeks to completely wipe out small and medium scale vendors by allowing financial creditors. Operational creditors, by virtue of this amendment, can be given the nil amount while financial creditors get their principal, interest and even, at times, penal interest. Such an amendment is anti-poor, and small and medium scale vendors, who, owing to the ill-practices of large corporates, would be denied their due monies for simply having been associated with them in the due course of their business. The Government has to look into this.

The third point is the amendment to Section 25A. By virtue of the said amendment, the voting rights of those who form a 'class of creditors' who are entitled to be a part of the Committee of Creditors is being watered down. Presently, by virtue of the amendment to Section 5(8)(h) of the IBC, home-buyers have been classified as financial creditors and they are represented in the CoC by an Authorized Representative appointed under the Code. This Authorized Representative casts his vote on the basis of the percentage of votes he has gotten. ...*(Time-bell rings)*... Just a minute, Sir.

For example, if there are 100 persons whom he represented and if 60 say yes and 40 say no, he casts his vote in the said proportion only. If the present amendment is carried, then by virtue of 60 per cent being yes, the entire 100 per cent would be constituted as yes. Merely because a certain class of financial creditors are required to be represented by someone under the tenets of the IBC, the nature and ambit of their right to vote cannot be watered down. The Government should also note this.

The time period of 330 days does not exclude the time period of appeals and proceedings which intervene. This would prejudice all parties to the resolution process.

These are some of the lacunae in the Act. I don't know whether to support the Bill or oppose the Bill. I always think that whatever kind of Bills this Government introduces, I have my own doubt in my mind.

With these words, I conclude. Thank you, Sir.

DR. NARENDRA JADHAV : Mr. Deputy Chairman, Sir, at the very outset, I congratulate the hon. finance Minister for bringing in the Insolvency and Bankruptcy Code (Amendment) Bill, 2019. Sir, there is no doubt that these amendments will give greater amount of clarity in the existing framework.

Sir, I wish to make three comments. My first comment is that this Bill strengthens the provisions related to time-limits. It sets a '330-day' time-limit to complete the entire corporate insolvency resolution process. This time-limit would have the positive impact of making the entire corporate insolvency resolution process time-bound. This proposed amendment is welcome and indeed commendable since it ensures that the insolvency process is conducted swiftly and the interests of creditors and employees of the corporate body are protected.

Sir, the second point that I want to make is that this Amendment Bill of 2019 seeks to cure some of the shortcomings that existed in the 2018 Act. This Bill prescribes that all the financial creditors represented by the same authorized representative would be considered as a group. An authorized representative would have to cast one vote on behalf of all financial creditors that he or she represents. This proposed amendment would have the effect of ensuring that the resolution plan is more acceptable to the Committee of Creditors.

Sir, hon. Member, Shri Kapil Sibal, eloquently argued that this amendment does not go far enough, but he also confessed that the direction is right. In my view, this amendment is certainly a very important step forward and, as was explained to us by the Finance Minister, three lakh crore rupees have already been gotten back. And if need be, further amendments and further improvements can always be done and that should not be the reason not to approve this amendment.

Sir, I commend this Bill, and I commend the hon. Finance Minister for this much needed amendment and recommend this Bill for passage. Thank you.

MR. DEPUTY CHAIRMAN: Thank you, Dr. Narendra Jadhav. Shri V. Vijayasai Reddy; four minutes.

SHRI V. VIJAYASAI REDDY: Sir, I rise to support this Bill. It is a very important and a well-designed Bill. The Bill addresses three important issues –first, it strengthens the provisions relating to time-limits, second, offers minimum pay-outs to the operational creditors and, third, provides the manner in which the representative of the group of financial creditors should vote. On all three counts, it is commendable and it is an excellent job that has been undertaken by the hon. Finance Minister.

Sir, I have four suggestions to make in this regard to the hon. Finance Minister. I hope the hon. Finance Minister would take it in a positive sense. A well-designed insolvency law should differentiate between financially distressed firms and economically distressed firms. The two are different. I would like to say that a firm is called an economically distressed firm when the present value of the expected profits of a company in future is less than the total value of the assets of the company. Then, if the assets were to be broken up and sold separately, the company is called an economically distressed firm. On the contrary, if a company is not an economically distressed firm but is merely unable to service the debts or interest, it is merely a financially distressed firm. Hence, I would request the hon. Minister to differentiate between the two, and see to it that the financially distressed firms are not sent in for insolvency. The assets of the firms are more valuable if kept together as a functioning unit. Such firms should be sustained either by restructuring or by selling them off to new investors.

Secondly, we have 14 NCLTs; two are yet to start functioning. The Government has announced that it is going to set up 24 bankruptcy courts. There are 27 members of NCLT against an assurance of 60 judicial and technical members. There are 27 judges dealing with 2,500 insolvency cases. As per estimates, the country needs about 80 more benches in the coming five years. I would request Madam Finance Minister to kindly look into it. There is no doubt that there is a huge difference between before-IBC and after-IBC. According to the World Bank, before the IBC came in, the time taken to resolve stressed loans was 4.3 years and the recovery rate was 26 per cent. And now, as Madam Finance Minister has said in her introductory remarks, after two years into the implementation of the IBC, the recovery rate has gone up to 48 per cent and the time has been reduced to one to one-and-a-half years. It is good that it is much less when compared to international standards. This is what is to be taken note of.

Lastly, if you look at the definition clause, it deals with definitions like 'debt', 'claim' and 'default', and there is a mention about the interest on loan. The Indian Banks Association wants that any default in payment of even interest should become a case for insolvency resolution, which is deplorable and cannot be accepted. I want to know the reaction of the hon. Finance Minister in this regard.

SHRI ASHWINI VAISHNAW (Odisha): Sir, I rise to support the third trench of Amendments in the Insolvency and Bankruptcy Code. At the outset, I would like to congratulate the hon. Finance Minister for the speed at which she has come up with the Amendments. These Amendments are purely based on the experience of the recent years. Sir, the IBC is one of the biggest reforms in the recent years. In one of the recent surveys done by CII and PWC, 83 per cent of the respondents in that survey said that this is one of the biggest structural reforms in the recent times. What is this reform? We have discussed and debated this reform from many angles. I would like to touch two angles which generally have not been covered so far. The first and foremost is, what are the four pillars of this reform? We have seen in the past how the companies which were going sick were managed and what efforts we were making to bring them out of indebtedness in whatever the situation they were in. This is a very, very different picture and process where transparency is the biggest factor. In this process, all data, like the appointment of resolution professional, the whole infrastructure of NCLT, the process which has been created, is kept in a purely digital form. There is a data room in which everybody can access the same data. We can take our decision based on that data and purely the Committee of Creditors is taking the decisions. This kind of transparent system was never there and the focus on resolution keeping a company a going concern and making sure that the company survives is something which was not there earlier. Mr. Sibal said that had the companies gone into liquidation, maybe the money which would have got recovered would have been much less. Today the choice is between keeping a sick company as a zombie company or bringing it out of the sickness, reviving it and making it a live company. The human angle is very important here. If a company is sick, what is the condition of its employees? The biggest issue the employees or the workers would face is what their future is. Would this company survive? In this process, there is a very definitive direction of keeping the company alive. That is why we should all support this process; we should all strengthen this process. There were a lot of apprehensions when this Bill was first brought in 2016. People used to say, "Will this really work?" This was a totally different way of thinking. So, people didn't have that

[Shri Ashwini Vaishnaw]

much confidence. But the test of two-and-a-half years has really proven that this Bill has worked; this system has worked and today the Amendments which have been brought are really going to strengthen it. The biggest change which has come in is the behavioural change. There was a time when the promoters, the entrepreneurs would not even consider what debt they have on their books is. Today I know many entrepreneurs who are personally monitoring their debt levels on a day-to-day basis. Daily something should reduce from that level of debt; that is what people are thinking. That is a great behavioural change. Not only are the entrepreneurs, banks are also following up. Earlier the contracts would just be signed and nobody would bother. आज बैंक्स एक-एक covenants को प्रॉपरली देखते हैं। They are checking whether the security perfection is actually happening or not. That was not even considered as part of the industry and commerce earlier. That has come today. Regarding project appraisals, from my personal experience I am telling, when I left IAS to become an entrepreneur, there were a whole series of advisers who would say यार, अगर प्रोजेक्ट 10 का है, तो उसे 15 का बताओ, जिससे कि तुम्हारी ईक्विटी भी इसी में से निकल जाएगी। That was the scenario. Sir, unfortunately, that was the scenario. But, today, I am very glad to say that the project appraisal process has become so strict that both the bankers and the entrepreneurs are thinking that nobody should get into that whole insolvency process. That is a huge change. There are going to be long term implications of this Code, this system and this structural reform. This will definitely differentiate between good entrepreneurs and bad entrepreneurs. Let me put it like, genuine entrepreneurs and bad entrepreneurs. This is definitely one of the biggest impacts of this Bill. It is going to definitely bring in stability which is the key to investment, which is the key to employee welfare. This will also lead to keeping the bank's balance-sheet healthy.

Sir, in the current Bill, there are three major changes which are supposed to be brought. First and foremost is the single window clearance. What is this single window clearance? Any resolution process today is complex; there are a series of things, series of changes in commerce and industry whether it is amalgamation, merger or demerger. That kind of structure has to be created. This structure, if we create through the resolution process, it had to be taken then into various other approving bodies for different levels of approvals. In this Amendment, all those separate approvals will not

be needed and whatever resolution is approved by the NCLT, by the CoC, will get finally automatically confirmed by the different bodies. There is a 330 days guillotine which has been brought in. I think this was well needed. Various interested parties were taking a lot of diversionary measures to delay the process. The third is that the resolution process will be binding on Central Government, State Government and local bodies. This was really needed because once you take up a process at one place, when you go to all other places, it becomes meaningless. The other change which has been brought in this Bill is that there is a floor which is now been created. In case there is set of dissenting creditors, then, they would also get a minimum basic which is what has been brought into this law. Sir, these changes are definitely part of the ongoing process. This a very complex economy in which this kind of Bill will definitely keep on coming. I would like to address one point which Mr. Sibal said. In case of liquidation, what happens to the employees? Today there is a legal constraint which hon. Finance Minister may like to consider. If liquidation is done as a going concern, in that case, the company can survive even after liquidation and the employees can see a future beyond the liquidation process. The second issue is about the contingent liabilities. Supposing somebody acquires a company through this resolution process, and tomorrow, the Income Tax Department comes and says that there are some demands which are beyond the demands raised in this resolution process, then, what happens to the whole process? That is one check which has to be brought in. There has to be a clean slate beyond the resolution process. That is one major point which I would like to put before the hon. Finance Minister. To conclude, I would like to support this Bill and I would like to request everybody to strengthen this institution and this great structural reform which has come in. Everybody should support it. Thank you, Sir.

MR. DEPUTY CHAIRMAN: Now, Dr. T. Subbarami Reddy. You have seven minutes.

DR. T. SUBBARAMI REDDY: Sir, the Finance Minister is not here, who will take my points?

MR. DEPUTY CHAIRMAN: There are Cabinet Ministers here.

DR. T. SUBBARAMI REDDY: Sir, there are very important points which nobody has raised.

MR. DEPUTY CHAIRMAN: You always raise very important points.

DR. T. SUBBARAMI REDDY: Sir, firstly, let me thank you for giving me opportunity to take part in the discussion on Insolvency and Bankruptcy Code (Amendment) Bill piloted by the hon. Finance Minister, Shrimati Nirmala Sitharaman. Sir, in this Bill, there are so many challenges which have to be faced by everybody, creditors, promoters, industries...Even though a number of Amendments have been brought in this Bill, I don' t want to spend more time again in discussing these Amendments. The Amendments are good. I want to point out one thing. Everything becomes perfect in human life after making efforts. The Ministry of Corporate Affairs has been making a lot of efforts. I know it because I have been in touch with the Ministry as the Chairman of some Committee. They have been making efforts to plug the loopholes and remove the difficulties in this Bill. So, they have brought new Amendments, on which I have no comments to make. I appreciate that. But, at the same time, along with these Amendments, there are some more important things which are missing and which must be done. For instance, there is some confusion between a borrower and a lender. If a borrower borrows some money from the lender and if he also gets some corporate guarantee by some person, in the case of default, the lender must first go to the borrower and ask for his money and make an effort to resolve the matter. If he is not able to get his money, then he must go to the guarantor. Now, there is some confusion in the Bill. Actually, there is some vagueness in the Bill. So, I would like to draw the attention of the hon. Minister. I do not know who is noting my points. No Minister is noting my points.

MR. DEPUTY CHAIRMAN: The other Minister is here. You can make your points.

DR. T. SUBBARAMI REDDY: Sir, somebody has to note it. I am making a very important point.

MR. DEPUTY CHAIRMAN: Yes, all points are important.

DR. T. SUBBARAMI REDDY: There has to be some clarity in this regard in the Bill. It may not be possible to do it in this Amendment, but a clarification should come from the hon. Minister. So, first, the creditors must go to the borrower. Then, if they are not able to get their money fully or partly, then they can go to the guarantor. So, this is my first point.

Now, I come to my second and very important point. Take the case of cement industry, steel industry, infrastructure, or, any other industry in the country. In the case of all these industries, there will be a number of banks who will be the creditors. Twenty-

five or 30 banks will be the creditors, and some institutions may also be the creditors. When the creditors are there, according to this proposed Bill, a single person who has given an amount of Rs.30 or 40 lakhs to a company, he has the power to go to NCLT, and say that this particular company owns him money. So, there are cases in NCLT where the Judges, after some time, appoint the resolution professionals. The resolution professionals means some Chartered Accountants. Unfortunately, the hon. Finance Minister is not here. ...*(Interruptions)*... She has come now.

MR. DEPUTY CHAIRMAN: Please continue your speech.

DR. T. SUBBARAMI REDDY: Sir, I want to draw the attention of the hon. Finance Minister to a very important point. A company may have a business of Rs.20,000 crores or even ₹ 50,000 crores, but even a small creditor, who has lent a small amount like ₹ 30 or 40 lakhs, has power to go to NCLT. In NCLT, there have been cases where Judges appoint the resolution professionals. These resolution professionals have enormous powers. They can even simply throw out the promoters or Directors. They have full powers. Then, he will manage it. How can he manage? What does he know about management? Then, if he is not able to do it and if he derails the management of the company, what will happen to the money given by all the banks? If the company collapses, all the banks' money will be lost. This point has never been thought of by anybody, nor has it been covered in this Bill. I would like the hon. Finance Minister to bear in mind this very important aspect. The law is very dangerous now. The Amendments are very good, but you have to add some more things. The first thing is that you have to clarify this problem that how a small lender can derail a big company. Then, I would like to say that some people are taking undue advantage also. For example, if a strong promoter is there, and he says that he does not have the money, he can make his creditors to go to the NCLT. In the NCLT, there will be haircut of 30, 40 or 50 per cent. So, he gets the advantage. I am not saying that everybody will do like that, but there is a loophole where there is a possibility for a promoter who can take undue advantage because of this Bill. Therefore, I draw the attention of the Government that this particular point has to be borne in mind on how best we can plug this loophole. Then, there is no doubt that this NCLT is a platform for the creditors to claim their money. ...*(Time bell ring)*... Is my time over?

MR. DEPUTY CHAIRMAN: You have more speakers from your party, so please conclude.

DR. T. SUBBARAMI REDDY: Sir, I have seen, time was five minutes there.

MR. DEPUTY CHAIRMAN: You have one more speaker from your party. Please conclude in one minute.

DR. T. SUBBARAMI REDDY: Sir, I am just finishing. Now, I forgot my subject. I would like to repeat my last point because the Finance Minister is here now. When any money is given, the borrower and the lender are there. The lender should first make all efforts to take the money from the borrower. The confusion in the law is that though it is not mentioned in the law, but there is an interpretation by some people that they can directly go to the corporate guarantor who has given the security without bothering about the real borrower. So, it has to be clarified in the law that first the lender has to go to the borrower and if they are not able to get the money, then they must go to the corporate guarantor. ...*(Time-bell rings)*... This is very important point. So, these few things should be thought of and amendments should be welcomed. A number of amendments are required for this Bill, and in an Indian democratic country, you should go through them. लोकोत्तरायणा: संगठन: निरुपमान: सन्निवेश: नद्वितीय: निरुपम:।

MR. DEPUTY CHAIRMAN: Thank you, Dr. T. Subbarami Reddy. Now, I will invite Shri Binoy Viswam.

SHRI BINOY VISWAM: Sir, I must say that our Finance Minister is a vibrant Finance Minister. She is energetic and I should say that I admire her. But the policies that she adopts for the Government cannot be appreciated. Sir, the Insolvency and Bankruptcy Code (Amendment) Bill, 2019 should be called as a manifesto of an unholy alliance between the Governments, the corporates, the rich and the bureaucrats. Sir, the beneficiary of this Bill, as everybody knows, is neither the Government nor banks. As on 31st March, 2019, the public sector banks earned gross profits of 1,49,804 crores of rupees. But, the amount they were asked to provide to resolve bank loans comes to around 2,16,410 crores of rupees. Sir, the Government talks about stability and national pride, but, it is giving a blow to the banks to the tune of ₹ 66,606 crores of rupees. This is the fact behind this Bill. Sir, this Bill is really a big blow and maybe a death knell to the financial stability of the country. Sir, many colleagues were telling that this is to help the workers in the industries. No, Sir, it helped the Sterlite-fame Vedanta, to the tune of 8,400 crores of rupees in the electro steel resolution. In the Alok industry deal, it helped Ambani, their favorite political cousin, to the tune of Rs. 25,000 crores and the banks

were asked to sacrifice ₹ 25,000 crores for the benefit of Ambani and the beautiful term has come to the scene now, *i.e.*, haircuts. In this one deal, the haircut was 83 per cent and we call it a step forward! No, Sir, it can never be called a step forward. Sir, the Government informed the Parliament that as on 31st March, 2018, there were 9,331 wilful defaulters in this country, who owed ₹ 1,22,018 crore of money to the banks. What happened to them? Has the Government any plan to get back that money? Will the government be dare enough to tell who they are? Many a times, the Bank employees association, ...*(Time-bell rings)*... the AIBEA asked the Government, at least, to publish their names but the Government did not. Sir, my Party, the Communist Party of India, demands that all the names of the wilful defaulters should be published so that people should know who they are. You run after the small merchants, you go to the peasants' house, you recover the loans back from the students, but when it came to these persons, you close your eyes and say that you have a mechanism which you call resolution. Sir, we want recovery. Recovery is not resolution. In the name of resolution, you are helping the big industries and the looters.

MR. DEPUTY CHAIRMAN: Please conclude.

SHRI BINOY VISWAM: Sir, this is a Bill to cover the loot of the looters of the country.

So, I hope the Finance Minister, while replying, would answer as to what prevents you from publishing the names of the wilful defaulters. Thank you.

MR. DEPUTY CHAIRMAN: Thank you. Now, Shri Suresh Prabhu.

SHRI SURESH PRABHU: Sir, as we all know, the living beings have a lifespan. Some live longer, some shorter, depending on many factors like lifestyle, the type of environment they live in, as all these things decide how long one can live.

A corporate entity is also an artificial person. So, even a corporate entity is supposed to have a lifespan. It can live longer or shorter depending on the business plan, their ability to manage the business or the environment in which they operate.

[THE VICE-CHAIRMAN (SHRI TIRUCHI SIVA) *in the Chair*]

Some of the sectors, which were mentioned earlier, steel, cement and others, faced challenges, as it always happens, because the externalities can influence a business that

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you are running. So, like a human being, like a living being, even corporate entities have a life. But, unfortunately, if you do not a have proper legal system allowing the corporate entity to live the life in full, you are losing precious capital, you are losing the value of assets and you will not be able to recycle them, and, it has happened in many cases. A very startling and eye-opening example is the textile mills of India. Mumbai, Kanpur, Ahmedabad, once upon a time, were known as the Manchester of the East. There were thriving businesses. I am sure, my friend, Mr. Viswam, as a trade union leader, will be happy that at that time, they were the strongest supporters of the Communist Party of India. Shripad Amrut Dange, the founder of the Communist Party, was their leader. So, what happened to the textile mills? Where did they disappear? Mumbai was the hub of textile industry. Lakhs of people lost jobs. Why? It was because at that time, we did not allow the textile industry to reinvent itself by allowing it to have a proper system. At that time they were facing problems like they were not modernised, they had debt, whatever it is. Had there been a law properly structured to allow the recycling of those assets, even today, you would have been one of the big home for textile industry. But, unfortunately, we did not have a legal system, and, therefore, we have seen, over a period of time, such corporate entities going directly from the ICU to the grave. Like a human being, I can come back from the ICU and can still lead a normal life because I am properly medically treated, I got the proper attention that I needed but, unfortunately, for a corporate entity, there was not a provision like this. Therefore, this particular Act, the IBC, has actually helped us to create a system whereby recycling of capital and assets both will happen. It will allow the industries to again reborn, get new life and can start protecting both the interests of employees as well as the economy as a whole. And to do that, you need a legal system. What was the system, Sir? We had so many laws which were trying to deal with the problem. We had SICA, the BIFR and many others. But we never had a system whereby we could actually take control of the assets and recycle them through a system which is transparent and independent and which also allows you to re-live a life beyond your present problems. Therefore, this is a very good beginning. It is a new law. It is relatively quite new. It was only recently passed by both the Houses of Parliament and now amendments have been brought in. Very importantly, this is a law which will allow us to make sure that rather than liquidation as the only solution, like death is the only solution, we can look for other possibilities. Can't we allow that entity to find out how long it will live? There are possibilities. Some companies

will die naturally like human beings. As former Forest Minister I love trees. I feel bad when a tree falls, but some of them have no choice. They can live for 500 years, but still they will not live longer than that. Mr. Jairam Ramesh knows that. If we have a situation in which some companies will die anyway, we can at least make sure that some of them survive and get back on their feet again. If there is no exit for a company, there is no entry even. Employment, which is really a priority of our Government and of any Government for that matter, will not be there unless there is investment. There will be investment only when the promoter or the investor realizes that exit is possible. If there is no exit, who will enter there? My dear friend, hon. Member of Parliament, Mr. Kapil Sibal, was saying that unemployment is a very big problem today. But, Sir, those sectors which he mentioned are already suffering from challenges. So, sectoral solutions have to be found out. But even if you find out sectoral solutions for real estate, steel, and automobiles, what is the legal system in which they will operate? Unless you have a legal system independent of sectors, overall umbrella system is not going to work. You talked about employment. Sir, in these sectors, already people are facing employment problems. If you can have a system whereby you will be allowing that company to be revived, the employees' rights will be protected and they will get jobs. Therefore, this is also in a way a pro-employment law.

Sir, I was talking about assets. I now understand that this is not a blanket situation in which all the companies' management will be changed. But there are possibilities that there could be a management which is responsible for a company's problem. In those cases, changing the management will be a solution. But not only in all cases. Obviously not. But if that actually is the conclusion that the Committee of Creditors come to it finally, then obviously, that should be the solution. By doing that, you are saving a company, because a better management can revive the company. It has happened globally. It has happened in India. It has happened in our own country. Therefore, we should actually look at it from a different perspective. I can very clearly see that this particular Bill deals with very limited amendments actually. This law is very recent. We always say that it is an evolution. Something like this is a completely different regime in India. It is a different regime in which sick companies and everything else has to be dealt with. The amendments are actually a reaction to some of the happenings within the judicial system or outside of it. One important element of that is differentiation

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between financial creditors and operational creditors. This is a very important point. If you are starting a business, what is the first thing that you do? Debt is normally two or three times more than the equity. That is the debt and equity ratio. If I have equity, I go to the bank. The bank puts twice or three times or sometimes even more money than that into the business. If they don't put the money which is two or three times of my equity, I cannot start a business. If I don't protect them, and most of them are public sector banks, and if I don't protect their interest, how can I make sure that there will be more investment that banks will be willing to make? So the interest of the financial investors or the bankers has to be properly protected. Then there are operational creditors. So, there again, it has to be properly taken care of. Therefore, the distinction between financial creditors and operational creditors is very important. That has been done not for the first time today. It has been done from the very beginning. There are secured creditors, unsecured creditors and the creditors which have a right, lien and security. Securitisation of the assets has been done to them. Therefore, this is something which is already there. Now, there is amendment of Section 53 which deals with this. Now, even the operational creditors will get something equivalent to what they would have got otherwise if the company had been liquidated. It is, I think, a very fair assessment. You were not going to get anything. Now, it is assuring but making a distinction, which is really welcome and, in fact, necessary to make it happen. Then comes the committee of creditors which will do commercial consideration and take a rightful decision. The hierarchy of creditors has to be decided properly. This actually is making it clarificatory and making sure that there is no confusion and ambiguity on this. That is a correct thing because this is something which has been accepted over a period of time. Even the earlier Companies Act of 1956, in Schedule-VI, talked about how to present the accounts of a company, in which there was a clear distinction between different kinds of creditors. So, this is not the first time that this is happening. But, it is making sure that in the IBC, it is very critical and very important.

Sir, voting is very important because ultimately, the decision for revitalization of the company, who is going to take the haircut, who is going to make sure that thing, etc. will have to be done through a process. Sir, the process is voting. It is very properly made. Even in our Parliament, how do we take a decision? We take it by majority. How are Lok Sabha Members elected? They are elected by majority. How are Member ê of Rajya Sabha, if there is an election in Vidhan Sabha, elected? It is by seeing who has

got more than 51 per cent votes or first-past-the-poll will get elected. So, there is a committee of creditors which actually is going to decide on the basis of their voting rights and, therefore, 51 per cent will be the correct. ...*(Time-bell rings)*... This will happen. While all creditors are equal in different ways, but some have to be more equal than others like in real life also. So, equality with relative priority is something which has been done. And, therefore, I think, a security is given to bankers. The contractual obligations must override the issue, which is actually the hierarchical structure that we are talking about. Sir, I think, unless the secured creditors are guaranteed this particular right, further lending will always be in trouble. If you really want to protect the rights of public sector banks, I think, this is the best thing to do. They are the largest lenders and if they are not protecting their interests, what will happen? Therefore, it is actually the rightful position and, therefore, I welcome it.

Sir, then I come to corporate restructuring. It is a very important thing. There could be mergers and acquisitions; there could be amalgamations; there could be reverse mergers. There are different forms of corporate restructuring. All of that should be allowed to be used as an alternative. This again is an amendment which actually makes it possible. There is an enabling provision which really makes it possible. Again, there is a legal binding. Some Members had an issue with that. Sir, legal binding is also on the Government. The State Governments and the Central Government will be bound by this time-bound action that will be take place. Therefore, this is not discrimination but, in fact, it is a very welcome measure including the Government becoming bound by the provisions.

THE VICE-CHAIRMAN (SHRI TIRUCHI SIVA): Suresh Prabhuji, your Party has two more speakers.

SHRI SURESH PRABHU: Sir, I am concluding. Home buyers are one of the critical areas. We are seeing that real estate sector is suffering. Real estate sector suffering is a suffering for the corporate. But the bigger suffering is for those who actually bought and made contracts for flats. They wanted to live with their families. They were looking at some high dreams and suddenly, they are realizing to forget that dream. There is no reality also in which they can see their flat anymore. The plan for building also probably disappeared. So, in this situation, it is a welcome provision. There is a provision for 51 per cent flat owners agreeing to a plan. All the flat owners cannot come together. Some may be living in different parts of the country. Some of them may be NRIs who have

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invested in it. So, even if 51 per cent of the home buyers agree to a plan, it would be binding. Therefore, I think, Sir, a very good beginning of a new process is made, in which proper restructuring would be done and there would be unwinding of the situation in which the money of banks, promoters, employees and everybody else was struck. Economic activity will also get a boost. In fact, I must say, Sir, one thing very importantly and I must congratulate the Finance Minister for it. These Amendments have been brought in with a record time. When there was a judicial pronouncement on some of these issues by interpretation, I think, this must be one of the fastest responses given to an emerging situation. Therefore, I must congratulate the Finance Minister. Also, I think, you have presented it as the Corporate Affairs Minister. So, I would welcome her in both the capacities. I am sure that working together will really make it happen.

THE VICE-CHAIRMAN (SHRI TIRUCHI SIVA): Thank you.

SHRI SURESH PRABHU: So, our friends, who have rightly so, and the Communist movement is born for protecting workers' interest. So, this is one thing which will allow the workers' interest to be protected. This is something which will ensure that even the flat owners' interest is protected. Therefore, even sectoral decisions can be taken. So, Sir, I abide by your ruling. Thank you very much.

SHRI T.K. RANGARAJAN: The mills were closed when your friend Datta Samant was there. …*(Interruptions)*…

THE VICE-CHAIRMAN (SHRI TIRUCHI SIVA): …*(Interruptions)*… No, no. Clarifications later please. …*(Interruptions)*… Mr. Jairam Ramesh. …*(Interruptions)*…

SHRI T.K. RANGARAJAN (Tamil Nadu): When your friend Datta Samant was there, only at that time it was closed. …*(Interruptions)*…

THE VICE-CHAIRMAN (SHRI TIRUCHI SIVA): Mr. Rangarajan, you can seek clarifications later, …*(Interruptions)*… Please do not interrupt. …*(Interruptions)*… Mr. Jairam Ramesh.

SHRI JAIRAM RAMESH : Sir, some days ago, I stood up to attack the Government bitterly for trying to destroy the RTI. Today, I stand up to acknowledge that the Insolvency and Bankruptcy Code, 2016 was a major transformational move. I welcome not only the Code but these Amendments that are being brought forward today. The

IBC deals with a fundamental paradox of India. The paradox was that we had sick industry but we did not have sick industrialists. The IBC deals with the problem of sick promoters. It creates a market in the promoter field. Now, this is the third round of Amendments. We had one Amendment in January of 2018. Then, the second round in May, 2018 and I had an occasion to speak on all the Amendments. I said at the second round that we will soon have a third round and I say today that we will soon have a fourth round. There is no harm in acknowledging that the IBC is a new world that we have entered. The more we learn from our experience, the more Amendments we bring, the better off we will be. This third round of Amendments has been triggered by an extraordinary decision of the National Corporate Law Appellate Tribunal on July 4th. The Government has moved very quickly in the matter because the matter is pending before the Supreme Court.

What the decision of the NCLAT did –I want the hon. Members to be fully aware of this major decision of the Appellate Tribunal – was to bring the secure financial creditors and operational creditors on par. The second thing that the NCLAT did was to review the plan that had been approved by the Committee of Creditors. Sir, to give you one example, and this was on the ArcelorMittal case, takeover of Essar Steel, the Committee of Creditors had agreed to ₹ 54,547 crores. The NCLAT reworked this proposal to ₹ 69,192 crores. The Committee of Creditors had said that the banks should get ₹ 49 crores but the NCLAT said the banks should get ₹ 30,000 crores. The CoC said that the operational creditors must get ₹ 5,000 crores but the NCLAT said that the operational creditors should get ₹ 12,000 crores. So, the point is that the NCLAT sat in judgement of a resolution plan that had been agreed and brought the secure creditors on par with the operational creditors. Sir, this was not the intent of the IBC that was passed by this House in 2016. Therefore, the Government was actually duty bound, in view of the fact that this matter was coming before the Supreme Court in a matter of days, to bring forward this legislation and I congratulate the hon. Minister for coming very quickly with this legislation. I am sure she will move with equal rapidity in future because we are learning the ecosystem is also evolving.

Sir, I have five very specific questions to the Minister and one big point to make for her to think about. First, Sir, what is the Government's thinking, when successful bidders do not follow up after their bid? There is a Corporate Insolvency Re-structuring Plan. A company 'X' bids; a company 'X' is selected but the company 'X' does not move

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forward and country loses. So, what is the Government's thinking? How do you deal with the situation? Can you take penal action against somebody who actually wins the bid and does not move forward with the bid? Madam Minister, this is not an academic question but this is a real live question and I am sure you know as to what I am referring to.

Second, the Interim Budget of 2019 proposed amendments to the Indian Stamp Act of 1899 because stamp duty makes a very big difference in the bid process. I want to ask the hon. Minister where are we on the amendments to the Indian Stamp Act because that will affect the attractiveness of many bids.

Third, many of the cases that are coming to the IBC involve the mining sector and in the mining sector, State Governments are important stakeholders. I want to ask the hon. Minister, what is her thinking and what is the system that you are evolving that States are on board when as far as the resolution plan is concerned?

The fourth point that I want to raise is, does the IBC have over-riding jurisdiction over all other laws? The reason why I am asking you this is because SEBI has gone to the Supreme Court on a case challenging the IBC and saying that the SEBI Act should apply and not the IBC. However, there are Supreme Court Judgements which say that the IBC has over-riding powers over all other Acts and I would like to know for clarity from the hon. Minister.

The fifth and final question that I have is, and this point was raised by Shri Binoy Viswam, how do you indemnify new promoters against the actions of the past promoters? Are the past promoters getting away lightly? It is because actually most of these IBC cases are cases in which the previous promoters have really mismanaged and you have got to bring in new promoters. So, the question that I have is, can you indemnify the new promoters, the new people who are bidding from the actions of the previous promoters who have actually led to the IBC? This is something for you to think about.

Sir, the one big question; the one big issue to which I want to draw the hon. Minister's attention is what do you do about the MSME sector? The most important sector from an employment point of view and from an export point of view is the MSME sector and we all know the level of sickness in the MSME sector. However, Sir, you are not going to get bidders for an MSME firm because the promoter himself is in the best

6.00 P.M.

position to rejuvenate and renew that particular MSME enterprise. MSME enterprises generally do not go sick because of mismanagement deliberately. They go sick because of competition; they go sick because of delayed payments and they go sick because the structure of the industry has changed. Now, I think that we need to pay attention to the MSME sector. We have paid great attention to the big 12 cases that the RBI referred to the IBC. I want to draw the hon. Minister's attention to a recent report of the Reserve Bank of India. This is just one month ago. Less than a month ago; an Expert Committee that the RBI had set up on the MSME sector made the following recommendations. The IBC provides for a differentiated regime for insolvency and bankruptcy of firms; proprietary firms and individuals. Delegated legislation and rules in this regard are currently under discussion.

The finalisation of these rules can boost lender confidence because lenders will have more certainty and predictability regarding the recovery of defaulted loans. This can increase the amount of credit available to MSME in the Indian economy. The point is, if you want to revive...

THE VICE-CHAIRMAN (SHRI TIRUCHI SIVA): Excuse me. One moment. Please. ...*(Interruptions)*... Mr. Jairam Ramesh, it is 6 o' clock. The House may be extended till the disposal of the Business for the day. That is the sense of the House.

SHRI JAIRAM RAMESH: If you want to revive the MSME sector, you have to have either delegated legislation or delegated rules in order to be able to deal with the problem of insolvency and bankruptcy. One simple way of doing this is to amend the MSME Act. The hon. Minister knows that the IBC mandates an information utility. It is mandatory as far as secured creditors are concerned, but it is not mandatory for operational creditors. My experience and the experience of most people is that sickness in the MSME sector comes because of delayed payments. We have delayed payments legislation but that is adhered to more in the breach. Therefore, my suggestion to the hon. Minister is to please consider amendments to the MSME Act in order to ensure that the operational creditor, namely, the MSME, is able to put the invoices in the public domain, which then puts a pressure on the company to actually pay the MSME sector on time. I think this MSME sector deserves special attention from the IBC point of view.

[Shri Jairam Ramesh]

The IBC, so far, has been really driven by banks, and naturally so, because you want to reduce the NPA levels, you want to boost credit and I have no problem with that. But I think now is the time to switch gear and I would request the hon. Minister, now, in addition to focussing on banks, also to focus on MSME sector.

THE VICE-CHAIRMAN (SHRI TIRUCHI SIVA): Now, Shri Narain Dass Gupta.

SHRI NARAIN DASS GUPTA: Sir, thank you very much for giving me this opportunity. I rise to support the Bill. Without going into the past history as to how this Insolvency and Bankruptcy Code came into being in 2015, I will simply mention and confine myself to three amendments. One is the amendment, in Clause 2, where the Explanation has been added and that is a very welcome amendment. It will give the opportunity to the resolution applicant when he will take over the stressed assets. He can hive off and merge with the other units. He may first demerge whatever the unit will be. And the reason why it is a welcome suggestion is because when he will merge or demerge, he will get the benefit out of the Income-tax Act and for that, especially, there is a provision for merger and demerger, where there is no tax liability. This was required also because if I take over the existing stressed assets, I may not like to go with their existing name. That is a very welcome suggestion by the hon. Finance Minister and I welcome this. There are two more amendments to Section 12 (1) (3), where the time has been extended from 270 days to 330 days. Now you have included the time of the court proceedings also. After 330 days, it will go automatically to liquidation. My only submission is, how will we have a control over the proceedings of the court? Sometimes it may take 330 days in the court proceedings and the very purpose of this Insolvency and Bankruptcy Code was just to avoid the liquidation proceedings. But, here, it will go automatically to liquidation proceedings. It will cause loss to the financial creditors. In case of liquidity, then in the order of precedence to have the benefit, they will be the loser and, particularly, there can be loss of job also. That is why I just recommend that we may revisit this provision. As Bhupenderji has said that we will manage that the time does not go beyond 330 days, we will increase the courts of NCLT and will ensure it. But it is very difficult to say, to have a control over the proceedings of the courts.

Then, I come to Clause 30 where you have stated that in case the financial creditors do not participate in the voting, they will have the right, and they can participate in that. In that process also, if it goes below fifty per cent, whatever may be

the limit, then it will again go to the liquidation. That will also create a problem. The very purpose of this Code was to avoid the liquidation proceedings because earlier, there was an Act called SICA, and as you have rightly said, we could not address these issues. Again, the problem may come.

Finally, I will refer to the explanation. I will read it out. In the explanation, you have provided that 'the distribution in accordance with the provision of this Clause shall be fair and equitable.' How will you decide what is fair and what is equitable? Again, it may generate litigation because we should define what is just and what is equitable? This is all my submission. With this, I support the Bill.

THE VICE-CHAIRMAN (SHRI TIRUCHI SIVA): Now, Shri K.J. Alphons.

SHRI K.J. ALPHONS (Rajasthan): Sir, I rise to support this Bill. The amendments proposed in all the three sections are most welcome, and I am not going into the details of the amendments proposed because most of the Members in this House who spoke, have spoken about them in detail. This House has set huge democratic Precedent here. Mr. Kapil Sibal has raised certain insurmountable problems in having these amendments implemented, and Mr. Jairam Ramesh came up and said, these are not huge problems, and he said, solutions are already there, I think, this is a true democratic spirit in which this House has to move.

Since I am not talking about the numbers, I think, there is one issue on which I am extremely happy about and that is, amendment to Section 31 which says, that this is binding on the Government because the biggest litigant in this country is really the Government, and therefore, if this is made applicable to Government and also semi-Government bodies, I think, it is fantastic, and it is a great move from the Government.

Sir, let me go beyond these amendments which are proposed. Why is our industry Which are sick? Let us go to the fundamentals. We have far too many industries sick. Phenomenal numbers are brought out here, and I think, the fundamental principle we must accept is that, unlike in human beings, I qualify, unlike in human beings, whatever must die, must die. Look at Air India! Rupees sixty thousand crores of peoples' money, your money, was eaten away, and there are people who would say, 'no, Air India must be salvaged.' We must let them die, and not allow them to eat up more and more resources. How long do you want these companies to be on ventilator? ..*(Interruptions)*.. No, I am not conceding. For seventy years, we put these companies on ventilator. Our

[Shri K.J. Alphons]

money, India's poor people's money was eaten away. I think, this has to be stopped. I think, this is the great initiative taken by this Government. Why do the companies fall sick? I think, there is a question of ethics and morality here. Sir, where is corporate morality in India? Let me ask you. When you prepare your project report, it is inflated. Why? Because you want kick-backs. This is one thing which the Modi Government has done. We stopped these kick backs. PM said: there will be no corruption in Government. This is what we have done, This inflated project report, what does it lead to? Your calculations will not go entirely wrong if for a project which is worth ₹ 1,000 crores, you estimate it at ₹ 1,500 crores. How would that project ever become viable? Before the baby is born, it is sick. It is on ventilator. I think, we need to stop this. Then, the lending rates in India are very high. All over the world, what are the lending rates of the banks? When globally, lending rates are 3-4 per cent, and if you lend at 13-14 per cent, how does your industry compete? I am very happy to note that the Government has a better relationship, let me use the word, 'not control', with the Reserve Bank of India today. RBI is bringing down the interest rates. I think, we need to dramatically bring down the interest rates. Look at corruption at the bank level! How does a Bank like the Bank of Baroda, from one branch, transfer ₹ 5,000 crores to Hong Kong without anybody in that bank or the RBI knowing? We need better controls. We need better enforcement. Now, let me come to the project implementation. Before a project is implemented, today, most of the corporate sector takes away whatever equity they have put in. Mr. Vice-Chairman, Sir, I am telling some very plain truths about the Indian industry. Before you commission a project, whatever money you have put in is taken away. You have inflated your purchases and expenses. That is what they are doing. We need to change this entire corporate ethics.

Sir, let me come to auditors. Take for example just one company the IL&FS. How did it manage to borrow so much? We have credit rating agencies giving completely false reports. Senior bureaucrats manning IL&FS and what did happen? Our money, more than ₹ 1,00,000 crores. I am told, is in deep trouble. Why? Who did it? I think, corporate ethics must be there. Who audited IL&FS? Is it the same auditors who audited Enron? Possibly not, it is some other company; I know which company audited Enron. Not they. These are Indian auditors. The Hon. Prime Minister in his address to the Institute of Chartered Accountants of India said, 'You people have to be the conscience of the country but you are not being the conscience of the company.' Mr. Vice-Chairman,

Sir, there are fundamental problems because if you don't go along with the company owners, what happens? You will never get appointed to audit that company again. You will not. Therefore, they will go along.

Let us come to the role of independent directors. I am very happy that this Government has brought about regulations which says that independent directors are also responsible. We have far too many IAS officers, of my breed, going and sitting in the Board, keeping quiet, knowing everything that is happening; they keep quiet because they are looked after very well. Mr. Vice-Chairman, Sir, this has to stop. I am very happy that some directors of banks are going to jail. The independent directors also must go to jail. They are accountable to the country, Mr. Vice-Chairman, Sir. So, what do we need? We need a complete change in corporate morality. We need a complete change in bureaucratic morality. We need a change in the banking sector. We need all these things. These are fundamental. But, I am very happy that this regulation, based on these fundamentals addresses the problems which are ailing the industry.

I was a real estate dealer; in fact, I was the biggest real estate owner once upon a time in Delhi, as Commissioner of DDA, it. We need to settle things. I am extremely happy that the Supreme Court is doing it, sending real estate cheats to jail. I think, we need to bring about regulations not only in the real estate area but also in all sectors, wherever we know that people are cheating and running away. Mr. Jairam Ramesh asked a question: "What do we do about the original owners once the company is bought over, once there is a resolution" I think, we need to have a proper audit, an ethical audit. The people who have stolen money who had wrecked the company, must also be behind bars. This country needs to do this. We need to be tough. I am extremely happy that with the Prime Minister has the backbone, We have a Finance Minister who is determined. Therefore, I am extremely happy that in this House, we are all together in supporting this Bill. Thank you, Mr. Vice-Chairman, Sir.

SHRI KANAKAMEDALA RAVINDRA KUMAR (Andhra Pradesh): Mr. Vice-Chairman, Sir, thank you for giving me the opportunity. The Insolvency and Bankruptcy Code was brought with a claim that it will change the credit culture. It was also stated that the Insolvency and Bankruptcy Code will take away the control of defaulting company from promoters. The wilful defaulters has to follow the resolution process. The wilful defaulters from raising funds from the market. But, in reality, what is happening is known to everybody. The home buyers were running from pillar to post to get their grievances resolved.

[Shri Kanakamedala Ravindra Kumar]

Sir, amendment to Section 12 has been proposed. It inserts two proviso. There is already a proviso in the Principal Act. The Principal Act, at the time of appealing, prescribed for completing the Insolvency Resolution Process within 180 days. A proviso has been provided in the Principal Act itself that if an application is made to extend the time period beyond 180 days with the permission of the Committee of Creditors, it can be extended for a further period of 90 days. In total, the time granted is 270 days in the Principal Act itself. Now, through this Amendment, a proviso has been added which extends the time-limit to 330 days.

Sir, already there is a huge pendency in the National Company Law Tribunal. If you look at the website, the pending insolvency resolution petitions can be seen. There must be a sound mechanism in place to handle the issue of wilful defaulters. According to the reply given to a parliamentary question, the number of wilful defaulters has increased over the years. In 2016-17, it was 7,079. In 2017-18, it was 7,535. In 2018-19, it was 8,582. There is propaganda that corporate debtors are wilfully filing the insolvency resolution to evade the principle debt. There is no sufficient guarantee even at the time of granting loan. And, at time of liquidation, due to this whole process, they will get only 30-40 per cent. The rest of the things are free. It requires a penal provision in the Bill itself in order to curb this type of practice. The next thing is, the period of limitation should also be included in the Bill. In order to file proceedings before the NCLT, we have to look at period of limitation, whether time-barred debts can be entertained and whether provisions of the Limitation Act are applicable. I am saying this because there is an ambiguity in the Code itself. Secondly, the NCLTs have taken a different stand from one Tribunal to another Tribunal. There is an ambiguity. It has to be clarified in the enactment by making such an amendment.

Sir, there are many tribunals, but the posts have not been filled up. Vacancies are there. Even the malpractice can be curbed before granting the loan itself. Sufficient steps have to be taken by taking sufficient guarantee. Now, coming to the other aspect, most of the corporate debtors are taking undue advantage of this Code by simply filing for resolution process, thereby escaping the liability. And, Sir, some of the benami corporate debtors came into picture and ultimately, they are running the institutions. Therefore, this type of malpractice has to be curbed. For that, a mechanism has to be developed by making necessary amendments in this Code. Thank you.

श्रीमती रूपा गांगुली (नाम निर्देशित) : उपसभाध्यक्ष महोदय, I rise to support the Insolvency and Bankruptcy Code (Amendment) Bill, 2019. इस बिल में जो सबसे अच्छी बात मुझे लगी

वह है बड़ी ट्रांसपेरेंसी के साथ और बड़ी क्लीयरली हर बात को एक्सप्लेन किया गया है। The best thing in this bill is it is time-bound. All procedures are made to be time-bound. टाइम बाउंड होने से, जिने लोगों को यह अफेक्ट कर रहा था, उनके लिए आसान हो जाएगा। इस बिल के बारे में बात करते वक्त, जो मुझे याद आ रहा है कि सबसे पहले इस बिल को वर्ष 2016 में श्री अरुण जेटली जी जब लाए थे, तब उन्होंने बड़ा क्लियरली एक्सप्लेन किया था NPA क्या है? वर्ष 2015 से पहले, यानी वर्ष 2014 से पहले हमें या आम आदमी को NPA के बारे में ज्यादा सुनने को नहीं मिलता था। मैं साधारण लोगों की बात कर रही हूं कि NPA क्या है, उसे खाते हैं, पीते हैं या सिर में लगाते हैं, इस बारे में कुछ किसी को पता नहीं था। धीरे-धीरे NPA के बारे में पता चला। NPA हमेशा अंडर दि कारपेट रहा। बाद में, लोगों को पता चला कि ऐसे NPAs बनते गए हैं और किस वजह से बनते गए हैं और कितने पकड़े गए हैं, इस बारे में याहं ज्यादातर माननीय सदस्यों ने डिस्कस किया है, इसलिए मैं उसके विस्तार में नहीं जाऊंगी।

महोदय, इस बिल में एक चीज बहुत अच्छी है। हम हमेशा बात करते हैं कि पब्लिक सैक्टर बैंक है, आपका बैंक है। मैं कहना चाहती हूं कि बैंक एक बिल्डिंग नहीं है। अगर NPA बने हैं, तो बैंकों के भी बहुत सारे लोग इसमें इन्वॉल्व रहे थे। कॉरपोरेट सैक्टर में सब चोर नहीं हैं, सब विलफुल डिफॉल्टर नहीं हैं। ऐसे बहुत सारे सैक्टर्स हैं, जहां ये धीरे-धीरे डिफॉल्टर बनते गए। ऐसे लोगों के लिए इस अमेंडमेंट में प्रोविजन है, ताकि वह एक बार उठकर खड़ा हो जाए। इस बिल के क्लॉज़ 2 में एक बहुत अच्छी बात कही गई है- "restructuring of the corporate debtor, including by way of marger, amalgamation and demerger". इसमें सब किस्म के उपाय किए जा रहे हैं। टाइम बाउंड होने से एक फायदा है कि सबको जवाबदेही देनी पड़ेगी। आज की तारीख में यह भी एक सच है कि ऐसी कई घटनाएं हैं, जहां पर बैंक मैनेजर्स, जो डिफॉल्टर्स हैं, जो मिलने के लिए आए हैं, जो appointment मांग रहे हैं, वे उनको appointment नहीं दे रहे हैं, उन्हें घुमा रहे हैं, उनसे चक्कर कटवा रहे हैं। हमारे देश में अब जो ऐसा हुआ है कि एक नई किस्म की economic growth का दौर आया है, जहां पर लोगों को धीरे-धीरे आदत डालनी पड़ रही है। यह ऐसा देश है, जहां पर पहले, मैं कई साल पहले की बात कर रही हूं, लोगों को लगता ही नहीं था कि ट्रेन का टिकट न कटना कोई अपराध है, लोगों को लगता ही नहीं था कि कुछ खरीदने पर बिल लेना पड़ता है या टौल टेक्स दिया है, तो टौल टैक्स की रसीद लेनी पड़ती है। उनको यह आदत नहीं थी। यह आदत, यह जो behavioral change है, इसके लिए हमें यह कहते हुए बड़ा गर्व होता है कि इस सरकार के आने के बाद सभी इन सब चीजों की ओर धीरे-धीरे बहुत स्वच्छता के साथ आगे बढ़ रहे हैं।

महोदय, अमेंडमेंट्स तो आने चाहिए, बल्कि और भी आने चाहिए, क्योंकि अमेंडमेंट का मतलब ग्रोथ होता है। यह खासकर नया बिल है, इसलिए इस सारे बिल पर दिन-ब-दिन काम करते हुए और भी जो amendments और changes लाने की जरूरत पड़ेगी, वे जरूर आएंगे।

[श्रीमती रूपा गांगुली]

महोदय, हम मंत्री महोदय को साधारण लोगों की तरफ से बहुत तहेदिल से एक धन्यवाद देना चाहते हैं कि जो सचमुच विलफुल डिफॉल्टर्स नहीं हैं, उनके लिए यह बिल, यह अमेंडमेंट बहुत काम आएगा। आपने मुझे बोलने का अवसर दिया है, इसके लिए आपका बहुत-बहुत धन्यवाद।

THE VICE-CHAIRMAN (SHRI TIRUCHI SIVA): Now, Shri Ramdas Athawale. You have two minutes. .

सामाजिक न्याय और अधिकारिता मंत्रालय में राज्य मंत्री (श्री रामदास अठावले) : सर, पांच-सात मिनट दे देते।

THE VICE-CHAIRMAN (SHRI TIRUCHI SIVA): No, you have only two minutes. You abide by the time. The Deputy Chairman has given only two minutes.

श्री रामदास अठावले : उपसभाध्यक्ष जी, आपका बहुत-बहुत धन्यवाद। मैं इस अवसर पर यह कहना चाहूंगा कि—

"देश में आ रहा है अर्थव्यवस्था में अमन
क्योंकि मोदी सरकार में अर्थ मंत्री हैं निर्मला सीतारमण।
हम काले धन पर करेंगे वार
हम खत्म करेंगे भ्रष्टाचार।
2024 में कांग्रेस की हो जाएगी हार
पुन: आएगी मोदी सरकार।"...**(व्यवधान)**...

SHRI BHUBANESWAR KALITA (Assam): Sir, I am on a point of order. Sir, sometimes, it is okay. But, every time he speaks, he takes the name of a particular political party and speaks all sorts of things.

THE VICE-CHAIRMAN (SHRI TIRUCHI SIVA): Mr. Athawale, please, confine to the Bill. Please, don' t rake up other issues. ...*(Interruptions)*...

श्री रामदास अठावले : ठीक है, कांग्रेस शब्द निकाल दो, अपोजिशन हार जाएगी, ऐसा बोल देते हैं।

THE VICE-CHAIRMAN (SHRI TIRUCHI SIVA): No, no. You confine to the Bill, please. ...*(Interruptions)*...You speak on the Bill.

श्री रामदास अठावले : ठीक है।

बंद करना है हमें दिवाला,
हमें नहीं चाहिए हवाला।
2014 के पहले तुम्हारा था रेरा,
लेकिन 2019 में नरेन्द्र मोदी जी ने आपको था धकेला।

...**(व्यवधान)**...

SHRI BHUBANESWAR KALITA: Sir, where is this in the Bill? ...*(Interruptions)*...

श्री रामदास अठावले : बिल पर बोलूंगा।...**(व्यवधान)**...

PROF. MANOJ KUMAR JHA: Sir, I am on a point of order. ...*(Interruptions)*...

श्री रामदास अठावले : मैं बिल पर तो बोल ही रहा हूं।...**(व्यवधान)**...

THE VICE-CHAIRMAN (SHRI TIRUCHI SIVA): Ramdasji, please speak on the Bill. ...*(Interruptions)*...

श्री रामदास अठावले : रेरा के संबंध में आपने ही तो बोला था।...**(व्यवधान)**...हम तो आपको...**(व्यवधान)**... दे रहे हैं कि...**(व्यवधान)**... रेरा कानून आपने कार्यकाल में आया था।...**(व्यवधान)**...

PROF. MANOJ KUMAR JHA: Sir, I am on a point of order. ...*(Interruptions)*...

THE VICE-CHAIRMAN (SHRI TIRUCHI SIVA): Mr. Ramdas, he is on a point of order. Mr. Jha, under which rule?

PROF. MANOJ KUMAR JHA: Sir, it is under Rule 110. It is relating to passing of Bills. Rule 110 talks about the scope of debate. Sir, it says that the discussion on a motion that the Bill be passed shall be confined to the submission of arguments either in support of the Bill or for the rejection of the Bill. And, what we are hearing here is all kinds of things, except nuanced view on the Bill. That is it, Sir. Thank you.

THE VICE-CHAIRMAN (SHRI TIRUCHI SIVA): All the time it was like that. Mr. Ramdas, you please confine to the Bill and don' t deviate.

श्री रामदास अठावले : उपसभाध्यक्ष जी, यह जो "The Insolvency and Bankruptcy Code (Amendment) Bill, 2019 है, जो "संशोधन" बिल है- अपने देश में जब कंपनियां बंद होती हैं, तब कंपनियों के बंद होने के बाद employment की भी एक प्रॉब्लम क्रिएट होती है, इसलिए निर्मला जी यह बिल लाई हैं और हमारी सरकार employment क्रिएट करने की कोशिश करती है। जो लोग कंपनियां अच्छी तरह से चलाना चाहते हैं, अगर वे कंपनियां किसी अच्छे कानून

[श्री रामदास अठावले]

की वजह से बंद हैं, तो National Company Law Tribunal के माध्यम से ऐसी कंपनियों को मदद दी जाती है।...**(समय की घंटी)**...14 दिनों में उसको examine किया जाता है। अगर उसके बाद NCLT को लगा कि कंपनी बंद होने के कारण सही हैं, तो फिर उसकी मदद करने के संबंध में 180 दिनों में उसको examine किया जाता है। अगर NCLT उसके लिए positive है, तो उसके लिए और भी 90 दिन बढ़ाए जाते हैं और उस कंपनी की मदद की जाती है। इसलिए यह बिल ऐसी कंपनियों की मदद करने के लिए है। लेकिन कई लोग fraud करते हैं, जिस तरह नीरव मोदी ने पंजाब नेशनल बैंक से इतना पैसा लिया। बैंक वाले गरीबों के लिए पैसा नहीं देते हैं, लेकिन बड़े-बड़े लोगों को ज्यादा पैसा दे देते हैं। ऐसा भ्रष्टाचार करने वाले बहुत सारे बैंक वाले लोग भी हैं। उनके ऊपर भी कड़ी कार्रवाई करने की आवश्यकता है। लेकिन जो कंपनियां अच्छा काम कर रही हैं, जो मालिक employment create करने का काम कर रहे हैं, ...**(समय की घंटी)**...ऐसे मालिकों की मदद करने के लिए यह बिल बहुत important है। यह बिल लाने का मौका मोदी सरकार को मिला है।

मैं आप लोगों का आभार व्यक्त करता हूं। कांग्रेस पार्टी हमारे बिल का समर्थन नहीं करती है, लेकिन आज हमारे जयराम रमेश जी बहुत अच्छा बोल रहे थे। वे भी अच्छा बोलते हैं, लेकिन जब मैं अच्छा बोलता हूं, तो कुछ लोग हंगामा करते हैं।...**(व्यवधान)**...इसलिए यह अच्छी बात है कि जब सरकार एक अच्छा बिल लाई है, तब as an Opposition कांग्रेस पार्टी ने इसका समर्थन किया है, सब लोगों ने इसका समर्थन किया है, आपने भी किया है। आप तो हमारे अच्छे मित्र हैं, लेकिन जो हंगामा कर रहे हैं, मुझे मालूम नहीं है। इसीलिए जब मैं बोलता हूं, तो वे क्यों हंगामा कर रहे हैं? मैं कोई कांग्रेस के विरोध में नहीं हूं। मैं तो आपका मित्र ही रहा हूं। पहले कई साल मैं आपके साथ भी रहा हूं। तीन बार मैं आपके साथ चुन कर आया हूं। इसलिए यह ठीक बात है। इस बिल का समर्थन कांग्रेस पार्टी ने भी किया है, बाकी Opposition ने भी किया है, इसलिए मैं उनका भी आभार व्यक्त करता हूं।

THE VICE-CHAIRMAN (SHRI TIRUCHI SIVA): Please conclude. ...*(Interruptions)*... Please conclude. ...*(Interruptions)*... Please conclude. ..(Interruptions)...

श्री रामदास अठावले : इसी तरह जब हम अच्छे कानून बनाएंगे, तब आप उनको support करते रहिए।

THE VICE-CHAIRMAN (SHRI TIRUCHI SIVA): Please, Ramdasji. ...*(Interruptions)*...

श्री रामदास अठावले : अगर आप support करते रहेंगे, तो जनता हमको support करती रहेगी और दोबारा और भी ज्यादा कानून बनाने के लिए 2024 में पुन: मोदी सरकार आएगी। आप उधर रहेंगे, हम इधर रहेंगे। जय भीम, जय भारत।

THE VICE-CHAIRMAN (SHRI TIRUCHI SIVA): Now, the hon. Minister.

SHRIMATI NIRMALA SITHARAMAN: Sir, let me commence by thanking every Member because a debate in the post-lunch Session of the Parliament is always a bit difficult because many of the Members do give a little input and sometimes participate further. But, today' s post-lunch debate was actually very invigorating. Every Member, who spoke on this Bill, has very well gone through the amendments; has understood the spirit with which the IBC has been brought into this country, with every Member's cooperation. And, post 2016, nearly three years since its implementation, there has been a repeated need to bring in the amendments because the amendments were always brought in as a response to what was developing outside the Parliament, where the industries, the curators, the courts, all of them were using the IBC to give solutions. But, there were greater challenges, newer challenges that were coming up. As a result, amendments are always brought up. This time, I am glad many of the Members have credited the Government with speedily coming up with amendments for what was developing in the recent past in the last few months, a situation where we thought the very legislative intent of the Act itself was being corroded upon. Therefore, we had to respond and come out with these amendments. I am glad that very many Members recognized that the response of the Government has been in time and speedy. Therefore, I would just go over rapidly on what these specific amendments aim to achieve. And, then, will respond to each of the Member's queries and suggestions.

Sir, the Insolvency and Bankruptcy Code, actually the Amendment Bill that we are talking about now, seeks to amend seven Sections of the Insolvency and Bankruptcy Code, 2016. I shall keep referring to it as the ' Code' . These Sections 5(26), 7, 12, 25A, 30, 31 and 33 are largely to remove the ambiguities and to facilitate a smooth conduct of the corporate insolvency resolution process, for maximizing the outcomes in line with the Preamble of the Code. I, particularly, thank Shri Suresh Prabhu, who metaphorically said, we have to give a life to these companies. So was the mention by Shri Ashwini Vaishnaw, a Member from Odisha, who spoke about the speedy responsive way in which we are coming back with amendments, which shall keep the company alive. Also, Shri Jairam Ramesh referred to it. So, it is a response to what was developing and, since, specifically, some of the Members have taken the name of the Resolution plan and also the interpretation given by the NCLT in the ESSAR case, where I am glad that points were literally brought out like nuggets, where the interpretation was trying to treat

[Shrimati Nirmala Sitharaman]

secured creditors, operational creditors, and treating them at par, defeated the purpose and also the spirit of the Act. So, with such very serious interpretative problems coming up, it was only incumbent on the Government to come up with such amendments, the amendments which are, actually, clarificatory in nature.

(MR. DEPUTY CHAIRMAN *in the Chair*)

So, the intent of the Government is to ensure the maximization of value of a corporate debtor as a going concern, while simultaneously adhering to strict timelines. As regards the timelines related point, I could hear, many of the speakers did raise questions and doubts, if, actually, we can implement them; actually, can we have these kinds of timelines added? I am very grateful to Shri Bhupender Yadav who very correctly pointed out the spirit behind the Insolvency and Bankruptcy Code in a changing India. Post 1991, we have had quite a lot of opening up, quite a lot of economy and issues related to speeding up the economy, bringing in more lubrication into what we want to do. They were all discussed and in the spirit of that kind of a change which is happening in India, which is getting greater attraction, of late. In spite of the global headwinds, we needed to bring in that kind of a reform and it is not going to be as though it is being done exclusive of the courts and it is, certainly, not eroding into the Courts' domain. I would just want to bring in this particular quote or a couple of paraphrasing of the Court' s words, which will remove from the minds of any one of us who would suspect that by bringing these kinds of timeline-related constraints, we are trying to tread on to the Court or we are trying to impose something on the Courts. Not at all; we are not imposing on the Court. It is something which I want to explain to you by using the Court' s own words. In the Swiss Ribbons matter in 2019, the hon. Supreme Court had observed, – I am not quoting; I am using their words; so, let there not be a misunderstanding; I am paraphrasing the words of the court, –"the Defaulters' paradise is lost" through this IBC. So, India can no longer be a defaulters' paradise. So, because of the IBC, now, it is very clear, there has to be a resolution. Even if it leads to liquidation, defaulters will have to be facing law. So, that is being recognized by the Supreme Court.

Secondly, again, on the issue of, whether we can amend such laws even as issues are pending in the Courts, I, again, am not saying that the Court said it in anticipation that we are going to do something, but I am only using some of these observations by

the Court. “Economic laws need flexibility and experimentation.” This is an observation by the Court. If the Courts have said that, why are we hesitating in using the legislative mandate that this House has? Legislative mandate is what we are doing. We are not at cross purposes with the Court. It is the legislative mandate. If we don’ t use our mandate and leave the space open, after all, nothing is left in a vaccum, something fills it up. But it is our duty to have the legislation and, therefore, we are doing it. The Court again had observed in the Swiss Ribbons matter, "We need to move away from traditional approach" –also an observation of the Court. So, if you are slightly worried, by saying –and some of our Members did observe –are we trying to do something which is very away from what has been the traditional practice, well, yes, we may have to experiment and it is because we started the experiment even in 2016, repeated amendments are coming. And, I would, with one more observation, move over to, in fact, quoting the observation of Jairam Ramesh*ji*, in his participating in a debate earlier which he himself recalled in August, 2018 which will explain why we have to come back repeatedly with amendments because it is such a path-breaking Code that we have come up with. The Supreme Court again had observed, "The constitutional..." – and it upheld the constitutional validity of the Code. So, if the constitutional validity of the Code has been upheld and well within our jurisdiction, well within the division of power as envisaged in the Constitution, the three pillars are using their own areas, Legislative, Executive, Judiciary, the fourth being the Media and the Press, within our legislative or the constitutional area of operation, domain of operation, we are bringing in certain amendments. Only the Code itself is absolutely constitutionally valid. So, let's not have doubts in our mind saying, 'are we doing too much, are we treading into the area of the courts, are we putting restriction on the courts'? No, we are not experimenting. Aren't we? Because the courts themselves have said it.

Let me now –before I get into the details of what I want to highlight –recall, and I quote. I am glad that the Member whose words I am quoting is himself here. In the August, 2018 debate, Jairam Rameshji had said very clearly, "We have the Insolvency and Bankruptcy Code which we are amending from time to time as we gain experience." Exactly; we are gaining experience, and therefore, we are using every opportunity which has to be in time. This time we have been speedy which I am glad many of the Members have conceded, and I am very grateful for that. But that is a point. "We have to, as we move along, do these amendments." And again in a different line, Jairam Ramesh*ji* has also said earlier as, "I expect..." just as he said now too. I quote, "I expect that in the

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months ahead as we gain more experience in the implementation, we will continue this process of fine-tuning both of the IBC as well as the GST." So, as we gain experience, it is going to be necessary for us to come up with amendments, such amendments which are going to be in response to the developments outside.

Now, regarding today's amendments, very quickly – I said, there are seven – I would just tell you what is it that we are doing through these amendments. The salient features of these Amendments are that we are bringing clarity on allowing comprehensive corporate restructuring schemes such as mergers, demergers, amalgamations, etc., as a part of the resolution plan. Many of you have did mention. The Resolution Plan is something which is going to be determined and framed up by the Committee of Creditors, the CoC. Government doesn't give it. Government does not give the resolution. There is a Committee of Creditors for each of these issues and they are the ones who decide it. So, that is the first thing. We are bringing clarity to include these sort of parts in the resolution plan. Greater emphasis is being given on the need for a time-bound disposal at application stage. I will, in a minute, give you the details of what kind of waiting list is there before us. It is now our duty, it is our duty as a House which had passed this Code, to also ensure that we don't clog up. I understand, many of the Members rightly said, 'The clogging up is not for anything else but for want of you appointing people.' I can give you an answer for that also. I recall, hon. Member, Shri Kapil Sibal, mentioning that. I have an answer to give for that too. Deadline for completion of the CIRP, which is a Corporate Insolvency Resolution Process, within an overall limit of 330 days, including litigation and other judicial processes. Votes of all financial creditors, which I am glad very many of you have picked up, for the scattered dispersed creditors, some of whom now you can – everyday you read – compare with the home-buyers. The homebuyers can now have a voice. They can vote in a separate voting process, their vote would be taken for what it is worth and, therefore, they participate in the resolution process. That is being enabled now in the light of so many different issues which have come for the home-buyers, which is a very serious issue. Many Members even highlighted the quantum of money which is locked up because they are waiting for resolution. This will move towards, or help towards moving, a resolution situation. So, votes of all the financial creditors covered under Section 21(6)A shall be cast in accordance with the decisions approved by the highest voting share, that is, more than 50 per cent of

financial creditors on present and voting basis. The basis that we use there is, present and voting. The specific provision for financial creditors who have not voted in favour of the resolution plan is a very important point that I want the House to take into cognizance. Now, do we forget them? No, we don't. Those who have not voted in favour of the resolution plan and the operational creditors shall receive, at least, the amount that would have been received by them if the amount to be distributed under the resolution plan had been distributed in accordance with Section 53. Many Members did refer to Section 53 and asked what the fall-out of invoking Section 53 would be. I am saying it very clearly here that that takes care of not just everyone who has voted in favour, but even those who have chosen not to vote in favour. Even they would be taken care of under Section 53 of the Code, or the amount that would have been received if the liquidation value of the corporate debtor had been distributed in accordance with Section 53 would be provided. So, Section 53 takes a full play there as regards those who have not voted.

Inclusion of commercial consideration in the manner of distribution proposed in the resolution plan within the powers of the Committee of Creditors is another point which Shri Jairam Ramesh brought out as a nugget. When a commercial decision for which the final word rests with the CoC, was treated not as a commercial decision, it really brought in a very big contention, saying, is this going against the IBC's very spirit? That is why, in this speedily brought in amendment, that is a very important point that we have brought in. What is commercial shall remain commercial and that cannot have a different dimension. Therefore, that is a very important part of this set of amendments that we are bringing in now. Another point that was raised was about clarity that the resolution plan shall be binding on all the stakeholders including the Central Government. I am glad many Members, including Shri Alphons, said that the Central Government shall also be a party to the resolution plan; you are bound by it. That is something which this amendment brings in. Partly answering Shri Jairam's question, which I would come a bit later to, if this is binding on the Central Government, State Governments would also be bound by this, and so would be local authorities to whom a debt in respect of the payment and the dues may be owed. Clarity has also been brought in that the Committee of Creditors may take the decision to liquidate the corporate debtor any time after constitution of the Committee of Creditors and before preparation of information memorandum. Even then, the moment the Committee of Creditors is constituted, the motion sets pace. So, that has to be very clearly laid out

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before and these are the amendments which we are bringing in. The changes are expected to lead to a timely admission of applications. That is the most important point. Delays at the admission stage itself are worrying. So, we are expecting this to lead to a timely admission of applications and timely completion of the corporate insolvency resolution process. Analysis of data available demonstrates that there are delays in admission of applications and spillage of CIRP cases well over the time-limits which are permitted through the Code. The amendments are expected to, again, address the issue of sanctity of time-lines of completion of the entire corporate insolvency process. So, this is the larger picture with which we are moving ahead. I would now like to address some of the specific issues which many of the Members have raised.

I will start with Kapil Sibalji who, in fact, identified and said that too many Amendments are coming through; you are bringing in such Amendments which may not be implementable and so on. He broadly mentioned that twenty seven Amendments have already been brought in. I just want to clarify that twenty seven is not a correct figure. This is the third Amendment to the IBC Code. The First Bill amended eight clauses. The Second Bill amended thirty eight clauses and in the third one now, we are coming up with Amendments to eight clauses. As on 30th June, 101 cases were withdrawn, 120 cases were resolved, and 475 cases moved into liquidation. Of the 475 cases, 349 cases were in the BIFR or were sick units. This point is mentioned in passing, but I want to underline that majority of the cases which are now under the CIFR are the backlog and the legacy which has come from the BIFR stage. So, if BIFR cases are also being dealt with now with certain rapidity, it is because IBC is proving its worth and what couldn't be achieved through the BIFR is actually being achieved now. In that, I would just like to give you some data. I recall some Members were talking about behavioural change. Actually, I credit them for having used those expressions. Actually, there is a behavioural change, a behavioural change which is happening for good and that should actually convince Shri Binoy Viswam that the whole object is not to kill and finish off. We are actually coming up with resolutions which can help the sick unit to live its पुनर्जन्म, the next *Janma.* So, it is actually giving life. Suresh Prabhu*ji* said, "It is actually giving life to companies which are in almost ICU stage; we are not killing them off; we are giving more energy to them; we are infusing life into them." So, I would like to link

this behavioural change point of view to one statistics that I want to put before you. The following are the details of disposed of cases before admission, that is, even before admitting into the restructuring process, the CIRP. The total number of companies or cases under Section 7 was 894. Under Section 9, they were 5,102. Under Section 10, they were 83. So, a total of 6,079 cases got disposed of even before they got admitted into the process of resolution. What does that mean? It means people realized that if this comes into the effect, and it has come into effect, they have to go through this process and they may probably end up with a process of resolution and in the process they may be out of owning their companies or the resolution process would have its implication on their credibility and, therefore, many of them have chosen to have disposal mechanism through which they could get out clear. What in terms of amount of money has this meant? There were 6,079 cases. All of them got disposed of before admission. Somebody did mention, "Do you have a mechanism? What is the mechanism? This Code doesn't. The Amendment Bill that you have brought in doesn't speak of any mechanism." No; it does have. That is why even before it sets rolling, people have come on their own to say, "Please, this is what we want to do; dispose of our cases." That is the indication of an effective mechanism, not just a mechanism, through which 6,079 cases got disposed of before admission and it meant an amount of ₹2,84,000 crore being redressed. It means that that is the amount which is being used for settling claims. So, if that is the kind of impact we are having because of the mechanism which is in play and people have come to get the cases disposed of even before the mechanism sets rolling in a particular case, it just shows how effective this whole process is. If that is the way in which much before the cases could come into resolution process, I will give you the data for those which have come into the process. As of 30th June, 2019, 2157 cases were admitted into Corporate Insolvency Resolution Process, the CIRP. Out of these cases, 164 cases were closed by appeal, review or settlement and; 112 cases were withdrawn under Section 12A of the Code. I think, Shri Kapil Sibal had referred to Section 12A. Then, Resolution Plan was approved in 117 cases and 474 cases have resulted into liquidation. In the total 117 resolved cases, an amount of ₹1,24,636 crores is realised. In some cases, it is realisable, if I can say because some of them are almost at the fag end of the process. But, ₹ 1,24,636 crores are realised. This is possible with the CIRP. What I gave you earlier was before entering into it.

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Now, I will give some more data. As on date, 1,852 applications filed under Section 7 are pending admission beyond statutory period –see the length of wait –of 14 days. And, five big cases, some of which Shri Kapil Sibal named, Essar, Amtek Auto, Bhushan Power and Steel, Era Infra Engineering and JP Infratech, and so on. Out of the 12 big accounts referred to IBC, these are pending for more than 600 days. Now, if we think that we can wait, we can't impose time limit on the Courts –when I say courts, I also mean the tribunal, –we can see cases pending for more than 600 days due to continuous litigation by some or the other party in the matter. So, even the process is waiting because one litigation is here, one other is there. It is never getting started. So, to emphasise on the intent of the Legislature for time-bound resolution of matters, we have proposed to bring in the Amendments to Sections 7 and 12 of this Code.

Now, I will give a bit more data because I think many of us were very keen to know about figures saying, 'what is this going to end up in.' About the status of the CIRP, I have given till now what happens before, what happens just at the entry. Now, regarding the Corporate Insolvency Resolution Process (CIRP), under the Code, I want to give you data again as of 30th June, 2019. First, I will talk about the status of CIRPs. Number of admitted cases is 2162; number of cases closed on appeal, which I read out about, is 174; number of cases closed by withdrawal under Section 12A, is 101, I have given you a slightly later data; number of cases closed by resolution is 120; closed by liquidation, 475; and ongoing CIRPs are 1292. So, now, I would like to mention the number of days of waiting. I would like to mention here the details of the ongoing CIRPs, along with the timelines. Ongoing CIRPs are 1,292, the figure just now I gave you. Over 330 days, 335 cases; over 270 days, 445 cases; over 180 days and less than 270 days, 221 cases; over 90 days but less than 180 days, 349 cases; less than 90 days, 277 cases. The number of days' pending includes time, if any, excluded by the tribunals. So, that gives you a picture on what is the kind of wait and, therefore, why we want to bring the Amendments for this speeding up. Most of the times, you are talking about the cases which are pending. Of course, there was a talk about what happens to the creditors. They keep on waiting for eternity. Now, I will give analysis of the 475 CIRPs, which I repeated twice, which have yielded to liquidation. As of 30th June, there are 475 which have yielded to liquidation. Claims of the financial creditors are ₹3,15,370 crores. Then, I come to claims of the operational creditors. Of course, regarding risk, both of them are being treated equally, but what are the claims? The claims are ₹31,285 crores.

So, the total claim is about ₹3,46,655 crores. The liquidation value here is ₹24,117 crores only. So, these are the companies which had been in difficulty and under BIFR for years. Look at the change of profile once they come in for liquidation process through the IBC. So, it is more important to understand that the IBC does not aim to delay or to just allow the asset value to fritter away, but, on the contrary, gives solutions where the optimization of assets is possible. So, the liquidation value is only seven per cent of the total admitted claims of these companies. This is important because they are coming from the BIFR background. Sir, 73.42 per cent of all these cases –I am not going through that data totally – are BIFR cases or cases of those which are not any more as going concerns, which means that they are dead cases. 73.42 per cent cases are in this category.

Then, there was a question. Probably, Shri Kapil Sibal raised it. It is about the operational creditors and financial creditors. He is an eminent lawyer. I am not reading the book to him, but I still want to explain this point. All financial creditors form only one class and they cannot be sub-classified into secured or unsecured creditors for the purpose of distribution of moneys under the resolution plan. That can' t be. The NCLAT, the Appellate Tribunal, held that the distribution of moneys under the resolution plan is not a commercial decision to be taken by the CoC. Those are the two points on which we are coming up with the clear Amendment, so that that grey area, which is not grey to me, but the grey area, which has come up, is being addressed.

SHRI KAPIL SIBAL: Sir, will the hon. Minister yield for a minute? I did not talk about operational creditors at all in the course of my submission. But what I am worried about is the following. She may clarify it. Sub-section (b) of Section 30 says, "In sub-section (4), after the words "feasibility and viability," , the words, brackets and figures "the manner of distribution proposed, which may take into account the order of priority amongst creditors as laid down in sub-section (1) of section 53, including the priority and value of the security interest of a secured creditor" shall be inserted."

My worry is that you are making a distinction amongst the secured creditors, and that is the gravamen of this Amendment. That is what I am worried about. I never talked about operational creditors.

SHRIMATI NIRMALA SITHARAMAN: I will certainly give a response to the hon. Member about this point. There was this discussion also about the haircut. A lot of our

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hon. Members did speak about this. I remember my university colleague, Prof. Jha, saying that this is not a haircut, this is complete *mundan.* No, that is not true. Haircuts are there. Yes, I agree. But they are only haircuts. Financial creditors, on an average, are getting 43 per cent of the claims, but 188 per cent of the liquidation value.

But, there is 188 per cent of liquidation value which is after rescuing the company and bringing about a behavioural change. I guarantee that you should be worried that they are going to be left with nothing to comb. They will have something to comb. You asked as to what are the steps taken by the Government in the clogging up of the cases in the NCLT. Are we blaming the courts and the tribunals when we have not empowered them adequately with infrastructure, soft power in terms of number of qualified people and resolution professionals? I want to give a picture as to what exactly are the things that we are doing. Some points will be very specific and some will be general. In view of the increasing number of cases, the Government has increased the number of benches of NCLT from 10 to 15, during just the last one year. In one year, we have increased it from 10 to 15. The number of members has also been increased in a phased manner. Recently, 26 new members have joined bringing the total number of members to 52. Sir, more than one court has been operationalised in the benches where a large number of cases are pending, such as, in Mumbai, Delhi, Chennai and Kolkata. The projects like e-governance and e-courts have also been implemented for faster and speedier disposal of the cases. I would like to tell you about some specific steps that we have taken. At Allahabad bench, the interior with all the renovation work is being done in an area of about 10,763 square feet. The tendering process has also been started. At Mumbai bench, the renovation and interior work is nearing completion in an area of about 38,520 square feet. In Delhi, in the CGO complex, a total area of about 10,812 square feet is under renovation again with interior work, all these are under process. In Delhi, in MTNL building, for NCLAT, the appellate tribunal, in an area of about 48,720 square feet, the renovation work is happening there and interior work is almost near completion. Sir, for the new benches at Amravati, near Vijayawada, the interior and renovation work has been undertaken in an area of about 9,886 square feet. The planning has already been completed and the interior work will start soon. At Indore, the renovation and interior work is being started in an area of about 9,496 square feet. The planning has already been done. We are talking about the infrastructure, but, steps taken for capacity-building

were also questioned. The question was asked about the capacity-building for the members and employees of the NCLT and the NCLAT. Sir, regular colloquiums are being held for capacity-building of members, so as to ensure speedier and uniform judicial delivery system. Sir, for capacity-building of officers and employees, relevant training has also been given from time to time. The Ministry has also approved a programme of induction-level training for newly-joined members and in-service refresher training for existing members. The NCLT has been entrusted to conduct the programme. The induction colloquium for newly appointed members of the NCLT was held between 13th July and 17th July, in collaboration with the National Law University, New Delhi. As regards the resolution professionals, Sir, the IBBI registers and regulates the Insolvency and Bankruptcy Board of India. It registers and regulates all the professionals, *i.e.,* the CAs, the CSs, the Cost Accountants, the advocates with ten years of work experience with at least ten years of experience. They pass an examination conducted by the IBBI. So, they are not just picked up and left without a screening. They have pre and post registration trainings also. So, we are giving a lot of attention for these professionals to be absolutely trained and ready.

Mr. Deputy Chairman, Sir, Shri Manish Gupta had asked this question about Section 240A, which provides relief for MSMEs, and, on MSMEs, several Members spoke with a lot of concern. I just want to inform the Member that Section 240A provides certain relief to MSMEs. Section 29, clauses(c) and (h) do not apply on them. Operational creditors have been beneficiaries. Thousands of applications are withdrawn before admission as the company arrives at a settlement with the operational creditors. Sir, 6,079 applications for ₹ 2.8 lakh crore were realised. I have given the figures.

Shri Ravi Prakash Verma spoke about resolution plan under the Code and also spoke about realization value and so on. Without naming the case, in which this has happened, I would like to tell you that the liquidation value of this particular example, I want to read for you, was ₹ 9 crores. Claim of financial creditors was ₹ 900 crores. Realisation for creditors was ₹ 54 crores. Realisation of percentage of claim was six per cent. Realisation, as a percentage of liquidation value, was 600 per cent underlining the fact that Insolvency and Bankruptcy Code's resolution plan gives better returns for those creditors.

The company, the example of which I have given you, was in the BIFR. I have not named the company. It was with the BIFR for a decade, and, because of IBC, it was able

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to come up for a solution. Company was revived, Mr. Viswam, the company was revived and the creditors got 600 per cent of the liquidation value. Without IBC, and, this is something which I would like to inform all the Members, creditors would have got only one per cent of the claim, that is, Rs. 9 crore. So, the IBC actually benefits every one of the creditors, not just the big. Forgetting the small is not on the agenda, in fact, the small benefit, and, even more, companies are not shutting, resulting in unemployment; companies are resuming, resulting in workers going back to work.

Shri T.K.S. Elangovan spoke about dues of the Government. This is not a new provision, Sir. It exists even today as it is under Section 53. The Bill only clarifies it. Case laws have also been holding up the fact that Government dues to be treated at operational debt level.

Sir, now I come to a last few responses. I won't take more of your time. You have been very generous but I thought that it is important for me to respond to all the Members who have raised all these questions and it matters to the Indian economy that the step being taken by the Government, through the amendments in the IBC, is largely approved by all our Members because that is the message which has to reach the industries, which has to reach the workers, which has to reach the public at large that moneys are not being forgotten, the value of the assets are not being forgotten, the workers are not forgotten by the IBC. It is made for all, it is not made for any one particular section.

Sir, Shri Ragesh had asked several questions. Corporate establishment and corporate person are not different. Sir, through you, I want to inform the Member who asked this question. Insolvency of corporate persons has commenced; insolvency of individuals is yet to commence. Individuals are of three categories, (i) personal guarantors to corporate debtors, (ii) partnership and sole proprietorship firms, and, (iii) other individuals. So, insolvency of individuals will be implemented in a phased manner. We are working on it. We have started the work on it.

Shri Vijayasai Reddy suggested the Government should rescue financially-viable companies. Government is facilitating the rescue of such companies. The commercial matters are decided, as I said, by the CoC, and, not by the Government. The stakeholders who are in the CoC decide it. The Government does not intervene in the process.

I think I have mentioned quite a few on MSMEs. There was this question, I am not sure which of the hon. Members had asked this, what happens if an SME has an account in a bank which has NPA, whether we will forget them and so on. I want to assure you here that the provisions of the sub-sections (c) and (h) of Section 29A shall not apply to the Resolution Applicant in the CIRP of the MSMEs. Thus, the promoters of the corporate debtor can make application as a Resolution Applicant even if they have an account with the bank which has an NPA. Even when they are in the NPA stage, they can still ask for resolution.

Dr. T. Subbarami Reddy, who normally takes a lot of interest in all the Bills which come up for discussion and goes through a lot of details and comes up with very valuable suggestions and valuable amendments, also had an observation on the insolvency professionals. He observed that the professionals throw out the management. It does not work that way, Sir. It is the creditor-in-control model. We moved away from the debtor-in- possession model which I did read out when I made the initial remarks. The difference between the way in which SICA and the SARFAESI Act dealt with companies and now the IBC deals with companies is that we have moved away from the debtor-in-possession model which did not work at all. The professional is adequately empowered and enabled and he does not throw out managements.

DR. T. SUBBARAMI REDDY: Once a professional is appointed, he gets abnormal powers. He simply deals with the Company Board and takes over the management of the company and nobody can touch him. He can derail the company. All the creditors, which are commercial banks, will lose the money. This is a very important issue. Please check it up.

SHRIMATI NIRMALA SITHARAMAN: Sir, the Indian Contracts Act, partly also answering Dr. T. Subbarami Reddy's point, allows the lender to realize from the borrower or the guarantor also. So, the lender goes to the borrower first and then to the guarantor.

I think as we were discussing the Bill, in one of the interventions, Shri Kapil Sibal mentioned that taking into account the order of priority and value of security interest of a secured creditor.., it is the domain of the CoC, the Committee of Creditors, to decide. They may decide to take more or less on their own volition. The extent of security interest is a material information. At this stage, I think I broadly touched upon that response. There can always be greater discussion, Mr. Kapil Sibal. Mr. Deputy Chairman,

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through you, I request him for any such suggestion or guidance that he may want to give, but later.

Shri Ravindra Kumar had said that the period of limitation should be there. Section 238A introduced on 6th June 2018 provides for applicability of the Limitation Act of 1963. So that is taken care of.

I now respond to the five points which Shri Jairam Ramesh made as the concluding remark. What happens if the successful bidder does not pursue? The regulations introduced on 24th January of 2019 require performance security before approval by adjudicating authority. Criminal prosecution is also possible. If somebody who has successfully claimed that he could come up with a thing and then bids for it and later does not show up, in that case, criminal prosecution is permissible. IBC has actually an overriding effect. For instance, you asked whether IBC will override SEBI. Section 238 provides that IBC will prevail in case of inconsistency between two laws. Actually, Indian courts will have to decide, in specific cases, depending upon the material before them, but, largely, yes, it is IBC. Then, on individual insolvency you spoke of MSME promoters and so on. Rules and regulations in respect of personal guarantors to corporate debtors are ready. We would be operationalising them soon. There are two other categories, proprietors and partnership firms, which would also come in the realm that you are talking about, and other individuals would be done in a phased manner, but we are making provision for all of them.

There is also this question about indemnity for successful resolution applicant. The amendment now is clearly making it binding on the Government. It is one of the ways in which we are providing that. The Government will not raise any further claim. The Government will not make any further claim after resolution plan is approved. So, that is going to be a major, major sense of assurance for the people who are using the resolution plan. Criminal matters alone would be proceeded against individuals and not company. There will be no criminal proceedings against successful resolution applicant. There will be no criminal proceedings against successful resolution applicant for fraud by previous promoters. So, I hope that is absolutely clear. I would want all the hon. Members to recognize this message and communicate further that this Code, therefore, gives that comfort to all new bidders. So, now, they need not be scared that the taxman will come after them for the faults of the earlier promoters. No. Once the resolution plan

is accepted, the earlier promoters will be dealt with as individuals for their criminality but not the new bidder who is trying to restore the company. So, that is very clear.

Then comes Information Utility, on which you have asked something. We have only one IU. Creditors are learning to use it. Operational creditors are individuals. Mandatory submission of information by everyone may be difficult at this stage. Last thing is about MSME which you had raised beyond your five points. Section 240A and sub-sections (c) and (h) of Section 29A – I read this before also – do not apply to resolution applicant for MSME. Government may relax any provision for MSME. You have given a suggestion. We take that on board. We would see what we can do about it. However, there is a definition of MSME in the MSME Act, to which you referred to. Apparently, the Government wanted to redefine MSME to have its expanded scope. Maybe, we would be able to respond to this a bit later. However, MSMEs, as operational creditors, are using the Code and benefitting. Some of the figures I read here were benefits which accrued to smaller units. Information Utility accepts information from everyone including the MSMEs. I have mentioned that it can help. Mr. Deputy Chairman, Sir, you have been very indulgent and given me all the time to respond to everybody; I hope I have not missed out any individual who asked any question. But, largely, this debate has been very invigorating. I am very grateful that everyone participated with such in-depth arguments. I hope once this gets passed, I would only underline the gravity of this that a unanimous passing of such an Act would give a message to our economy and I am very grateful in anticipation that we would pass this Bill today. Thank you.

MR. DEPUTY CHAIRMAN: Thank you. I shall now put the Motion moved by Shrimati Nirmala Sitharaman.....*(Interruptions)*…

SHRI K.K. RAGESH: Sir, I have one small question. …*(Interruptions)*… Section 60 of the principal Act is not notified. Even after two-and-a-half years of enacting it, Section 60 is not notified. …*(Interruptions)*…

MR. DEPUTY CHAIRMAN: Thank you. …*(Interruptions)*…

SHRI K.K. RAGESH: What are the steps that the Government is going to take? Will the Government notify Section 60? …*(Interruptions)*…

MR. DEPUTY CHAIRMAN: Thank you. I shall now put the Motion moved by Shrimati Nirmala Sitharaman for consideration of the Insolvency and Bankruptcy Code (Amendment) Bill, 2019 to vote. The question is:

"That the Bill further to amend the Insolvency and Bankruptcy Code, 2016, be taken into consideration."

The motion was adopted.

MR. DEPUTY CHAIRMAN: We shall now take up Clause-by-Clause consideration of the Bill. In Clause 2, there is one Amendment (No.3) by Shri Manish Gupta. Are you moving your amendment?

SHRI MANISH GUPTA: Sir, I am not moving.

Clause 2 was added to the Bill.

Clause 3 was added to the Bill.

MR. DEPUTY CHAIRMAN: In Clause 4, there is one Amendment (No.1) by Dr. T. Subbarami Reddy. Are you moving your Amendment?

DR. T. SUBBARAMI REDDY: Sir, I want to place on record.....*(Interruptions)*…

MR. DEPUTY CHAIRMAN: Are you moving or not? …*(Interruptions)*…

DR. T. SUBBARAMI REDDY: Before that, I would like to say that the Finance Minister has given an extraordinary and exemplary reply. I compliment her. I am very much satisfied.

MR. DEPUTY CHAIRMAN: Thank you.

DR. T. SUBBARAMI REDDY: There is only one small thing before my decision as to whether to withdraw or to go for division. The most important thing is the third party. When they give guarantee along with the borrower, they should not straightaway go to the third party. The lender should go to the borrower. This may be examined again by the Minister.

MR. DEPUTY CHAIRMAN: Are you moving it or not?

DR. T. SUBBARAMI REDDY: No, I am not moving.

MR. DEPUTY CHAIRMAN: Thank you.

Clause 4 was added to the Bill.

Clauses 5 and 6 were added to the Bill.

MR. DEPUTY CHAIRMAN: In Clause 7, there is one Amendment (No.2) by Dr. T. Subbarami Reddy. Are you moving your Amendment?

DR. T. SUBBARAMI REDDY: Sir, I am very much satisfied with the reply of Finance Minister. I am not moving.

Clause 7 was added to the Bill.

Clauses 8 and 9 were added to the Bill.

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

MR. DEPUTY CHAIRMAN: Now, Shrimati Nirmala Sitharaman to move that the Bill be passed.

SHRIMATI NIRMALA SITHARAMAN: Sir, I move:

That the Bill be passed.

The question was put and the motion was adopted.

MR. DEPUTY CHAIRMAN: Now, Special Mentions. Shri Jairam Ramesh.

SHRI JAIRAM RAMESH: Sir,....*(Interruptions)*…

MR. DEPUTY CHAIRMAN: Please, let the House be in order. …*(Interruptions)*… Special Mention of Shri Jairam Ramesh. …*(Interruptions)*… Please speak. …*(Interruptions)*… Please let the House be in order. …*(Interruptions)*… Please. …*(Interruptions)*… He is your Member. …*(Interruptions)*… Call him back. …*(Interruptions)*…

श्री जयराम रमेश : सर, देखिए, इतने लोग खड़े हुए हैं।

MR. DEPUTY CHAIRMAN: Please, Jairam*ji*, you continue. …*(Interruptions)*… You continue, please. …*(Interruptions)*…

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