STATUTORY RESOLUTION

SEEKING DISAPPROVAL OF THE SECURITISATION AND RECONSTRUCTION OF FINANCIAL ASSETS AND ENFORCEMENT OF SECURITY INTEREST (SECOND) ORDINANCE, 2002 (NO.3 OF 2002)

AND

GOVERNMENT BILL

THE SECURITISATION AND RECONSTRUCTION OF FINANCIAL ASSETS AND ENFORCEMENT OF SECURITY INTEREST BILL, 2002.

SHRI KAPIL SIBAL (Bihar): Mr. Vice-Chairman, Sir, I beg to move:

"That this House disapproves the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest (Second) Ordinance, 2002 (No.3 of 2002) promulgated by the President on 21st August, 2002."

Sir, I consider it a privilege to move this Statutory Resolution. But I would like to say, at the outset, that, in the ultimate analysis, we, the Congress Party, would support the legislation and have it passed. I would like to give an explanation as to why this Statutory Resolution was moved. We believe that an economic legislation of this magnitude and complexity should only be brought to the House through a process of discussion and discourse with all the constituents of Parliament. We believe that an economic legislation of far-reaching importance and far-reaching significance, especially, in the context of mounting NPAs, which have risen over the years, should not be brought through the Ordinance route. The Ordinance route should only be used in certain very extra-ordinary situations, and in an emergency, when no other recourse is possible. It is with this in mind that we have moved this Statutory Resolution, because we do disapprove this particular avenue that the Government has adopted. It is not the first time that the Government has adopted this avenue. There have been several occasions in the past, and I may remind the House, that on most of the occasions, we took objection to that, whether it was with respect to the amendment to the Passports Act, which was brought through the Ordinance route, or whether it was with reference to the taking over of the Sapru House, which was also brought through the Ordinance route. On all these occasions, we raised objection. Then we had consultations with the Treasury Benches; and, pursuant to the consultations, those Bills were moved and passed. In this context also, I would like to say that this

particular route should not have been adopted by the Government. In fact, the opposition should have been taken into confidence. I am sure, this is a matter which does not just concern the Treasury Benches, it concerns all of us. And for the mounting NPAs that have troubled us over the years, we would have sat down together, passed an appropriate piece of legislation, but, nevertheless, I say that it is better to have a flawed law than to have no law at all. So I commend to the House the passing of this piece of legislation. I really did not think that I would have to speak because there were so many other hon. Members who were to move the Statutory Resolution but I just happened to be in the House. Anyway before I move on to some of the specific issues, I would like to mention that on the 9th October, 2002, a letter was written to an hon. Member of this House by the Reserve Bank of India when a question was put by an hon. Member as to what is the total NPAs in the country especially in the context of banks and financial institutions and, Sir, as of 31st March, 2002, the quantum-wise gross NPAs of public sector banks, as on that date, was Rs. 55,282 crore, as on 31st March, 2002. And of this total amount, Rs. 4,464 crore were NPAs in respect of non-payment upto Rs. 25,000 and Rs. 5,267 crore were NPAs between Rs. 25,000 and Rs. 1 lakh. Above Rs. 1 lakh and upto Rs. 5 lakh, the amount of NPAs was Rs. 4,277 crore, above Rs. 5 lakh and upto Rs. 1 crore, this amount was Rs. 7,875 crore, above Rs. 1 crore and upto Rs. 5 crore, this amount was Rs. 10,560 crore, above Rs. 5 crores and upto Rs. 50 crore, this amount was Rs. 16,809 crore, above Rs. 50 crores and upto Rs. 100 crores, this amount was Rs. 2,444 crore. Above Rs.100 crores, there are Rs. 798 crores as NPAs but there are only six parties that are involved, only six accounts that are involved, for above Rs. 100 crore.

In respect of Net NPAs, sector-wise NPAs, the data are not available, they say, denomination-wise, but between the priority sector and the non-priority sector, an amount of Rs. 25,139 crore is in the priority sector and Rs. 29,026 crore in the non-priority sector. And similar figures have been given in respect of financial institutions. In their case, the total NPAs are Rs. 22,554 crore. So, in respect of public sector banks and financial institutions, together, the total NPAs are over Rs. 77,000 crore. And I dare say, if that is the figure as on 31st March, 2002, between then and now this figure would have increased. Therefore, this is a real problem that faces our country and I think that immediate and rather drastic measures have to be taken in order to recover these NPAs and we are aware that a lot of these NPAs are created for various reasons which I do not want to go into at this stage.

3.00 p.m.

Now, Sir, what does this Bill try to do? I won't go into specific provisions of the Bill. But what does it try to do? Basically, what it tries to do, in essence, is to ensure that there is no intervention of the court when a creditor, namely, a bank issues a notice to the debtor and within a period of 60 days, the debt is not repaid. After following the Reserve Bank of India guidelines in respect of NPAs, I think that if for a period of 90 days, a particular debt continues to be an NPA, then it is a non performing asset in the hands of the creditor as will be reflected in the books of the bank. Thereafter, a notice of 60 days is given. If within those 60 days the debtor does not pay the money, there shall be attachment of his property and the debt should be recovered. It is reflected in clause 13 of the Bill. I would like to draw the attention of the hon. Members to this particular provision. It says, "Where any borrower, who is under a liability to a secured creditor under a security agreement, makes any default in repayment of secured debt or any instalment thereof, and his account in respect of such debt is classified by the secured creditor as non-performing asset, then, the secured creditor may require the borrower by notice in writing to discharge in full his liabilities to the secured creditor within sixty days from the date of notice failing which the secured creditor shall be entitled to exercise all or any of the rights under sub-section (4)."

What does clause 13(4) say? It says, "in case the borrower fails to discharge his liability in full within the period specified in sub-section (2), the secured creditor may take recourse to one or more of the following measures to recover his secured debt, namely:-

take possession of the secured assets of the borrower including the right to transfer by way of lease, assignment or sale for realising the secured asset;

take over the management of the secured assets of the borrower including the right to transfer by way of lease, assignment or sale and realise the secured asset;

appoint any person to manage the secured assets the possession of which has been taken over by the secured creditor;

require at any time by notice in writing, any person who has acquired any of the secured assets from the borrower and from whom any money is due or may become due to the borrower, to pay the secured creditor, so much of money as is sufficient to pay the secured debt.

Now all this happens without the intervention of the court. I think the Government is aware of the fact that the moment court procedures are involved, in many situations the courts do grant stays and when the courts grant stays then the very purpose of the legislation is lost. Therefore, let us include in this legislation a procedure which allows the creditor to secure his debt without the intervention of the court. I think that in essence is the intent of the Government. That is why they have brought in this provision.

My worry is -- this is something that I would like to flag at this point of time and I would like the hon. Members to take note of it -- the moment possession is taken of the asset which has become a NPA, at that point of time, the secured creditor is entitled to transfer that asset to any third party. When that asset is transferred to any third party, that third party gets the asset cleared of any encumbrances. In other words, he gets a clean and clear title to the asset. Let me quote one simple example. Let us assume that an asset is worth one hundred crores and it has been transferred to the third party because the financial institution or the bank felt that it was impossible for them to recover the entire money. Rs. 100 crores may be the principal amount or may be the interest, compounded interest and penalty amount. Or Rs. 100 crores may not itself be the principal amount. The principal amount may be Rs. 30 or Rs. 40 crores and the rest of the money may be interest and penalty. So the financial institution or the bank may think that it is better for them to transfer it to a third party and get the money now instead of fighting a litigation for the next 20 years and not recovering anything at all. So the third party gets a clean title. My worry is that in the process of the implementation of the law it should not happen that transfers are made to third parties for a song. If you make the transfer for a song, what happens is that once the third party gets the asset, that transfer cannot be challenged in a court of law. And, the financial institution, of course, gets less than what it deserves. So, there must be some mechanism that should be put in place either through the promulgation of rules about the real valuation of the asset and at some stage, the debtor should be associated, or, the true value of the asset should be determined so that institutions cannot transfer valuable assets to third parties in whom they might well be interested. I am not making any charge. This is a possibility and therefore, we must ensure that this does not happen. That, Sir, is one particular concern that I would like to flag. The reason why I say, Sir, is this because sub-clause 6 of the clause 13 says the following and I read it:

"Any transfer of secured asset after taking possession thereof or take-over of the management under sub-section 4 by the secured creditor or by the manager on behalf of the secured creditor, shall vest in the transferee, all rights, in or in relation to the secured asset transferred as if the transfer had been made by the owner of the secured asset."

In other words, even though the transfer is being made by the bank or the financial institution which is the secured creditor under sub-clause 6, when the transfer is made to a third party, sub-clause 6 says, "as if the transfer has been made by the owner of the asset." Now, therefore, the creditor is really in the shoes of the owner of the asset and he is transferring the asset. So, some framework to ensure that assets are not transferred to interested parties and as and when they are transferred, they must be transferred for their true value. And the reason why I say this is that we have had some very, very disturbing instances even in the disinvestment process. And, assets have not been transferred for their true value. We have the excellent example of the Centaur Hotel. When in Mumbai, Centaur Hotel was transferred through a disinvestment process, where the Government has always claimed that the valuation is done by international valuers. In that process, that asset was transferred to a particular party for 80 odd crores and within a couple of months thereafter, that very party told that that asset was transferred, sold it further and made a profit of Rs.32 crores. Now, if this could happen in the disinvestment process, I am a little worried that that may well happen and I am not blaming any Government for it, but I am saying that processes are such, and ultimately these laws are implemented by human agencies. Laws are not implemented by the God. They are implemented by human agents, and human agents sometimes, occasionally, as we have seen in the recent past, do get their hands tainted. So, we must make sure that this does not happen. So, that is one concern I want to flag.

The second issue, Sir, which I would like to raise is that there is no effective appeal given to the debtor in respect of the transfer of the asset, or, otherwise. And, the reason why I say that, Sir, is that Right of Appeal is set out in Section 17 of the Act and this is what it says: "Any person including a borrower, aggrieved by any of the measures referred to in sub-section 4 of Section 13" which I have already read, "taken by the secured creditor of the authorised officer under this chapter, may prefer an appeal to the Debts Recovery Tribunal, having jurisdiction in the matter within 45 days from the date on which such measure has been taken, wherein an appeal is

preferred by a borrower, such appeal shall not be entertained by the Debts Recovery Tribunal, unless the borrower has deposited with the Debts Recovery Tribunal 75 per cent of the amount claimed in the notice referred to in sub-section 2 of the Section 3 provided that the Debts Recovery Tribunal may, for reasons to be recorded in writing, waive or reduce the amount to be deposited under this section." My point here is that if you are going to give a right to the debtor to file an appeal within 45 days and he is required to deposit an amount of 75 per cent of the amount sought for in the notice, because you know, Sir, the amount sought for in the notice would be the principal amount, the interest amount plus the penal amount. He must, therefore, deposit 75 per cent of that amount before he is even heard. Now, if he had the 75 per cent of that amount, then he would have gone to the financial institution and bank and said, "Look, I want to resolve this issue. Take this 75 per cent that you have asked and resolve the issue with me". This 75 per cent includes the principal, the interest and the penal interest, and every financial institution and bank would be happy to do so if he had that kind of money. So, this right of appeal is an entirely illusionary provision because it is predicated on the fact that he deposits 75 per cent of that amount. That, I think, is an unfair procedure and, I think, the hon. Minister should look at it and see to it that a fair procedure is evolved through which somebody has a genuine right of appeal especially in the context of the fact that when an asset is transferred to a third party, in any case, the third party gets a clean title of it and, therefore, that asset cannot be transferred. So, give him at least that right of appeal because this situation arises after the assets get transferred and there is no judicial intervention prior to that stage. Even if you were to accept that as correct, -- no doubt, we are going to support this Bill because, as I said, it is better to have a flawed law than no law at all -- at least, at some stage, give him that right. That is the second concern that I would like to flag.

Now, the third aspect is that apart from transferring the asset, the management can also be transferred. And there also, nobody can be questioned. Now take a case where some industrial house is manufacturing a particular commodity, and when a particular debtor is unable to pay his debt, then, that manufacturing house, indeed, can get the management of that asset which in fact, helps that business house in the manufacturing activity, and that cannot be questioned. Sometimes you know that in a lot of these commodities, the income in cash is much more than the income which is above board. So, if you give the management in the hands of the third party, which cannot be questioned in a court of law, because it is a

procedure outside the court, then, I am afraid, some occasions may well arise where managements may make much more money, as you know, for their benefit, even though ostensibly they are not making much money. Again rules must be framed, procedures must be adopted, to ensure that all this is transparent, that all this is open, that there is no abuse of the processes, and that its objective is valid. But I am afraid that, in the implementation part thereof, there might arise some problems. That is all that I am bringing to the notice of the hon. Minister.

Now, there is one other aspect of this Bill which I would like to touch upon. Sir, I don't want to take much time of the House because some of my colleagues will have to speak. If we look at the title, it is called 'The Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Bill'. There are two aspects of the Bill. So far I have touched only on the aspect 'Enforcement of security interest' because Sections 30 and...

THE VICE-CHAIRMAN (SHRI SANGH PRIYA GAUTAM): Mr. Sibal, the time allotted for this Bill is four hours. So, kindly be brief.

SHRI KAPIL SIBAL: I have not repeated any point. I am supporting the Bill...

THE VICE-CHAIRMAN (SHRI SANGH PRIYA GAUTAM): That is okay. There are four more speakers from your party...

SHRI KAPIL SIBAL: Don't worry, Sir. I am not repeating any point. I have flagged two concerns; and, in fact, the Treasury Benches should be delighted that on this issue all of us are together.

I was saying that there were two aspects of this Bill. One is, Enforcement of Security Interest, and the other is the Securitisation and Reconstruction of Financial Assets. So far, I have dealt only with enforcement of security interest; in other words, when there is security in the hands of the creditor, how it has to be enforced. It can be sold off to a third party or the management can be given and all that. But that relates to only the enforcement of security. There is a very important part, which is securitisation and reconstruction of assets. Now, how is that brought about by virtue of this legislation? Let me explain it for the benefit of the hon. Members, in a couple of minutes.

In other words, you can have securitisation companies defined in Clause 2 (za) and reconstruction companies in Clause 2(v). Now, what happens is, that you and I or anybody, who has one crore of rupees can set up a company with an initial capital of Rs. one crore and call it a securitisation company or call it a reconstruction company. What does securitisation company mean? I go to the bank and the bank has, through the enforcement, taken over the asset. I tell the bank,"I well secure the credit that you have given." The debt will be secured by me because I have set up a securitisation company, so I receive the money of one crore of rupees and I set up that company and, if, say, it is a financial institution that is involved, I will tell the financial institution,"I will issue you receipts to ensure that your debt is secure. Now, you give over the asset to me." Suppose there is a mill which is running into a loss of Rs.50 crores. The financial institution says,"Rs. 50 crores is the amount that I paid to you, with the interest over and above, that comes to over 100 crore of rupees." And, therefore, it takes over the mill. I set up a securitisation company and I go to the bank or financial institution and say, "Give me the asset, and I will secure you of your debt, because I have set up a securitisation company". Now, once I secure you of your debt, you are not concerned with the asset, because you are only concerned with your debt and I will release it, because I will give you security receipts and you can encash those security receipts; that is not a problem. Now, with that one crore of rupees and with that asset in my hand, I can go to the bank and get more money.

SHRI C. RAMACHANDRAIAH (Andhra Pradesh): Sir, I am sorry. The company has to register for Rs. two crores ...*(Interruptions)*...

SHRI KAPIL SIBAL: All right, one or two crores. It does not make any difference. Two crores of rupees is not too much of money in the market today. So, you can have hundreds of securitisation companies. So, what you do, you take the asset, you give security to the creditor and then you can go to the bank and ask for further loans. So, more money is poured into the asset and you pay the money to the bank and you have got the asset. So, the real value of the asset that is transferred to you may be Rs. 200 crores. The security that you offered may be Rs.75 crores because that is the deal that you have with the financial institution or the bank. So, you have got a profit of Rs.125 crores and you sell that asset the way you like. Now I am a little worried again, that unless rules of transparency are framed, this provision may also be misused and ultimately more money may be poured by the banks or financial institutions into the securitisation

companies. But, of course, if more money is poured, then under the Act there are provisions by which the financial institutions will have directors over the securitisation company to manage the affairs of the company. But, that is another concern that I am flagging which the hon. Minister may well consider.

Then the other company is called the reconstruction company. Again, apart from security, you will reconstruct the company. It is like BIFR (Board of Industrial and Finance Reconstruction) except that this is now in private hands. What is happening, Sir, is that in the era of globalisation, public debt is also sought to be privatised. We are in that era of liberalisation and globalisation. We have seen that Governments, financial institutions and banks are not able to recover their debts and they get involved in court procedures, which are tardy, which are lengthy and which make it impossible for them to recover their debts. So, they say,"All right. Let us set up a procedure in the era of globalisation to give the recovery process in the hands of the private sector." So, this legislation is really a privatisation of the recovery of the debt. Because, this government believes that the process of privatisation is better than giving authority to the public institutions and, in the context of that, they are privatising the debt. It is fine, we have no problem with that. But, we want to beseech the Government to ensure that this process of privatisation and this process of recovery of moneys, of reconstruction of companies, of securitisation of the asset, is effective, is efficient and that more public sector money and more money from the banks is not poured back into these very assets to multiply the already non-performing assets and the quantum of those assets. With these words, I conclude.

THE MINISTER OF FINANCE AND COMPANY AFFAIRS (SHRI JASWANT SINGH): Mr. Vice-Chairman, Sir, hon. Members are, no doubt, aware that our banking industry has to increasingly comply with international prudential norms and accounting practices. There remain, however, certain areas in which the banking and financial sector need to take further action. Until recently, there was no legal provision for facilitating securitisation of financial assets so as to generate immediate liquidity. Indian banks, unlike banks in several other countries, had no powers to enforce securities except by going through time-consuming judicial processes. Our legal systems, when dealing with commercial transactions are not yet in pace with a rapidly transforming commercial environment. This results in asset-liability mismatch as well as mounting levels of Non-performing Assets (NPAs) in banks and financial institutions.

It is to overcome these problems that the Securitisation and Reconstruction and Financial Assets and Enforcement of Security Interest Ordinance, 2002, was promulgated on the 21st of June, 2002. This Ordinance enables banks and financial institutions to realise long-term assets, manage problems of liquidity, asset-liability mismatch and improve recovery by exercising powers to enforce securities easily. Copies of this Ordinance were placed on the Table of the House. The Bill to replace the Ordinance was introduced in the Lok Sabha on 19th July, 2002. Notice for consideration of the Bill was also given on 19th July, 2002. Regrettably, however, the Bill could not be taken up for consideration by the Lok Sabha. In the meantime, the Lok Sabha was adjourned *sine die*. The Ordinance was, therefore, re-promulgated on 21.8.2002 to save the actions already taken by banks and financial institutions under it.

It is now proposed to replace that Ordinance by the Securitisation and Reconstruction of Financial Assets and Enforcement Security Interest Bill, 2002 which has exactly the same features as the Ordinance.

Mr. Vice-Chairman, Sir, the Lok Sabha has already given its assent. Though I will subsequently be dealing with the issues that have been raised in the motion of disapproval, let me, at this juncture, refer to a somewhat broader issue which has been raised with me by several other Members, with the highest intentions in their minds. It is possible, Sir, that there will be apprehensions about the applications of these provisions either becoming too stringent in application or being applied in such a fashion as to cause greater distress than at present exists. I wish to assure the House that the Government is conscious of this and that it shall not let it happen. That is why I have already, when I got the responsibility of the Finance Ministry, initiated action on what I have said elsewhere, including in the other House, bringing a Lenders' Responsibility Bill. I am very happy to share with the House that just as it is necessary for the borrowers to behave responsibly, it is our view that it is also necessary for the lenders to conduct themselves responsibly towards the borrowers and to meet their genuine requirements adequately and on time. That is why in advance of preparing for such a legislation, I have constituted a Working Group to study the lenders' liability provisions obtaining in other countries, including in the United States of America, and to make suitable recommendations for our country. This Group, I am happy to inform the House, has already recommended the introduction of a fair practice code as a starting point, and as the first step towards the introduction of a Lenders' Responsibility Bill, which fair practice

code is for banks and financial institutions. The RBI has already been given this fair practice code. It has been prepared in consultation with the Reserve Bank of India, and the Reserve Bank shall shortly be issuing instructions in this regard.

In addition, Sir, based on the experience that we gained, and I don't wish to go into the details of some of these fair practices, though I have no difficulty in enumerating them here, if you so desire, or if anybody so desires, but these fair practices will provide us the requisite experience to prepare a suitable Lenders' Responsibility Bill, which I assure the House, I will come to the House with, and the House then can share its wisdom with us, so that the apprehensions that the hon. Members have about the application of this particular Ordinance and the Bill, they must be fully set at rest. So, that is the responsibility the Government have, not only to the House, but to the borrowers also. I wish to say this, Sir, because this is an aspect that must be borne in mind, and we are aware of this and we shall adequately take care of it. With these words, Sir, I commend that the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Bill, 2002, as passed by the Lok Sabha, be taken up for consideration by the House.

SHRI DIPANKAR MUKHERJEE (West Bengal) : Sir, will the Lenders' Responsibility Bill, which you have referred to just now, be brought through the same route of Ordinance or will it be brought in the form of a Bill?

SHRI JASWANT SINGH: I could not hear that.

SHRI DIPANKAR MUKHERJEE: Sir, the Bill which you referred just now, which you want to present to the House, the Lenders' Responsibility Bill, which you are talking about, we hope that this will also not be brought through the Ordinance route. It will be brought to the House.

SHRI JASWANT SINGH: I understand the hon. Member's concern about the ordinance route. But I also understand that in asking the query, the hon. Member wishes to make a statement that in this ordinance route. No, I assure you that we will come forward with the Bill so that you can, certainly, send it to the Standing Committee. Though, here I must take an opportunity to share with the hon. Members exactly the same concern that I had shared with the other House. When I was the Member of the other House, the Standing Committee system was introduced then. If I recollect right, it was the Ninth Lok Sabha that we did it. It is also a fact of life, Sir, that matters referred to the Standing Committee have now remained with

the Standing Committee, some of the measures for as long as 24 months, which really rather defeats the purpose of referring issues to the Standing Committee. I recognise otherwise what has been said. The Lenders' Responsibility Bill shall be a Bill, when it is ready and appropriate we will come forward with it to the House.

The questions were proposed

SHRI KAPIL SIBAL: I just want to make a mention. I give you one example of the proceedings of the Joint Select Committee on the Money Laundering Bill. The Report of which was furnished to the Government, I think, almost one-and-a-half years ago, and that Bill has not seen the light of the day, till today. So, whereas, there may be Bills which are pending before the Standing Committee, but there are Bills pending with this Government for more than two years, which have not been brought to this House. I just want to place that on record. Please don't blame the Standing Committees. This Government itself does not bring Bills to this House, and it should do so, especially the Bills which have been cleared by the Standing Committee and are pending with the Government.

THE VICE-CHAIRMAN (SHRI SANGH PRIYA GAUTAM): At the time of replying to the debate, the Minister will reply to your questions.

SHRI ASHWANI KUMAR (Punjab): Sir, It is indeed a privilege for me to participate in a debate on what I consider to be a legislative measure of vast importance and crucial significance for the financial health of our economy and for the competitiveness of our industry, as a whole. The Bill is long overdue. The genesis of this Bill could be traced first to the recommendations of the Rajamanaar Committee; then to the Narasimham Committee's Second report; then, to the recommendations of Mr. Andhyarjuna, the former Solicitor General of India, and the two internal committees of the RBI, constituted to look into the matter and scrutinise the proposals which are now before this august House.

Sir, it doesn't require too much conviction on one's part to support, in principle, the measure that seeks to address a malaise that seriously threatens the entire economy of this country. Some figures were quoted a little before in this House. I have a set of figures which I would like to share with this House, only to underscore why this legislation is long overdue, and, necessarily, must have, in my respectful submission, a bias in favour of the creditors.

Today, we have a situation where we are faced with a total non-performing asset portfolio of Rs.83,000 crores, and if stressed assets were to be included it would go to Rs. 110,000 crores; and, according to one estimate, of Ernest & Young, it might reach as much as Rs. 130,000 to 150,000 crores. Sir, as against 2% of NPAs in developed countries, we have a situation where we have 6.74% of NPAs a situation which is totally and completely unacceptable and unsustainable. Therefore, in a spirit of constructive cooperation promised to the Government by my leader, the Leader of the Opposition in the Lok Sabha, Smt. Sonia Gandhi, I support, in principle, the legislative measure that has been introduced.

I have, of course, a number of points, which I wish to make, primarily with a view to ensuring that the few loopholes that have been left unaddressed in the Bill which might, in the long run, have the effect of diluting the efficacy of the legislative measure, are removed. Sir, I have in mind, certain provisions. But before I take the House to those provisions, I would like to express my apprehensions regarding the possibility of the abuse of certain provisions of the Bill.

Sir, whenever we conceive and implement a legislative measure, those of us who have some experience in the practice of law at the Bar know that despite the best of intentions, a given legislative measure can fall by the wayside, if the gaps in its implementation are left unaddressed.

Sir, I know, there are provisions in Chapter-III, which, to some, might appear to be a bit harsh; and I am not oblivious of the concerns expressed by leading Chambers of Commerce in this country. But I have also, before me, a trite comment by the Chief Economic Advisor of the CII, Shri Omkar Goswami, who, in his report--I fully agree with this--says, "There are sick companies, there are sick bankers and unpaid workers; but there are hardly any sick promoters." This is a pointer to some of the undeniable reasons for the mounting NPAs in the country. There are, of course, external factors. There are, of course, factors on which we have no control. But there are very much internal factors which lead sometimes to manipulated NPAs, the siphoning of funds and diversification of funds. Sir, today the banks annually in this country are losing about Rs.5000 crores in interest income alone. All of this ultimately impacts upon the competitiveness of our economy, the health of our financial system and also, Sir, if I may say so, it acts as the single most significant block towards lowering of the interest rate regime. If you do not lower the interest rate regime, there is no way our economy can be competitive in the global

arena. Therefore, Sir, despite the fact that there is always a possibility of abuse of authority, I would be the last person to deny that fact, but we also know -- all of us who practise law -- that merely because of the possibility of perversion of law or abuse of power by an individual bent upon perverting the law, you do not question the validity of a legislation or indeed its justification. Therefore, Sir, I would like to state that as far as the safeguards in the Bill are concerned, I would like to point out that there are five or six important safeguards which do seek to assure all of us here that the possibility of abuse could be addressed and reduced. Sir, these provisions are clause 13(2)(4) (8) & (9) and clauses 17, 18 and 19. In the short while, Sir, I will within five minutes just take the House to these provisions. But, Sir, I am concerned about one provision to which I would specifically draw the attention of the hon. Finance Minister. There is this provision that an appeal to the Debt Recovery Tribunal would not be heard unless 75 per cent of the claimed amount is deposited. This, Sir, is not an unusual provision. We have this provision even in respect of house tax; we have this provision in respect of Income-Tax appeals, etc. The quantum may vary, it could be, at least, 50 per cent or 75 per cent. I would have no difficulty and perhaps the hon. Finance Minister may consider reducing it. It could be 60 or 50 per cent. But that is subject to his discretion. But, Sir, I have a little concern. There is also discretion to completely waive off the deposit of the claimed amount. This is where my apprehension of selective application of the rigour of the law arises. Sir, if you are going to invest the discretion to completely waive off the requirement of deposit, then I dare say that the Government could be open to the charge of deliberately letting in a window for people to escape the rigour of the law. Sir, I know that a rigorous law when rigorously implemented could be harsh. But in the very nature of this legislation, there has to be a bias in favour of the creditors. If you want this legislation to succeed, it must owe no apology to harsh provision without which this legislation is meaningless. Sir, let it not be said that the present chose to pronounce against the future. We do not have the luxury of time. This Bill ought to have been introduced years ago. But, Sir, at the same time, as has been pointed out and rightly so, laws are ultimately implemented by people. And all of us are fallible, some are unconsciously fallible, some are consciously fallible and some are motivatedly fallible. Therefore, as you have assured this House, the law of lenders' responsibility is a *sine qua non* to introduce an element of justness and fairness in the implementation of the law. While we support the rigour of law, we cannot but caution the Government that let the measure not operate in a harsh

manner. Let it not operate unjustly. Let it also not operate selectively. Let it not operate discriminatorily. Let it operate with discernment, humaneness, fairness; and justice of the cause will be best subserved if those who are invested with the responsibility -- indeed, the authority which implements it -- are not only called to account severely when an aberration is brought to their notice, but are warned or are forewarned or are warned in advance that the slightest doubt in the integrity of implementation of the law would likewise be called to account in as harsh a manner as those who wilfully default in making good the payments of public debt owed to the public financial institutions.

One provision to which I specifically draw your attention is Clause 13(13), which, I think, is extremely important. But, before that, I come to Clause 9 of the Bill. It starts with the words, "Without prejudice to the provisions contained in any other law for the time being in force, a securitisation company or reconstruction company may, for the purposes of asset reconstruction, having regard to the guidelines framed by the Reserve Bank in this behalf, provide for any one or more of the following measures, namely..." Here, my apprehension, as a lawyer, is that this being a special legislation, it ought to prevail over all other general or incidental or related legislations. Now, if you are going to say that this is without prejudice to the provisions contained, a serious question of conflict between the provisions of this legislation and other legislations is bound to open the doors of litigation in a very, very destructive manner. I think it must begin with a non-abstantee clause stating, 'Notwithstanding anything contained in any other law, the provisions of this Bill must apply...' Because, if this Bill, in the domain of its operation, is intended to overrule other legislations which are existing and found not to be efficient enough to subserve the policy objectives, then this legislation needs to be given an overriding effect.

Likewise, similarly, there are many provisions which, in my respectful submission, might dilute or give a window in a manner which I suspect is not envisaged or conceptualised in the legislation or conceived by its framers...(*time-bell*)...Sir, I will take just two minutes.

Sir, right to appeal is not an illusion. There is a right to appeal. Yes. It is a conditional right. It is a condition upon the deposit of an amount. But, Sir, eight months are given -- six months before a default converts itself into a NPA -- and, I understand that in 2003, the international prudential norms are going to be applied, and this period might be reduced to ninety days; one will get two months thereafter. Now, six months and

two months comes to eight months, which are good enough a window. Those who want to pay can come up and pay, and there is a provision that if you pay 75 per cent or if you pay before the auction or before the sale, coercive steps will not be taken. So, I think, that is there. However, as I said, if, in an appropriate case, a perversion is brought to the notice of those charged with the manner of implementation, let that representation be considered in all seriousness, not necessarily with bias against whom the law is intended to be applied, but, with a view to affording a reasonable opportunity that would add to the justness of the law and the justice of the cause.

Sir, as I said, in principle, the Congress Party supports this legislative measure. We have drawn your attention to some of our concern, only with a view to ensuring that the efficacy of the legislation is further enhanced and not diluted. Sir, I had made certain suggestions even in my letter to you. There are certain matters of detail. For example, in Clause 14(1)(b), there are references to the forward movement, that you must forward a particular security to so and so. The word 'forward' needs to be substituted by 'handing over' of possession because immovable property cannot be forwarded. It has to be handed over. Of course, there are certain matters of draftmenship. Sir, with your permission, I would like later perhaps, put them on a piece of paper and send them on to you because I do not want to take the time of the House any longer. I am deeply grateful, Mr. Vice-Chairman, Sir, for giving me this opportunity and to the Leader of the Opposition, Dr. Manmohan Singh, for having given me an opportunity to speak on behalf of the Congress Party. Thank you.

SHRI ARUN JAITLEY (Gujarat): Sir, I rise to support this Bill, which has been moved by the hon. Finance Minister. In fact, I must compliment the Finance Minister and his Ministry for having brought about this law because this is already belated. I say it is belated because we have had different experiments as to how banks and financial institutions must try and recover their moneys from defaulting debtors. We had, till about 10-12 years ago, the system where banks and financial institutions had to stand in the queue before courts like an ordinary litigant, and make an attempt to recover their dues. The system did not work well. Thereafter, in the year 1993, the then Finance Minister had introduced the Recovery of Debt Due to Banks and Financial Institutions Act, 1993, which provided for setting up of the debt recovery tribunals, where the banks and financial institutions could go and file the cases for any claim of more than rupees ten lakhs. Now, for

the last nine years, we have also seen the functioning of those tribunals themselves. Additionally, we had attempted through the SICA, also a procedure for rehabilitation of the sick units which was brought about in the year 1985. Today, in the year 2002, we stand confronted with a situation, where the situation -- despite the 1993 Act, despite the SICA -- does not appear to have improved. I have attempted to collect certain figures on aspects that have been referred to by Mr. Kapil Sibal and Mr. Ashwani Kumar in the very useful comments that they have made on this Bill. The situation, in fact, today, is a little worse than is evident from what their figures are. We thought that the recovery mechanism would be much faster before the Debt Recovery Tribunals where, we thought, there would be an expeditious methodology, where instead of moving to courts you move to tribunals, tribunals not being bound by judicial procedures, but bound by the principles of natural justice. But, in the year 2002, we have a situation where the total number of cases that have been filed by the banks and financial institutions before the Debt Recovery Tribunals as on 31st March, 2002, is 56,988. The total claims which have been struck in these tribunals, as a result of claim petitions, are to the tune of Rs. 1,08,665 crores, close to Rs. 1,10,000 crores, that is, approximately 1/4th of what the national Budget is. What we have managed to recover, in the last nine years, as against these claims of Rs. 1,08,665 crores, in terms of decrees on paper -- I say decrees on paper because values of assets deplete and assets have been squandered away by defaulters -- is only Rs. 18,556 crores. The actual recovery of money against claims of Rs. 1,08,665 is only Rs. 4,737 crores. So, when Mr. Kapil Sibal was speaking in terms of alternative routes rather than the route through courts or through tribunals -- which is judicial intervention -- I am sure, he was seized of this gloomy picture where banks and financial institutions have claims to the extent of Rs. 1,08,665/- crores. The amount they have actually recovered is something close to only four per cent of the actual amount due to these banks and financial institutions. This itself, Sir, tells a complete tale of how we have now to think in terms of alternative strategies; how to devise this, and then, how to make sure that the banks and financial institutions are able to get their money back. If we do not do that, the enterprise, the business, or the commercial activity, which is to be funded by the banking sector, by the financial institutions, will itself be in great difficulty because banks, instead of funding businesses, instead of helping sick businesses to revive, are going to feel the brunt of sickness themselves. That seems to be the system, and, I think, we must very honestly confess that judicial intervention in these matters has not been

helpful at all. On the contrary, judicial procedures have provided roadblocks, and they have become a big hurdle in the way of banks and financial institutions recovering their money.

Then, Sir, in 1985, we considered as to how to revive the sick industrial companies, where these moneys were stuck. Most of the NPAs' were blocked in a large number of these companies. So, we devised the 1985 Legislation, which we called the Sick Industrial Companies Act, that is, the SICA. The SICA Act, I believe, was conceptually a defective model. It was a defective model for the reason that the jurisdiction of the BIFR used to be invoked after the net worth of a company became negative, that is, when the liabilities and its losses were more than its assets and reserves. So, when the net worth itself was negative, the company was already a sick company; it was already in the doldrums, and it was a company which was in the fourth stage of cancer, we then, decided to have that company treated, by suggesting that it goes to the BIFR. The entry point into the BIFR was sickness, and sickness was the negative net worth itself. By that time, it was extremely difficult to revive these companies. We then had a provision in the Act itself, which became a great setback for banks and financial institutions, for workmen, and also for other creditors, that the moment a company sought an entry into the BIFR, an iron curtain, by way of Section 22, enclosed it, and nobody could institute an action, not even the workers, to get their dues from that company. As a result, banks, financial institutions, secured creditors, unsecured creditors, revenue departments, workmen, were all being deprived of their dues. The procedures for developing the schemes itself are extremely slow. And, when winding up was suggested -- we, in India, have a procedure for winding up, through the Institution of Official Liquidator. I think, we have a number of people here who are associated with various courts and laws, in different ways, and who, probably, can vouchsafe for this that the process of winding up that we have developed -- recovering moneys through winding up of these companies, for the creditors -- has not succeeded in this country. As far as the BIFR is concerned, we have a situation where, till last year -- I am referring to the period ending 31st October, 2001, -- the BIFR had been misused. We had a total number of 5059 references, of which 1293 were declined on the first day itself, because they were just devices to get into the BIFR, to make sure that the creditors were denied their dues; 792 were held not maintainable, after a hearing. So, almost 2085 references were not maintainable. And, in the last 15-17 years that this law has been in force, the total number of companies which actually got

out of sickness, were only 292. Out of the 5059 companies , which approached this mechanism that we developed in 1985 -- which seriously requires a reconsideration -- only 292 have been able to get out of that sickness. The others were either misused; references were either not maintainable, or which are pending for years. If you look at it, since 1987, that is, during the last 15 years, 22 references are still pending. This was an expeditious methodology of revival of companies. Since 1988, 12 references are pending. Since 1989, 19 are pending; and, as of today, 1508 are pending. Therefore, this mechanism itself has not succeeded. These companies whose cases are pending; which we are trying to revive; at the end of the day, whether in the private sector or the public sector, are national assets. These may be moneys of banks, these may be moneys of financial institutions, these may be moneys of investors, these may be dues of workers, and these may be dues of revenue. These are all national assets which are lying blocked. The net worth of the companies, whose cases are pending there, is about Rs.2,30,000/- crores, but their accrued losses are Rs.3,88,000/- crores. This is a methodology because of which we are, today, locked in a situation where banks and financial institutions, which are supposed to revive the economy by lending money, by investments, are themselves confronted with a situation that they have lent their moneys. During the last nine years, through the existing mechanism, they have been able to get back only four per cent of it, except those debtors who are actually paying back honourably to banks and financial institutions. There is also a dispute about what the figure of NPAs, in this country, is. Mr. Sibal mentioned a staggering figure of Rs.56,000 crores.

SHRI KAPIL SIBAL: I said, for both banks and financial institutions, it is Rs.77,000 crores.

SHRI ARUN JAITLEY:-You are right when you say that in the case of banks, it is about Rs.56,000/ crores-; you are right when you say that in the case of financial institutions, it is about Rs.27,000 crores, but these are the banks and financial institutions that we perceive to be either in the public sector or under the ownership of the people, directly or indirectly. You have old private sector banks, you have new private sector banks, you have foreign banks, you have public sector banks, you have financial institutions, and if you add up the NPAs of each one of these, the figure today comes very close to what Shri Ashwini Kumar has mentioned, a staggering figure of Rs.98,061 crores. This particular law deals with banks, private sector banks, and financial institutions of this kind. So, the NPAs

have reached a staggering figure of Rs.98061 crores, and that is why the Government has seriously been seized of the matter. It is not that only this Government is facing this situation; earlier also, it was there. You had the Narsimham Committee-I, you had the Narsimham Committee-II, and you had the Andhyarjuna Committee. Now, under the present situation what really seems to be happening in this sector is, the creditors are chasing the debtors, the banks are chasing the defaultors, the financial institutions are chasing the NPAs, and those people can broadly not be touched. In a number of cases...*(Interruptions)*..

SHRI KAPIL SIBAL: And defaulters are chasing the politicians.

SHRI ARUN JAITLEY: Well, I was almost tempted to say...*(Interruptions)*...

SHRI KAPIL SIBAL: I am sorry, please take it in a lighter vein.

SHRI ARUN JAITLEY: And, in an equally lighter vein, I hope, it is not the other way round, that is, politicians chasing the defaulters.

SHRI KAPIL SIBAL: I agree.

SHRI ARUN JAITLEY: You have a situation where creditors are chasing the debtors, saying 'please give me my money back.' This particular law seeks to reverse this principle. Some have called it harsh. But, a legislation has to really have a nexus to what the ground reality is. Should we not now reverse this relationship and make sure that debtors start chasing the creditors and start repaying the financial institutions? In fact, the experience, lately, has been that, after this Ordinance was promulgated, a number of people, who had otherwise just turned their backs to financial institutions and banks --an extraordinary large number of them -- have started coming to the banks and financial institutions, presenting schemes for settlement, and paying back instalments. Actually, money has not started flowing in; but has, certainly, started trickling in. Barring a few cases, offers are now being made for settlements, because those people also know that wherever their money is lying hidden, if the money is not paid, their assets are going to be taken over physically, not through judicial intervention. If their houses have been mortgaged, the banks do not have to wait for the next ten years before getting a decree, and, for another ten years, before the appeal is decided. Their houses are going to be taken over by the banks. These gentlemen are going to be on the roads. Because of the new legal regime which is being created, the debtors would

4.00 p.m.

be chasing the creditors and asking for a settlement. The second consequence which this law seeks to avert is that, banks and financial institutions, which would render themselves sick, because there is no efficacious mechanism for recovery of their moneys back, are now in a position to atleast get their money or some proportion of that money by taking over those assets and selling those assets. The defaulters who enjoy the legal regime that they could indefinitely delay the proceedings through judicial mechanism, that facility has now been taken away. Lastly, value of all secured assets, mortgaged assets has depleted; in the last 7-8 years, there is a fall in the real estate prices all over the country. Therefore, banks, which, legitimately, at the time of giving loans, took securities, are today confronted with a situation where the actual value of those securities has been depleted, because the value of real estate in this country has gone down. Therefore, if they have to wait for the next 10 years before they can go to a court and then take possession of the asset and sell the asset, what is the use because in the meantime the values go down. The banks and financial institutions will not be confronted with because of this handicap. Sir, one criticism of this Bill that I have read in the newspapers -- in fact, Mr. Sibal, while supporting this Bill -- I cannot say that was a criticism -- had made this suggestion at the very outset -- was that we are now thinking of a new legal system whereby we avoid a judicial intervention. Let me say, this is not the first time that this has happened in this country. We had existing models available where we were avoiding judicial intervention, and creditors -- both private and financial institutions -- were entitled to take over their assets. For instance, the State Financial Corporations Act. Every State has a financial corporation that gives moneys to various private sectors and small industries. When there is a default under Section 29 of that Act, even without judicial intervention, there is a power available with the financial institution to go and take over the assets. This is a time-tested mechanism, on the basis of which the SFCs have worked. You had the Small Industries Development Bank of India, which is still in operation. There is an identical provision. Without judicial intervention, you can go and take over these assets. You have the IRBI Act, which had a similar provision. Even under sections 172-176 of the Contract Act which deals with bonds, if there is a default, you can sell the asset without a judicial intervention. Under English mortgage which is provided for in the Transfer of Properties Act, it is provided that without judicial intervention, you can go and enforce the English mortgage, though only a limited section

of Indian population is entitled to its benefits. Then, you have bank guarantees. The enforcement of bank guarantees and their encashment does not take place through a judicial intervention, but the moment the person in whose favour the guarantee is issued, is satisfied that default has occurred, he can go and enforce the bank guarantee and collects the money. These are all procedures which have been upheld under our existing rule of law. Even when most of our banks were in the public sector -- now, of course, a large number of them have come up in the private sector also -- this facility is something which we were denying to them.

SHRI KAPIL SIBAL: The only difference between the legislations that you have mentioned and this particular legislation is the following. That whereas in all other legislations, the creditor has a right to sell off the asset, and through a particular procedure. Here the creditor has the right, pending everything to dispose of the asset to a third party, he gets a clean and clear title and that cannot be the subject matter of any dispute, and that cannot be questioned. That particular provision is not there in all the previous legislations. That is the only difference. Except that, what you are saying is all right.

SHRI ARUN JAITLEY : Sir, I do not wish to join issue with my learned friend. But under this Bill, there are already some safeguards which have been introduced, and I would refer to some of those safeguards. You have, therefore, four broad features as far as this legislation is concerned There is a securitisation of financial assets; there is a setting up of a Central Registry for registration of those security interests; there is enforcement of those security interests, and, there is a provision with regard to asset reconstruction. These are the four broad features as far as this Bill is concerned. Now, if we just take clause 13, which is actually the soul of this legislation, if I may say so, without which this legislation would not be efficacious, you first had a provision that a bank or a financial institution which has lent money for the loan to become a Non-Performing Asset. Under the scheme today, it becomes a Non-Performing Asset, if for 180 days there is no payment of instalments. Under the changes which are proposed now, these 180 days is intended to be made into 90 days. After the expiry of this 90 days' period, there is a provision for a two months' notice. So, you tell the defaulter that he is in default for 180 days. It will become 90 days. Since he has not paid back the instalments, you may say that you are giving him a statutory notice, and that you will take action against him. Before you take action under this Section, one bank or one

financial institution cannot just take action. Seventyfive per cent of the secured creditors must agree to take that action. That itself is a safeguard. We can understand this possibility where large borrowings are there, where people are defaulters, to the extent of a few hundred or thousand crores of rupees. There are a number of banks or financial institutions which are involved in the funding of that project. So, all of them have to get together. Seventyfive per cent of them have to agree. There may be cases where these people may feel that it is a running concern, but because it is in a bad cycle, it is in default. Therefore, they may decide to give them some opportunity to restructure the loans. But there may also be cases where everything is being written off. Then, 75 per cent of them must agree. They will then take over the projects under section 13(4). Mr. Sibal is very right when he says that since a notice is issued under Section 13(4), the defaulter has no remedy. Since he is in default for 180 days, and a two months' notice has been issued to him, if, after that, he goes to the court for obtaining a preventive injunction, and if, in such a situation, a remedy is to be provided to the defaulter, then the operation of the whole Act will come to a standstill. The first remedy which has been given to him is, when the posession is taken over under Section 13(4), if he feels that there is a case of vindictiveness or unfairness, a fullfledged right to appeal on every question of law and fact has been provided to him. He can go to the Debt Recovery Tribunal and file an appeal. This is what happens in this process. One change that I mentioned is this. As of today, the creditors are chasing the debtors. The moment his property comes into the hands of the creditor, it is he who will have to run and file an appeal and ask his property back. Since he will be on his knees, he will be prepared to pay something. The debtors will then start chasing the creditors. It is this reversal that this law seeks to bring about. Not only this, there is virtually a second right of appeal. Under Section 18, right of appeal to the Debt Recovery Tribunal is also available to him. This appeal and the second appeal, both are to judicial tribunals. I understand, the appellate tribunals all over the country, which are more than 27 in number, are headed by officers of the level of District Judges. The second appeal tribunals are headed by retired High Court Judges, in four different zones of the country. So, judicial authorities are going to hear the appeals.

There were some different suggestions made by Mr. Kapil Sibal and Shri Ashwani Kumar. They were with regard to mandatory deposit of money at the time of filing appeal. In fact, if not conflicting, two different views were expressed by both of them. Deposit of money at the time of

filing appeal is not something peculiar to this Act. The 1993 law which provided for setting up of Debt Recovery Tribunals, has an identical provision. When you file an appeal, you have to deposit 75 per cent of the money. But, if you have a very strong case and you convince the judge that this money is not owed by you, then he has the power to waive it. He can bring 75 per cent down to 50 per cent or 40 per cent or even to zero. That power has been given to the judicial authority. In any case, there is no need to dilute the power. In fact, the amount mentioned here is 75 per cent. In most other legislations, in the Customs Act or in the Excise Law, when demands are made after adjudication orders, 100 per cent of the deposits have to be made. These are time-tested provisions. In most municipal laws, when municipalities are starved of funds, of property tax or other demands of municipality, the law is, 100 per cent deposit must be made. There is a power given to judicial authorities in most Acts that if he feels there are special reasons, he can waive off any or all the amount. In fact, one Act, where there is no such power, is the Bombay Municipal Act. Shri Murli Deora must have stood up saying that there is no power of waiver at all. So, if you have to file an appeal, you must deposit 100 per cent of the money, and there is absolutely no discretion to waive off that amount. The trend in economic or revenue legislations has been that you must, in order to make an appeal conditional, provide for some deposit. You cannot have the facility of filing an appeal after an appeal and not pay any money. You must pay some deposit and that amount of deposit will not be judged by the bank, but will be judged by the judicial authority after the *prima facie* view, whether the monies are payable or not. In addition to this, there is a very important provision in this Bill- Clause 90. Both learned speakers, who spoke before me, mentioned that there must be no arbitrariness. You cannot pick and choose. This will be done on some sound commercial considerations. Banks and financial institutions may feel that a particular project or a particular industrial undertaking is such that has a bright future, it is just going through a low phase; they may feel that here is somebody who is stifling the money and we must immediately enter and take over the asset. But if they use this power in a *mala fide* manner, Clause 19 provides that if it is wrongfully taken possession for vindictive reasons, or, for some other reasons, banks on the direction of the Appellate Tribunal will have to pay compensation to the person from whom possession has been wrongfully taken up. There is already a provision which provides for this. Mr. Sibal made a point that when you take over possession of these assets, there must be no arbitrariness. You should not be allowed to sell it at an

under-stated value. There should not be any collusion in the manner of creation of third party rights, because in such a situation where the asset of Rs.50 crores is sold for Rs.10 crores, the debtor loses, the creditor loses and the third party gets benefits and, in the process, somebody unlawfully also gets the benefit. I only suggest to my hon. friend that the rules, which have been framed under these Ordinance, have now a specific provision with regard to valuation. After the asset is taken over, there is a provision for fixing the valuation and it says.....*(Interruptions)* Well, the Centaur Hotel case, which you have raised again, may perhaps be a case of being not under-valued, but ill-informed. If you want me to deal straight with the Centaur Hotel, I will deal with it. Values of assets, I must tell you the principle, when privatisation takes place and you sell shares at a particular value, what the value of shares in the market, six months or eight months later, is going to be, is not determinant of what the pre-disinvestment value should be. If you remember correctly, the Government had disinvested the VSNL. The VSNL was disinvested at the value of Rs.202 per share. The market price two weeks ago was Rs.92 per share. The Government had disinvested the CMC. Six months later, the value of shares in the market was twice the amount. The Government disinvested IPCL. The IPCL was disinvested at the value of Rs.230 per share. Now, the value of share in the stock market is Rs.66. What values of disinvested shares six months later or one year later are, is no determinant of what the pre-disinvestment value should be.

SHRI KAPIL SIBAL: You accepted the fact that Rs.32 crores profit ...*(Interruptions)*...

SHRI ARUN JAITLEY: I do not accept the fact. I accept the fact that ...*(Interruptions)*...

श्री जीवन राय (पश्चिमी बंगाल) : शौरी साहब के साथ होगा। ...**(व्यवधान)**... संतूर होटल इश्यु ...**(व्यवधान)**...

THE VICE-CHAIRMAN (SHRI SANGH PRIYA GAUTAM): No intervention, please.

SHRI ARUN JAITLEY: Even on Rs.32 crores, you are ill-informed. Your Rs.32 crores does not take into consideration the ...*(Interruptions)*...

SHRI KAPIL SIBAL: Not mine. Somebody else's..

SHRI ARUN JAITLEY: Since you have chosen to rely on somebody else's borrowed wisdom, let me correct you. Your Rs.32 crores does not

take into consideration Rs.7 crores of stamp duty. Your Rs.32 crores does not take into account the 6-8 months the party had the interest factor, the cleaning of the balance sheet, the disinvestment into the company itself in terms of additions.

SHRI DIPANKAR MUKHERJEE: (West Bengal): Sir, he is opening another debate ...*(Interruptions)*...

THE VICE-CHAIRMAN (SHRI SANGH PRIYA GAUTAM): Your turn will come.

SHRI DIPANKAR MUKHERJEE: It is such a big thing. The Government brings the Bill through an Ordinance. There are so many clauses. The time given to me is 13 minutes only ...*(Interruptions)*...

SHRI ARUN JAITLEY: I had no intention of joining issue with the hon. Member on the Centaur Hotel. But since it was raised twice, I thought something had to be said on this issue. ...*(Interruptions)*...

SHRI DIPANKAR MUKHERJEE: No,no. There is a confusion.

SHRI ARUN JAITLEY: I thought that I have cleared the confusion in respect of Centaur Hotel. ...*(Interruptions)*...

SHRI DIPANKAR MUKHERJEE: Sir, he is no longer a Minister. He is speaking on this Bill in the capacity of a Member of this House, and if there is a charge against the Government, it is for the Government to clarify the same. The Minister concerned will reply to that. It is not his business to reply to that charge. I want a clarification whether he is speaking as a Member of this House or a former Minister or a Minister. What is happening?

SHRI S.S. AHLUWALIA (Jharkhand): He is speaking as a Member of this House.

SHRI ARUN JAITLEY: Sir, I wanted to contest some figures given by the hon. Member. ...*(Interruptions)*... Sir, has my right as a Member to be curtailed? ...*(Interruptions)*... Sir, Mr. Ashwani Kumar had raised a very important question with regard to a conflict that may arise in regard to other laws. Section 31 of this Ordinance does not apply to a large number of transactions. At the same time, it does not bar the application of several other laws under section 37. There are only some laws which are barred, and that also has been clarified not by one but by two provisions of this Bill. Sir, there is only one suggestion that I have to make to the

hon. Finance Minister, and that is, in relation to section 13(2), where it speaks in terms of taking over the management of secured assets of a borrower. So, I would like to know whether in the subsequent rules or the guidelines, which are framed, or even under the R.B.I. guidelines, this point will be incorporated. What is mentioned under the scheme of this Ordinance itself, which we hope will become an Act is, there is 180 days' period for it to become an NPA. There is then a provision for two months' notice, that is, eight months period. There is a large number of very small borrowings, particularly, in the automobile purchases, household items purchases. In industrial corporations and a large number of companies, this six months plus two months period may be a reasonable period. But, in a number of small borrowings, this may itself become a very unreasonable period, where defaults take place. Therefore, when the RBI guidelines are framed, at least, in relation to this, the existing regime which continues, which is governed by the contract itself, may continue or some provisions may be conceived in those guidelines themselves. Otherwise, recoveries of those loans, which are expeditiously proceeded with, may get unusually delayed. With these words, I support this Bill.

DR. M.N. DAS (Orissa): Mr. Vice-Chairman, Sir, I may be permitted to put one question to Shri Arun Jaitley.

THE VICE-CHAIRMAN(SHRI SANGH PRIYA GAUTAM): You cannot put questions to the Member. You can put questions to the Minister.

SHRI C. RAMACHANDRAIAH: Mr. Vice-Chairman, Sir, I thank you for giving me this opportunity to speak. Sir, I rise to support the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Bill, 2002. Sir, the amount of NPAs that are prevailing in this country, is really a matter of grave concern. I had the privilege of speaking on this subject umpteen number of times, and one should feel that it is not any more the lender's problem; it is equally the borrower's problem. Sir, this banking credit from the financial institutions has played a very good role as catalyst for developing the economy of this country. I really compliment the Government for bringing this Bill, though belatedly. This Bill facilitates the commercial banks and the institutions to repossess their assets, to realise their debts without going through the process of law. That is the main positive feature of this Bill. Sir, this right has already been conferred with the State Financial Corporations under section 29, and the Financial Institutions enjoy this right, and they were successful in reducing the NPAs in the States. Sir, I have heard the speeches of so many Members in the Lok Sabha also. Some Members have suggested there

that criminal action has to be initiated against officers of the bank; against the borrowers. Sir, I do accept that there are some wilful defaulters. But, the extent to which this system in this country, the philosophy of economic policy is responsible for these NPAs, has also to be taken into consideration. Sir, it is not that I am supporting any NPAs because it is a great conserve, but it is considerably being reduced from 1992-93. It was 23.18 per cent gross in 1992-93, now it is reduced to 12.4 per cent and the net, 14.46 to 6.74 per cent. Sir, what I am trying to drive at is, it is a very alarming picture, I do admit. But compare it with other countries. One gentleman was referring to developing countries. The situation in Japan is totally alarming. In China, as per our system, it is 20 per cent. But, I do not want to take solace from this, it is not a comforting situation. But, Sir, some historical facts have to be realised. In 1991, the former Prime Minister of this country, Shri P. V. Narasimha Rao, if my remembrance goes well, totally diluted the Industrial Regulations Act, with the good intention of creating the industrial capacity in this country, which was the need of the hour. Entrepreneurial development should be there, and the banks have to come forward. So, there, the question of scrutinising the proposals as per the viability has been given a go-by to a certain extent. So, we were in a hurry to build up the entrepreneurial base in this country so that they could contribute to the economic development. Virtually, within a span of four to five years, the installed capacity in this country in industries has trebled. And there has been a great flow of funds from the financial institutions. In 1997, the then Finance Minister, Shri Chidambaram, virtually cut down the customs duty on imports. So, there was a very great inflow of products from other countries into this country, with which we could not compete. So, that was one of the reasons why the NPAs have gone up in the banks. Many industries have become sick and we want to build up entrepreneurial base in this country, we want to diversify incomes, we want to eradicate academic inequalities, we do not want to build up richness of a few to the detriment of the many. These were all the philosophies that have been adopted rightfully. Of course, because of these measures, it has gone in a different way...*(Interruptions)*...The Chair has to come to our rescue. ...*(Interruptions)*...

THE VICE CHAIRMAN (SHRI SANGH PRIYA GAUTAM): He is coming....*(Interruptions)*...The other Cabinet Ministers are sitting here. Mr. Goel is sitting here; he is a Cabinet Minister. And, another Cabinet Minister is also here.

SHRI C. RAMACHANDRAIAH: And, subsequently, Sir, very well diversified industrial based entrepreneurship has been built up in this country. We can proudly say we are able to address ourselves to the needs at the global level also. Sir, what I am trying to say is this. This problem is not being caused because of any particular reason. There has been diversion of funds and siphoning of funds. Industries may fail because of Government policies; because of some external reasons, or the exports may go down, or the Government may not be in a position to supply the requisite power. So, these are all the reasons which I do not want to go into. Sir, one of the estimates that I read in the papers says that 12-15 per cent diversion of funds is the reason for the industry becoming sick in this country, and we should not claim that all the entrepreneurs, or all the officers, are indulging in fraudulent transactions to grab the amount for killing the industry. That is not true, Sir, It is not true, Sir. And, let us not create the fear psychosis that has been built up in the institutions which were not coming forward. Banks are surplus with funds and no borrowers are coming. It is very difficult for bankers to get good borrowers in this country. Sir, with regard to this Bill, I want to make some suggestions on certain aspects which are not clear with regard to re-construction companies. There is no provision or information in the Bill about who is to fund them. And, the source of funds to the units or the industries, which are being taken over by these re-construction companies, has also to be mentioned in the Bill. Sir, in this connection, I want to make a suggestion. The funds supplied to these institutions should be provided with tax benefits. You are already providing some tax benefits to investments that are being made in backward areas, in venture capital funds and now a virtually dying company is being given a life in this aspect. It is being revived. Tax benefits have to be given so that they act as an incentive. So, this particular aspect of means of finance has to be made clear. And, I fully concur with the opinion expressed by Mr. Kapil Sibal about value determination or to what value you can transfer this asset to an RC. Sir, I used to hear in the villages that if I am a weak man, if I have to get an amount which I lent to a particular person and if I cannot collect, I can entrust it to a rowdy for a commission. He will collect it. You will buy my debt at some discordant price. In fact, I may not extend it to that example. But, how the evaluation has to be done? Who is responsible for making a valuation? And, I need not ...*(Interruptions)*...

SHRI KAPIL SIBAL: Citibank is doing exactly this.

SHRI C. RAMACHANDRAIAH: I am sorry to say that Citibank is doing exactly this and will get commission from both sides. It is the privatisation of debt. That is what is happening. So, this mechanism, which you are proposing to assess the value of the properties which are being transferred, has to be a transparent mechanism. And, Sir, one more aspect is totally absent and it was, again, mentioned by Mr. Kapil Sibal. This Bill takes care of the institution's interest. But, what will be the role of the shareholders? Suppose there is a particular company, with a capital of Rs. 20 crores and a term loan of Rs. 80 crores, is being transferred to this re-construction company at a value of, say, Rs. 60 crores. So, the re-construction company is more concerned to procure price of Rs. 60 crores which has been invested in it. But, what will be the role or the position of the shareholders of Rs. 20 crores? Whose interests are being transferred? That is not clear in this Bill. So, role of the shareholders *vis-a-vis* this reconstruction company has to be made clear.

SHRI KAPIL SIBAL: This point that my colleague has made is the most important point.

MR. CHAIRMAN: The Minister is taking note of it.

SHRI C. RAMACHANDRAIAH: Because we are supporting, they take us very lightly.

SHRI KAPIL SIBAL: They take us for granted.

THE VICE CHAIRMAN (SHRI SANGH PRIYA GAUTAM): I have enquired. One Minister is taking notes. Yes please, go on.

SHRI C. RAMACHANDRAIAH : Should I, Sir?

THE VICE CHAIRMAN (SHRI SANGH PRIYA GAUTAM): Go on.

SHRI C. RAMACHANDRAIAH: Or else, if he directs me, I will make a note of it and give it to the Hon. Minister.

THE VICE CHAIRMAN (SHRI SANGH PRIYA GAUTAM): As you wish. Still time is left for you. You can continue for three minutes.

SHRI C. RAMACHANDRAIAH: Sir, I am making a very valid point. It appears that a good quality of financial asset can also be transferred. This Bill need not cover the NPAs. Even the sound assets, standard assets can be transferred to this re-construction company. This breaches the privity of the contract between the lender and the borrower. If you transfer the

standard assets of a company, which is being run on sound lines, for some other reason, maybe, for transferring the risk or for reducing your lending capacity, the privity of contract between the borrower and the lender is breached. The borrower may not, for a variety of reasons, like the SORC. So, if an asset is a standard one, there should be some safeguard, and it should be transferred only with the consent of the borrower.

There are some deficiencies which I want to point out. I am not well-versed in the subject like Shri Kapil Sibal and Shri Arun Jaitley. They are legal luminaries. What are the problems that we will face while implementing the provisions of the Bill? In the case of an asset, which is not a standard asset, there is a need to incorporate the concept of debt discounting by the original lending bank or financial institution in favour of the SORC, that is, the reconstruction company. *(Time bell).* Sir, you give five more minutes.

THE VICE-CHAIRMAN (SHRI SANGH PRIYA GAUTAM): You have to finish within two minutes.

SHRI C. RAMACHANDRAIAH: In such a situation, this legislation needs to recognise the consideration of the banks or financial institutions. This has not been done adequately. It has to be kept in mind; otherwise, the purpose of this legislation will be defeated. I assume that the rights of enforcement of security interest is available to all secured creditors, not just the transferred company. Suppose my company is being transferred. The securitised company has invested Rs.60 crores, and there are preferential creditors or secured creditors, to the tune of Rs.20 crores. When you are transferring the entire company, the ARC is more concerned with recovering the Rs.60 crores. As regards the secured creditors, to the tune of Rs.20 crores, they are charged on the assets. There is no provision in the Bill with regard to the other secured creditors. If this assumption is correct, the scope of the legislation has to be enlarged.

The SORCs are allowed to sell or lease the assets. This must be accompanied by a supporting legislation. Some consequential changes are also needed in other Acts like the Contract Act, the Transfer of Property Act, the Payment of Wages Act, etc

I want to make some suggestions only, because you have already rung the bell. Most of the NPAs in the country have arisen due to diversion of funds. That is the experience. So, we should develop a mechanism by which the financial institutions could ensure the end-use of funds. We

should ensure that the funds are utilised for the purpose for which they are given. In that connection, the Kohli Committee recommendations are there. Kindly go through those recommendations and implement them.

Sir, I want to conclude with two more suggestions. The NPAs should be avoided at the initial stage of credit consideration, by rigorous and appropriate credit appraisal. But this is not at all happening. So, the Government should come forward with a mechanism so that rigorous and appropriate credit appraisal can be done at the initial stage itself. If there had been such a practice, most of the NPAs could have been avoided at the beginning itself.

The second aspect is that, the lenders are equally responsible for the sickness of the units because of untimely disbursements, laxity on the part of the lenders, and their incapacity to assess the value of the assets. So, that is why industries are becoming sick in this country.

Lastly, Sir, there should be an effort on the part of the Government to change the mindset of the borrowers also. They should realise that this NPA plays havoc and if it is not checked, the economy will be derailed and future borrowers also will not get the credit. So this aspect has to be given serious consideration and the borrowers also should be made aware that this is equally their responsibility also to use the funds for which they are sanctioned. Thank you, Sir.

SHRI DIPANKAR MUKHERJEE : Sir, here is an issue which involves one lakh crores of rupees, just now someone from the Treasury Benches has mentioned. Here is an issue where something is brought through an Ordinance and when the Bill is being discussed, there is no Minister - neither the Minister nor the Minister of State for Finance. So far as the NPAs are concerned, does it mean there is any seriousness on the part of any of them? If you are dealing with this problem with so much seriousness - Why is there no Minister of Finance? Why has it necessitated an Ordinance? The Chair's order is for me. You say that some Ministers are there ...*(Interruptions)*... I ask you, Sir, you have been in the Chair. As it is why you are against the ordinance route itself? Now here is the Bill. Forty-two clauses are there. I have got 13 minutes but आप वहां हैं, 13 मिनट की जगह आप मुझे 25 मिनट देंगे । वह दूसरी बात है कि आप वहां हैं ।

THE VICE CHAIRMAN (SHRI SANGH PRIYA GAUTAM): Why do you presume so?

SHRI DIPANKAR MUKHERJEE : I would like to know what this seriousness is? How do you expect me to speak? Should I speak in this empty House? We have been told, time and again, from every TV channel and everywhere that Parliament is not interested in legislating business. The Opposition is not interested in legislating business. They just want to make some hullabaloo. You must give some sort of direction to the Government. This way, it can not go on, Sir. This way it can not go on. Where is the Minister of State for Finance?

THE VICE CHAIRMAN (SHRI SANGH PRIYA GAUTAM): Mr. Mukherjee, already I have directed the Chief Whip of the Party...*(Interruptions)*...

श्री दीपांकर मुखर्जी : वह भी चले गए । ...**(व्यवधान)**...

श्री नीलोत्पल बसु (पश्चिमी बंगाल): आप जो डाइरेक्शन उनको दिए ...**(व्यवधान)**... मौका पाकर वह भी चले गये । ...**(व्यवधान)**...वास्तविकता है कि यहां पर कोई मिनिस्टर नहीं है।

THE VICE CHAIRMAN (SHRI SANGH PRIYA GAUTAM): I have already directed him to bring either the Cabinet Minister or any of the State Ministers. He has gone there. But under the Rule, it is not necessary ...*(Interruptions)*...He has come.

SHRI DIPANKAR MUKHERJEE : Let us start. Let me start. Sir, as I started from there why we are against this Ordinance route, the first point I have already told when the Minister was not present that thirteen minutes or ten-fifteen minutes time is not sufficient. It requires a clause-by-clause consideration. As some of my earlier speakers did it. Mr. Sibal also mentioned about it.

THE VICE CHAIRMAN (SHRI SANGH PRIYA GAUTAM): The BAC has allotted four hours. You start your speech.

SHRI DIPANKAR MUKHERJEE : Please listen, Sir. This is an issue which has been confronting this country for the last so many years, for a decade. I am not speaking just like that. For years together, I have collected evidence on this. I have got the evidence and names of the defaulters are there. If the Government thought that an Ordinance was necessary, I am not going into why an Ordinance was issued or not issued. Will the Minister lend me his ears? Sir, I would like to know specifically, through this Ordinance which has been promulgated in June, in the last five months, in how many cases this Ordinance could be utilised. In the other

House, it was told that in 10,000 cases, some people have come for settlements. I would like to know how much money is involved in these 10,000 cases? I would also like to know whether they are all small fish? Will the Minister come out with the categorisation of those 10,000 cases; how many of them are big defaulters - more than one lakh or more than one crore.

We have strong apprehensions regarding the implementation of this Bill. Whether it is the Debt Recovery Tribunal or this Bill, it is the political will which is required here to implement it. Do you have this will? In some countries, a defaulter is not allowed to contest an election. The Government has come forward with this Bill. Four years back in this House, we discussed about a company, Dunlop India. At that time, the Government gave an assurance in this House. The charges were by the banks, the UBI and the Consortium. Seventy-five per cent of them decided to go to the Supreme Court. Sir, Rs. 100 crores have been diverted. The company is sick. People are starving and some people are committing suicide. The banks want their assets to be seized. The companies are going to the BIFR and others. Have you used this Ordinance to see that this Dunlop company, which is the only unit in the whole of the country, which manufactures aero tyres which are used for defence purposes, is back on its feet? If not, are you going to use this Ordinance to see that the diversion of funds as has been done by the promoters and the bank's default is taken into consideration? Would you take it up with the Assets Reconstruction Company for the revival of this company? Secondly, are you really serious about the loan defaulters? You are not. I have got two cases. What are you going to do? So far as NPAs are concerned, these assets are going to be seized.

THE VICE-CHAIRMAN (SHRI SANGH PRIYA GAUTAM): Kindly address the Chair. Look at the Chair.

SHRI DIPANKAR MUKHERJEE: I am addressing the Chair. नज़र पर मत जाइए, भावना पर जाइए । The assets are being seized so that loans could be recovered. In the case of disinvestment of one company a specific direction was given that such and such company is taking over this company. It has already been decided to strategically sell Jessops to one company which itself is a defaulter. A question was put in the House to the Disinvestment Minister about Ruia Kotex Ltd. which is a defaulter company. Will that be allowed to take over a public asset? I don't think there is

anything to put a ban on someone who is a defaulter to take over some other public asset. One who is already having non-performing assets is being allowed to take over the asset, if I may say at a throwaway cost, Shri Jaitley would say 'at the market price'! Are you keeping any provisions for that? I know about one corporate name which was discussed in this very House. I appreciate that. Mr. Finance Minister, at that time, you said that this NPA was a loot. You used this word 'loot'. There are some charges of diversion of funds against that company also. But I found their name in the bidders' list who are bidding for a 'Shipping Corporation' a PSU. Is it so that the one who is a defaulter is being rewarded? Are we having a reward-cum-punishment scheme? We have to see this whole Bill in this context. Now you are talking of bringing reforms in the banking system. It has not to be seen in isolation. As the Finance Minister termed it, this money is a loot; we are all concerned about this loot. But are we serious about it? Is this Government serious about stopping this loot? When you are thinking of bringing reforms in the banking system and you are thinking of amending the rules. We have got a lot of apprehensions. We might see some big defaulters taking over the banks. How would the Government ensure that these defaulters would not take over the Assets Reconstruction Company also? These big defaulters are coming in all ways and are actually demolishing the political structure of the democracy itself, we can get more from different parties, some Central parties. I am talking about those, who have got so much of powers. What will do we have to stop them? This is my question. If that is not the case, if this has been treated selectively. It will be some small fellows. It is the small-scale industries, some 5 lakh corporate holders, I have the categorisation, Sir. Would the Government specifically, when the Minister replies, categorise this type of debts, the non-performing assets, that is, beyond rupees hundred crore, above rupees 50 crore, above rupees 5 crore, above rupees 1 crore, above rupees 50 lakh and say what would be your target so far as this Bill is concerned? Whom we are going to target first? This category won so many cases. साहब, जैसे रेलवे में होता है आपने देखा होगा कि टी0टी0 को बोल देते हैं कि वह केस पकड़ लाएं । वह उनको पकड़ लाते हैं, जो छोटे लोग होते हैं, जिनके पास पैसे नहीं होते और जिनके पास पैसे होते हैं वह बीस रुपए पकड़ा देते हैं और उनका केस वहीं खतम हो जाता है । How do we take care of that? Compromise settlements are all like that. People are coming for settlements. That is compromise settlements. But what action will be taken? How would you take care of collusive settlements? How much is the money involved, and how much money has been settled? Even in the 10 thousand cases, I would like to

know what is the money involved and what the Government and the banks have decided that this will be the settlement amount because these are the biggest source where more corruptions, more scams may be heard in the days to come. Sir, while we are talking about the Bill, Mr. Jaitley had referred to DRTs and BIFR. It is not just the mechanism, the law itself; it is the implementation. Hundreds of questions are there. When they were in the Opposition, they should have been shouting them. Many of the DRTs have no infrastructure available. Even within 2 years, after DRTs have been formed, infrastructures were not available. In the BIFR, I attended meetings time and again - four benches have remained. The sickness is increasing, but the number of benches has not increased. And sometimes the Bench of BIFR was even going ahead without any Chairman, almost for a year. But, that was not the problem, BIFR's problem was that it could have been easily amended. Section 22 could have been easily amended instead of going for all this. Section 22 could have been amended. In the BIFR, the main problem is that BIFR has the mandatory power to close down the industry. BIFR does not have the mandatory power to revive the industry. It does not have the teeth. The problem is that it does not have the power to force companies like Dunlop, companies like those corporate defaulters to force them to pay the money, to force them to revive the company. Unless that evil is again reflected, this will be again an exercise in futility. It will be again a selective exercise for certain people and this will be again a selective exercise to get some political patronage also. One thing which is missing specifically here is regarding evaluation of assets of ARC, I need not make that point again. I have to make it very clear from my party. Mr. Jaitley has tried to justify the resale of Centaur Hotel. If that is, the stand of this Government, we are very sure, we are hereby opposing any sorts of evaluation proposed in various methods. I am sure the other parties will join. There will be no sweet words on this. If that is what you are sticking to, the way you are evaluating these assets of public sector companies, that is how this Asset Reconstruction Company will work, we must say that that evaluation will not work, we will oppose it at every step, we will oppose the sale of public assets in the name of enacting this Bill. This will be very clear. This criteria cannot be found out. Each case should be accompanied by CAG's report. We can accept any evaluation only if that evaluation is accepted by the CAG, and not by... *

* Not recorded.

THE VICE CHAIRMAN (SHRI SANGH PRIYA GAUTAM). This will not go on record. You should name the Member properly.

SHRI DIPANKAR MUKHERJEE: I will say that that type of evaluation is supported by this Government and they are insisting that is the evaluation, not based on the market, which will go fluctuating. Lastly, I am coming to the aspect relating to workers. I feel, in this country, workers are also treated as non-performing assets...

THE VICE-CHAIRMAN (SHRI SANGH PRIYA GAUTAM): Your party's time is over.

SHRI DIPANKAR MUKHERJEE: I know that my party has 13 minutes. I have not yet gone into the Bill itself. There are 42 clauses.

Sir, when we talk about sick industries, there are corporate reforms and all that. But what happens to the workers? यह आपको समझना है सर । कम्पनी का नाम पलट जाता है, आज यह है, कल वह है । इसके जो डयूज है, वे कौन देगा ? Here, there is a reference of winding up cases, that is, the closure cases, where as per the Companies Act...*(Interruptions)*...

THE VICE-CHAIRMAN (SHRI SANGH PRIYA GAUTAM): Let him speak. He is competent enough.

SHRI DIPANKAR MUKHERJEE: Supposing a company's asset is taken over by these banks as it happened with Dunlop, then, who is going to take care of the liabilities pertaining to the dues of the workers? Who will give them their dues? I can take the name of Shri Kapil Sibal. But they cannot get the help of Shri Kapil Sibal. Seven lakh fifty one thousand people are involved in BIFR referred companies. When this Government is not paying salaries to the workers, what dues can you expect? If Rs.647 crores have not been paid by this Government for sick companies, what happens to these workers so far as their PF dues, gratuity dues, and other dues of these workers are concerned? If the Government is really serious about the people of this country, they must incorporate a special clause here in this Bill because there is no time once this is passed. Will the Finance Minister, the Leader of the House, kindly look into the problems of the workers that has been untouched here, namely, the security of job of the workers and the dues of the workers? In this changing scenario, where does your asset reconstruction company come and where do the promoters come and who will take care of these lakhs of workers? Who will take care

of their security? Who will take care of their dues? So, in a winding up situation, how are the workers going to be taken care of? I wish you would sit with the trade unions. We should try to create some sort of a measure to see that the workers are not penalised. Mr. Ganapathy, the earlier Chairman of the BIFR, once said, "Companies get sick. The workers are on the rolls. But no industrialist gets financially sick." Will this Government -- even though I don't have much faith in it -- look into this issue, at least for the sake of publicity, so far as the workers' dues are concerned, the workers' rights are concerned? How is this Bill going to affect them, especially, the small scale ones? Will the Government look into it and have some separate clause for protection of dues of the workers involved? Sir, while concluding, I would urge upon the Minister to give me a specific reply regarding Dunlop.

SHRI P.G. NARAYANAN (Tamil Nadu): Mr. Vice-Chairman, Sir, the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Ordinance, 2002, was brought forward to help the banks and financial institutions to reduce the non-performing assets. It helps them to turn their assets into securities, and this would result in minimum liquidity in the hands of banks. The new law would also help the financial institutions in setting up an asset reconstruction company to recover their bad debts. It would also help the financial institutions in the enforcement of security interests. Sir, the Ordinance was based on the recommendations of the Narasimham Committee (I and II) and the Andhyarjana Committee. All these Committees spelt the need for an enactment of a new law for regularisation and securitisation, reconstruction of financial assets and formation of asset reconstruction companies to smoothen the functioning of financial intermediaries. Sir, the Ordinance, though based on the recommendations of the Narasimham Committee and the Andhyarjana Committee, failed to incorporate the provisions earmarked to safeguard the borrowers. While converting this Ordinance into a Bill, we have to consider the points raised by the three committees. FICCI and CII so that we can safeguard the fundamental rights of the borrowers also. So, the Government should see to it that there is no violation of principle of natural justice and should not be a draconian. The law should not infringe upon the fundamental rights of the borrowers, there should be some remedy. Provisions for safeguarding the borrowers should be there, otherwise, unnecessary harassment will jeopardise the lender-borrowers' relationship. This relationship should be safeguarded. Sir, as per the Bill, it is quite possible that the lender could take over a company and remove its Board of

5.00 p.m.

Directors also. The clause asking defaulters to deposit 75 per cent of their dues, before being allowed to appeal and the absence of demarcation between wilful and non-wilful defaulters needed to be rectified. This type of provisions are pro-lenders. The Bill should not be biased. The Bill should be crystal-clear in demarcating the wilful and non-wilful defaulters, so that genuine defaulters are not penalised by the existing provisions. Sir, we should give enough opportunity to borrowers also. Before taking any action, as per the existing provision, we should uphold the principle of natural justice. Though, the Bill will help the bank and financial institutions to reduce their NPAs and permits them for setting up of asset reconstruction company and would also provide statutory regulation for hypothecation. Before passing the Bill, the above points should be taken into consideration including safeguarding the fundamental rights and the principle of natural justice to the lenders. Thank you, Sir.

SHRI S. VIDUTHALAI VIRUMBI (Tamil Nadu): Sir, the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Bill 2002 which has been brought before us for our consideration, I stand by that and support the Bill in principle. Even though the intention of the Bill is good, but in ground reality, it may create some problems in other areas. Sir, the Bill has brought before us on certain realities. The Debt Recovery Tribunal could not collect the money from the borrowers of the banks as well as financial institutions, as expected by the nation. They were able to collect only to the tune of four per cent of the total amount, that is under litigation. Sir, in 1998 the Lok Sabha Estimate Committee has submitted a report in which they have recommended some sort of legal action in order to collect moneys from borrowers of the public sector banks. In 1999, the RBI Working Group on Restructuring of Weak Banks also recommended that the...

THE VICE-CHAIRMAN (SHRI SANGH PRIYA GAUTAM): Mr. Virumbi, please sit down for a minute. Now it is 5 o'clock. I would like to take the sense of the House whether we should continue the discussion on this very subject or we should ask the hon. Home Minister to make the statement.

SOME HON. MEMBERS: Sir, we should have the Home Minister's statement.

THE VICE-CHAIRMAN (SHRI SANGH PRIYA GAUTAM): All right. The discussion on this Bill will continue tomorrow. I would request the hon. Home Minister to make the statement.

[MR. CHAIRMAN in the Chair.]

STATEMENT BY DEPUTY PRIME MINISTER

Attack on Raghunath Mandir in Jammu on 24th November, 2002

THE DEPTY PRIME MINISTER IN CHARGE OF THE MINISTRY OF HOME AFFAIRS (SHRI L. K. ADVANI): Sir, terrorist groups being mentored from across the international border/Line of Control in J&K have struck once again -- this time on the famous Raghunath Temple of Jammu. These terrorists have demonstrated their total lack of concern for the overwhelming yearning for peace demonstrated by the people of J&K when they braved violence and exercised their right of vote in the recent Legislative Assembly elections. The terrorists have simultaneously shown their disdain for international opinion and the efforts of various countries which have been trying to apply moral and diplomatic pressure to end cross border terrorism in India.

In the last three days, there have been a series of attacks by terrorists, chief among which were a suicidal attack on the CRPF Camp at Pamposh Hotel Complex, Srinagar on 22nd November and targeting the Jammu-bound Army convoy through an IED near Jawahar Tunnel on 23rd November. These and the present attack on Raghunath Temple makes one speculate whether it is a mere coincidence that this spate of terrorist incidents has occurred just when the process of government formation has been completed in Pakistan. The spurt of violence also follows the release by the Government of Pakistan of the chief of LET, Hafiz Mohammad Sayeed. After his release, he vowed to continue the "Jehad" in J&K and gave a public call to step up terrorist violence in J&K.

Monitoring of the communication network of terrorists indicates that the Jammu attack is the handiwork of Al Mansooran, which is a cover organisation of the Lashkar-e-Toiba.

The present incident has been aimed at innocent civilians at a public place of worship. Earlier, in March this year also, the terrorists had carried out an attack on the Temple in which five persons were killed. The three terrorists responsible for that assault were also eliminated.