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Title: Introduction of the Insolvency and Bankruptcy Code, 2015.

THE MINISTER OF FINANCE, MINISTER OF CORPORATE AFFAIRS AND MINISTER OF INFORMATION AND BROADCASTING (SHRI ARUN JAITLEY): Madam, I beg to move for leave to introduce a Bill to consolidate and amend the laws relating to reorganization and insolvency resolution of corporate persons, partnership firms and individuals in a time bound manner for maximisation of value of assets of such persons, to promote entrepreneurship, availability of credit and balance the interest of all the stakeholders including alteration in the order of priority of payment of Government dues and to establish an Insolvency and Bankruptcy Fund and for matters connected therewith or incidental thereto.

HON. SPEAKER: Motion moved:

"That leave be granted to introduce a Bill to consolidate and amend the laws relating to reorganization and insolvency resolution of corporate persons, partnership firms and individuals in a time bound manner for maximisation of value of assets of such persons, to promote entrepreneurship, availability of credit and balance the interest of all the stakeholders including alteration in the order of priority of payment of Government dues and to establish an Insolvency and Bankruptcy Fund and for matters connected therewith or incidental thereto "

SHRI N.K. PREMACHANDRAN (KOLLAM): Madam Speaker, I strongly oppose the introduction of this Bill, that is, The Insolvency and Bankruptcy Code, 2015.

Madam, this Bill deals with matters relating to insolvency and bankruptcy. This is a Bill which is having 155 pages, 252 clauses, 11 schedules and 113 corrigenda. This is the situation of the Bill.

My first objection is regarding Rule 69. As per Rule 69, every Bill should be accompanied by a Financial Memorandum. According to Rule 69, the Financial Memorandum should very specifically State the recurring and the non-recurring expenditure to be incurred when the Bill becomes a law. Madam, kindly go through the Financial Memorandum. Clause 11 of the Finance Memorandum says that 'the expenditure on account of the aforesaid would be incurred, but at present, it is not practicable to make an estimate of the financial implications to the Consolidated Fund of India arising from this legislative process. In case of expenditure to be incurred, the Department of Expenditure would be approached in accordance with the rules on the matter.' The first part of the Financial Memorandum of clause 11 states that the expenditure would be incurred. That means the expenditure would be incurred from the Consolidated Fund of India. But the second part of the same clause goes to show that 'if in any case of expenditure from the Consolidated Fund of India, then definitely, we will approach the Expenditure Department.' The Minister or the Government cannot say like this. No expenditure can be incurred by the Government unless there is an approval from the Parliament. The Parliament has the right and authority to see what the expenditure would be from the Consolidated Fund of India.

Unfortunately, nothing is mentioned in the Financial Memorandum regarding the expenditure to be incurred out of the Consolidated Fund of India. ...*(Interruptions)* The Minister or the Government can never say that we will approach the Expenditure Department if any expenditure comes there. ...*(Interruptions)* So, this is absolutely contradictory. ...*(Interruptions)* This statement in Clause 11 of the Financial Memorandum is self-contradictory and it also takes away the right of the Parliament to know as to what would be the expenditure, which is being incurred when this Bill is legislated as an Act of the Parliament. ...*(Interruptions)*

I would like to cite two precedents. ...*(Interruptions)* In the year 1965, the then hon. Speaker has stated regarding the State Financial Corporation (Amendment) Bill, 1965 and another precedent was in 1967 regarding the Essential Commodities (Amendment) Bill 1967. The Minister concerned was directed to revise the Financial Memorandum, and the then hon. Speaker has even directed and the discussion for moving the Bill was also postponed on the ground that the Financial Memorandum is incomplete. ...*(Interruptions)* So, the Minister was directed to submit a fresh memorandum. ...*(Interruptions)* So, I would appeal to the hon. Speaker that since the Financial Memorandum is incomplete, inadequate and insufficient, the Parliament's right is being taken away. ...*(Interruptions)* The Bill is drafted in a callous manner. ...*(Interruptions)* So, my first objection is that introduction of the Bill may be postponed. â€¦ *(Interruptions)*

Secondly, as regards Rule 64, I am not reading Rule 64 as you are well aware of Rule 64. ...*(Interruptions)* As per Rule 64, the Bill is not published in the Gazette and no advance notice of the intention to move the Bill has been given. ...*(Interruptions)* In such a circumstance, we received the Bill on Saturday. ...*(Interruptions)* We were in our Constituencies and we could not go through the Bill. â€¦ *(Interruptions)* This is a Bill containing 252 Clauses, 11 Schedules, 155 pages and 113 corrigenda. ...*(Interruptions)* We did not get ample time to go through the Bill. This is my second objection. â€¦ *(Interruptions)*

Madam, the third and very important objection, which I would like to raise here, is this. â€¦ *(Interruptions)* There are 11 Schedules in it. ...*(Interruptions)* The Schedules of the Amendment Act are there so as to avoid clause by clause discussion. ...*(Interruptions)* I am quoting Rule 88 and Rule 90. ...*(Interruptions)* I am not going to read Rule 88 and Rule 90. ...*(Interruptions)* As per Rule 88, clause by clause discussion is required. ...*(Interruptions)* By virtue of Rule 90, the Schedule can be put to vote at one glance, which means that it would be asked whether the Schedule will become part of the Bill. ...*(Interruptions)* So, my submission is that there are 39 Clauses in the Companies Act of 2013. ...*(Interruptions)* It is incorporated in 11 Schedules and the 11 Schedules annexed to the Bill are important / major statutes. ...*(Interruptions)* The statutes are amendment by incorporating them within the Schedule, which means that the right to have clause by clause discussion by the Members is being curtailed. ...*(Interruptions)* How can the Government change / amend most of the provisions of the Companies Act of 2013 without taking this Parliament into confidence? ...*(Interruptions)* When the Bill is put to vote, definitely Madam will ask us whether the Schedule be part of the Bill, then that has to be voted. ...*(Interruptions)* Clause by clause voting of the contents of the Schedule will not be put to vote. ...*(Interruptions)* This means that the Companies Act of 2013 and almost all the major statutes, 11 Schedules you are going to amend passed by this House by incorporating them in the Schedule. ...*(Interruptions)* This is my third objection that the right of the Parliament is being taken for granted. ...*(Interruptions)*

My fourth objection is with regard to notes to clauses. ...*(Interruptions)* In every Bill -- whichever provision you have to amend -- you have to give an

explanation in the note to clauses. ...(*Interruptions*) My humble question to the hon. Minister is this. Where is the note to clauses in respect of 39 Clauses of the Companies Act of 2013? ...(*Interruptions*)

This Bill is a defective Bill because these 39 amendments or clauses were incorporated in the Eleventh Schedule so as to not have any 'Notes on Clauses' which means, indirectly, evading the Parliament -- to amend the Companies Act and other major statutes. This is also totally against the rules and procedures and conduct of Business of this House.

On the basis of these four grounds, by citing the precedents of this House, I strongly oppose the introduction. Madam, you may kindly see that even outside the House, in a FICCI meeting day before yesterday, the hon. Minister has stated that insolvency and bankruptcy Bills would be pushed through Parliament. Is it proper, Madam? When the House is functioning and when the Bill has not even been introduced, it is an assurance which he has given to corporate houses that this Bill will be passed within three days in both Rajya Sabha and Lok Sabha. This Bill is for matters relating to insolvency and bankruptcy of the corporates, partnership firms and even individual corporates. ...(*Interruptions*)

HON. SPEAKER: A very important thing is being discussed. Please go back to your seats.

...(*Interruptions*)

SHRI N.K. PREMACHANDRAN :In such a situation, there is no exigency or there is no urgency. So, I strongly oppose the introduction of the Bill, which may be postponed to another date after this Session. Thank you. ...(*Interruptions*)

HON. SPEAKER: Hon. Member, Shri N.K. Premachandran has tabled a notice to oppose the introduction of the Bill whereby he has raised certain procedural issues. So, the Minister may now clarify whatever issues have been raised by him.

...(*Interruptions*)

SHRI ARUN JAITLEY: Madam, a Bill at the stage of introduction can be opposed only on two grounds – one is the legislative competency of Parliament, and the other is whether a Bill is violative of fundamental rights. Now, both those objections have not been raised and, therefore, the limited jurisdiction at the stage of introduction of Bill that it can be opposed on two considerations does not arise at this stage. But in any case, let me explain that at page 149, there is a detailed Financial Memorandum to this Bill. The detailed Financial Memorandum clearly mentions that there are certain categories of expenditure which cannot be estimated at this stage and which will be estimated when the Bill is put into operation, that is, constitution of more Benches of the Company Law Tribunal. How many companies will come up for insolvency, how many individuals will come up for insolvency will depend only when that exigency arises, and that expenditure can only be prescribed at that date.

His second objection is that adequate time has not been given. The Bill has already been circulated two days in advance and, therefore, adequate time has been given. Since certain provisions of other legislation including Companies Act, Income Tax Act, Customs Act, and Central Excise Act have to be overruled by virtue of this Bill, therefore, they are contained in the Schedule. It is an essential part of legislative drafting that some provisions can be amended by the Schedules. The Schedules will also be considered by this Parliament and, therefore, the rights of Parliament are not in any way being taken away by this Bill at all. That is all I have to say, Madam.

HON. SPEAKER: I think the Minister has cleared all the issues.

...(*Interruptions*)

SHRI N.K. PREMACHANDRAN: My point is what does 'legislative competence' mean? It is not only about the constitutional propriety of the Bill, but also it is about whether the Bill is a perfect Bill or not, which can be legislated. My point is that this Bill is a defective Bill. What is a 'Financial Memorandum'? They say that if any expenditure comes, they will approach the Department of Expenditure. Then, what is the scope of Parliament? That is my question. Legislative competence does not confine to the point of constitutional propriety and fundamental rights alone, but also the rules and procedures of the House have to be looked into while introducing the Bill. Suppose, the Bill has not been circulated two days prior to its introduction, then the Bill cannot be introduced. Can the hon. Minister say that there is no legislative incompetence in the Bill? The argument that a Bill can be introduced will not hold good. My humble submission is, looking at the precedents of your predecessors, Madam, the introduction of the Bill may be postponed. That is all, Madam.

HON. SPEAKER: I think, hon. Members, according to sub-rule (1) of Rule 69, the Financial Memorandum should have a mention of estimate of recurring and non-recurring expenditure that would be involved in case a Bill is passed into law. However, I may inform the House that failure to give in the Financial Memorandum the estimates of recurring and non-recurring expenditure involved does not throw out the Bill. In the past also, there have been instances when the Financial Memoranda did not mention the recurring and non-recurring expenditure.

Hon. Member has mentioned Rule 64 while opposing the introduction. I may inform the Member that Rule 64 is not relevant as quoted by the hon. Member. Rule 64 is applicable when a Bill is published in the gazette before introduction.

Hon. Members, the proviso to sub-rule (2) of Rule 69 provides that where a clause in a Bill involving expenditure is not printed inadvertently in thick type, the Member-in-charge of the Bill shall, with the permission of the Speaker, bring such clauses to the notice of the House.

Accordingly, hon. Minister may either bring such clauses, if any, to the notice of the House before introducing the Bill or if not possible, at the time of consideration of the Bill.

Hon. Members, Direction 19B provides that the copies of a Bill shall be made available for the use of Members at least two days before the day on which the Bill is to be introduced. Copies of the Bill were circulated to Members in the morning of Saturday, the 19th December, 2015. Accordingly, the requirement of Direction 19B has been met and the Bill can be introduced today.

Hon. Members, Rule 88 provides for submission of a Bill clause by clause. However, as per Rule 90, schedules of a Bill shall also be taken up for consideration after consideration of clauses. Members may speak on the amendments being proposed to various statutes through this Bill at the time of general discussion or when the relevant clause or the relevant schedule is taken up for consideration.

The question is:

"That leave be granted to introduce a Bill to consolidate and amend the laws relating to reorganization and insolvency resolution of corporate persons, partnership firms and individuals in a time bound manner for maximisation of value of assets of such persons, to promote entrepreneurship, availability of credit and balance the interest of all the stakeholders including alteration in the order of priority of payment of Government dues and to establish an Insolvency and Bankruptcy Fund and for matters connected therewith or incidental thereto."

The motion was adopted.

SHRI ARUN JAITLEY: I introduce* the Bill.

माननीय अध्यक्ष : मिस्टर इन्वोसेन्ट।

मैं आपको पहले बोलने के लिए एलाऊ कर रही हूँ, क्योंकि आप विशेष रूप से कैंसर पैशेंट के बारे में बोलना चाहते हैं। What is it?