Sixteenth Loksabha

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Title: Combined discussion on disapproval of Insolvency and Bankruptcy Code (Amendment) Ordinance, 2017 and Insolvency and Bankruptcy Code (Amendment) Bill, 2017- passed

HON. SPEAKER: Now, the House will take up Items 20 and 21 together. There will be no lunch break.

Shri N.K. Premchandran *ji*.

SHRI N.K. PREMACHANDRAN (KOLLAM): Madam, I beg to move:

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

(Hon. Deputy-Speaker *in the Chair*)

THE MINISTER OF FINANCE AND MINISTER OF CORPORATE AFFAIRS (SHRI ARUN JAITLEY): Sir, I beg to move:

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

The Bill was passed by this House and the Rajya Sabha. It was notified as a law and the provisions came into effect on the 1st of December, 2016. So, effectively for almost a

little more than a year, this has been in operation. Since this is for the first time in India that a law of this kind was being put into operation, this was necessary. It is because, those who cannot run businesses and have literally made the businesses insolvent, an exit had to be found for them. In order to save the employment and save the enterprises itself, an effort has to be made, in the first instance, to have a resolution under which those enterprises themselves could be saved. If a resolution is not possible, it is only then that in extreme cases one goes to the extent of dissolution.

The functioning has revealed that certain improvements etc. and changes were necessary. If we look at the language of the Bill itself, I think there was some clarity which was required with regard to the definition of the word 'resolution applicant' as to who can apply for a resolution itself. And, that clarification has been brought in clause 3 of the amended Bill which came in the form of an Ordinance itself. Clause 4 itself deals with the eligibility criteria that can be fixed. The core and the sole of this new Ordinance is really clause 5 which is Section 29A of the original Bill.

I may just explain that once a company goes into the resolution process, then applications would be invited with regard to the potential resolution proposals as far as the company is concerned or the enterprise is concerned. Now a number of ineligibility clauses were not there in the original Act, and, therefore, 29A introduces those who are not eligible to apply. For instance, there is a clause with regard to an undischarged insolvent who is not eligible to apply; a person who has been disqualified under the Companies Act to act as a Director cannot apply; and a person who is prohibited under the SEBI Act cannot apply. So these are statutory disqualifications. And, there is also a disqualification in clause (c) with regard to those who are corporate debtors and who, as on the date of the applicant making a bid, do not operationalise the account by paying the interest itself. That is, you cannot say that I have an NPA. I am not making the account operational. The accounts will continue to be NPAs and yet I am going to apply for this. Effectively, this clause will mean that those, who are in management and on account of whom this insolvent or the non-performing asset has arisen, will now try and say, I do not discharge any of the outstanding debts in terms of making the accounts operational, and yet I would like to apply and get the same enterprise back at a discounted value, for this is not the object of this particular Act itself. So clause 5 has been brought in with that purpose in mind.

And, clause 6, which is the other important clause, brings in that the Committee of Creditors, which by 75 per cent majority has to approve a resolution process, will see in terms

of clause 6 the feasibility and the viability of the proposal which has been made for the resolution itself. It is not bound to accept any or every proposal that comes up before itself. It must see that it must be a proposal which itself is feasible and viable, which inspires confidence and it is only then that the Committee of Creditors will approve that.

Now these are improvements. Since I said that this is for the first time India has entered into this jurisprudence, it is a learning experience for us also. One year after operationalising it, all the concerned stakeholders have been consulted and these amendments have been brought in. The reason why the Ordinance was brought in because a large number of cases are already pending resolution mechanism itself, and, therefore, if we had not immediately brought in, then even the ineligible persons, who are sought to be made ineligible under this, would have started applying for the resolutions itself. Therefore, in order to give it an immediate effect, an Ordinance to this effect was necessary and that is the reason why the Ordinance was brought in.

With these few words, I commend this Bill to the hon. House for acceptance.

SHRI N.K. PREMACHANDRAN (KOLLAM): Sir, several times in this House I have made the point on the Constitutional position of article 123 regarding the promulgation of Ordinance. I am not going to repeat all those issues because since this Ordinance is exclusively or it is an independent legislation brought by the Executive. This can be issued only on extraordinary circumstances or compelling circumstances under which article 123 can be invoked.

Sir, kindly see, in this case whether article 123 is a fit case for promulgation of this Ordinance because I do accept the argument of the hon. Finance Minister that several times we are forced or the circumstances may compel us to promulgating an Ordinance. I do accept that. Even the GST compensation to the States Amendment Ordinance was also promulgated like this.

Yes, I do fully agree that it was right time to have an Ordinance so as to protect the interest of the country as a whole. That is why we have all supported the GST (Compensation to States) Amendment Bill at that time. Unfortunately, I could not speak on that subject because of the turmoil in the House.

Sir, let us analyse whether this Ordinance has come within the purview of Article 123. This Ordinance has been promulgated on 23rd of November, 2017. As every one of us knows that normally the Winter Session of Parliament is summoned in the third week of November. Unfortunately, this time due to the Gujarat elections, the House was postponed to be summoned on 15th December, 2017. It means that from 23rd of November to 15th December only three weeks remaining. Why did the Government not wait for three weeks so as to bring a fresh Bill in the House instead of promulgating an Ordinance? That is the main objection, which I would like to make regarding the promulgation of the Ordinance.

Sir, let us also look at as to what were the exigencies in promulgating this Ordinance. The Ordinance seeks to amend the Insolvency and Bankruptcy Code as the hon. Finance Minister has just now narrated it clause by clause. The first amendment is -

(a) to facilitate the phased implementation of the Code to corporate persons, individuals and partners which fall under Section 2 of the Code. So, the definition clause in Section 2 is proposed to be amended.

(b) to provide clarity so as to the persons who can submit a resolution plan in response to an invitation made by the resolution professionals.

(c) enable the resolution professionals to specify the eligibility conditions of prospective resolution professionals while inviting resolution plans from the applicant.

(d) provide for certain persons ineligible for being a resolution applicants, as rightly pointed out by the hon. Minister, in discharging insolvency resolution, a person who has already been disqualified as a company's director or a board member from the company and he provides that the committee of creditors shall approve the resolution plan by vote of not less than 75 per cent of the voting share of the financial creditors. The proposed amendment is after verifying or convincing with the viability and feasibility of this proposal and that too as per the direction of the board. This is the amendment which is being proposed.

(e) disallow the sale of the property to a person who is ineligible to be a resolution applicant in case of liquidation; and finally,

(f) providing the penal provisions.

I would like to know from the hon. Minister as to what the urgency was in bringing these seven amendments that are to be sought in the Bill. We could have waited for three weeks and would come to the House with a fresh Bill and avoid such promulgation of an Ordinance. So, my point is that promulgation of this Ordinance is *ultra vires* to Article 123 and hence this has to be disapproved. There was no urgency, exigency or contingency or compelling extraordinary circumstance so as to attract Article 123 of the Constitution.

Sir, coming to the Bill I would like to say that when the original Bill was brought in, there were a lot of apprehensions. I do agree and appreciate that this is a new jurisprudence which have come into existence. It is well known that this Insolvency and bankruptcy Code, 2016 is the consolidation of laws relating to the reorganisation of insolvency resolution of the corporate persons, partnership firms and individuals in a time bound manner. It was enacted as an effective legal framework for timely resolution of insolvency and bankruptcy. The ultimate purpose of the original Bill, which was enacted in the year 2016, was to provide the benefit of ease of doing business.

The National Company Law Tribunal and the Debt Recovery Tribunal are designated as the adjudicating authorities for resolution of insolvency, liquidation and bankruptcy.

The two other very important features in the original Bill are – an Insolvency and Bankruptcy Fund of India has been constituted and an Insolvency and Bankruptcy Board of India is also constituted. These are the special features of the Bill.

When the original Bill was presented in the House, there was a big campaign and a disproportionate hope was being given to the industry that this Code was going to resolve all the problems being faced by the industry and the business in India. A widespread campaign was there. My point of view is that this Bankruptcy and Insolvency Code is not only expeditious but also it results in gross abuse, massive corruption, favouritism and nepotism and it may help to generate black money also. I can give you a certain reasons for it.

The reason number one is that the minority interest dominates over the majority interest. This is the first defect or disadvantage of this Bill. Even a minor default will lead to the company being placed in the hands of insolvency experts and it will be dissolved unless 75 per cent of the creditors agree to continue the operations of the company. It may be noted that the SICA of 1985 deals with only limited type of companies, that is, industrial companies. Under SICA, the rehabilitation of a company has to be approved by 75 per cent of the secured creditors and BIFR is the nodal agency to implement it. The BIFR must be supported

by 75 per cent of the secured creditors and any statutory authority. In this way, the interest of the secured creditors and the Government revenue are protected. Even the recovery proceedings under the Securitisation Act are not affected by the BIFR proceedings. So, the banks will be protected. The most protected institutions will be the banks.

Here, in this case, 26 per cent of the creditors can move for an insolvency resolution and thereby, go for liquidation proceedings. That means 26 per cent of the unsecured creditors can hold the interest of the 74 per cent of the secured creditors. That means, winding up of a company is automatic unless 75 per cent of the creditors oppose the winding up. This means that 26 per cent creditors, who may represent two to five per cent of the capital of the company, may hold the company to ransom.

Further, the National Company Law Tribunal has no jurisdiction to look into the larger interest of the majority shareholders or the creditors, the government revenue and workmen. That will be determined by the minority creditors. The point is that the companies may suffer financial crisis for so many reasons which may be temporary and need not be permanent. There may be a downturn in the market conditions, change in the overall scenario, strikes and labour problem, non-payment or payment not being made in proper time and change in government policies and decisions.

As soon as a petition of insolvency resolution is admitted, the company is handed over to the insolvency professional and thereby generate an automatic stay on all the assets of the company. It means that if any default has happened due to the above circumstances which I have mentioned, the company will be subjected to insolvency resolution and thereby liquidation. So, this is not meant for the revival of the company but for the insolvency resolution, the final result of which will be liquidation.

Sir, an amendment has been brought to the IBC. At the time of introduction of the Bill also, we had raised an issue. Who is an insolvency professional? Clause 319 speaks about the insolvency professional, but nowhere are mentioned the qualifications of an insolvency professional. The experience of the insolvency professional, the expertise and the managerial capacity of the insolvency professional is not well established in the original Act. Instead of establishing it, there is a provision that the qualifications of the insolvency professional will be decided by the insolvency professional agency. The point which I would like to make is that now the hon. Minister is coming with a new amendment, that is, Section 29A. That is a resolution plan. He has already read it. According to Section 29A, the proposed amendment in

this Bill, a person shall not be eligible to submit a resolution plan if such person or any other person acting jointly or in concert with such person…. I am not going to read the whole of it.

Sir, Section 29A deals with qualifications or the eligibility criteria for a particular person to present a resolution plan. I would like to put a humble question to the hon. Minister. If a person who has to submit a resolution plan, he has to comply with the criteria which are being enunciated in the Amendment Act. I fully agree with it and also support it, but my concern is that in the case of an insolvency professional, the qualifications and the eligibility criteria will be determined by an insolvency professional agency.

Then, what is the role of Parliament? When a person is submitting an insolvency plan before the Insolvency Authority or the Adjudicating Authority, then, the eligibility criteria and qualifications are well enunciated, well determined in the original Bill. Now it is in the amendment Bill. I too support it. It is also a good step. But in the case of Insolvency Professional, the qualification and eligibility criteria has to be made. How an Insolvency Professional, that is, a third party, can manage a company better than the existing management of the company? Insolvency Professional has no stake in the company. The result will be siphoning off of the money and winding up of the company rather than the reviving of the company. That is why, I have said in my opening remarks that it should be for the revival proposal; it should be for the revival process of the company. Instead of reviving the company, the ultimate result will be that the third party, that is, the Insolvency Professional, whose qualification will be determined by the Insolvency Professional Agency, such agencies will be looking into the affairs of the company and the entire assets will be handed over to the Insolvency Professional and everything will be just like the Receiver being appointed by the court. We know when a Receiver or a Commissioner is appointed to take stock of the situation, what is happening in various places? We see siphoning off of the property by the Receiver. Our experience is that it is being experienced in a lot of cases.

Whether the Government has any role in determining as to who is the Insolvency Professional? That is the heart and soul of this Act, as rightly said by the hon. Minister. The Insolvency Professional has a vital role in the insolvency proceedings. Therefore, his qualification has to be determined. Hence, I suggest to the hon. Minister that instead of delegating this authority to the Insolvency Professional Agency, kindly bring an amendment, prescribe eligibility criteria of the insolvency professional in the main Act itself.

Even if there is a minor default also, operational creditors, or the financial creditors can move for insolvency. In this regard, I do accept the time limit – 180 plus 90 days – that is 270 days. There also, big companies would be protected. These big companies can very well swallow the smaller companies.

In regard to priority in realisation also, I would like to make a very important point. This is the time and opportunity when we can highlight the issue in respect of the Bill. Unsecured and secured creditors have been put on the same footing which will be a serious disadvantage to the public sector banks and secured creditors.

Sir, you may kindly see this. The priority of clearing the liability is workers, secured creditors, revenue, tax, etc. The last priority is being given to `revenue' and `tax' is being given the last priority. This will only assist minority, unsecured financial manipulators and will be against the economic interests of Indian business, Indian public sector banks and Indian workmen also.

Regarding workmen and staff, I would like to state here that workmen and staff will be dismissed immediately on the order of winding up of the company. There is no protection as far as workmen are concerned. This Bill gives a new message that destruction is liberalisation. There is no concept of revival of companies; if a person wants to create trouble, he can very well do it. So, the ramifications of the Bill have to be seriously considered and appropriate amendments are required in the original Act. It has become operational since the last one year. From the operational exercises, it has come to this conclusion and many amendments have been brought in. My suggestion and submission is, kindly have a relook into these provisions also; come up with new amendments so that Bill can be made more fruitful and protect the interests of the secured creditors and the public sector institutions.

With these words, I conclude my speech. Thank you very much, Sir.

HON. DEPUTY SPEAKER: Motions moved:

"That this House disapproves of the Insolvency and Bankruptcy Code (Amendment) Ordinance, 2017 (Ordinance No. 7 of 2017) promulgated by the

President on 23 November, 2017."

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

PROF. K.V. THOMAS (ERNAKULAM): Sir, this Insolvency and Bankruptcy Code (Amendment) Ordinance, 2017 has been brought to replace the Ordinance which the Government has promulgated.

Now, the original Bill was brought in 2016 and the Government has got the experience of it after its implementation – there are various lacunae, there is no difference of opinion. This is the time when we have to look into the financial situation of the country.

This Government has been in power for the last forty-five months and after fifteen months, in the natural course, this Government has to face the people of this country. What was the promise made during the election and after the election? I do not want to repeat it because it has been expressed in this House and outside. The hon. Prime Minister, during the time of his election campaign, said that if you bring a new Government, a new face, the corruption will be removed and all the black money will be brought back. Now, when we analysed that after forty-five months, where are we?

This Government has brought some drastic measures. On 8th November, 2016, the demonetisation was brought and the hon. Prime Minister promised that, by the end of December, 2016, things will be normal. But is it normal after eight or nine months? This is now the end of 2017. This Government also brought the GST which was brought in such a hurry. We had warned the Government that it had to be discussed but it was brought in such a hurry that, now and then, we are bringing the amendments. My State and especially, our Finance Minister have welcomed the GST with an understanding that the State of Kerala will be benefited. But, now, our own Chief Minister and the Finance Minister of Kerala say that Kerala is on the receiving end. Our financial situation is so bad. We have not got any benefit by implementing the GST.

Now, Sir, look at the NPA. In 2015-16, when the NPAs of the banks were examined, at that time, in the public sector banks, the NPAs were to the tune of Rs. 5 lakh crore. Now, I

understand that it is going at an alarming rate. The PSU banks are writing off and the NPAs have gone up to Rs. 55,356 crore. In the first two quarters of the fiscal year 2017-18, the NPAs are about 54 per cent higher than it was last year. Yesterday, I was told that NPAs are going to be about Rs. 20 lakh crore. I do not know whether this is correct or not. Anyhow, it is more than Rs. 20 lakh crore. So, what is happening? How is the financial discipline brought in? I welcome this Insolvency and Bankruptcy Code, there is no difference of opinion. It is to bring the discipline but, is the discipline brought in?

You should understand that when this Government came to power, it was a big *mela* in the courtyards of Rashtrapati Bhawan, the money was spent, and it was said that a new Government is coming with a new hope, but where are we? The farmers are on agitation. In Tamil Nadu, the farmers are not getting the price they need to continue producing, for example, tomato; tomatoes are being thrown on the street. In Kerala, the rubber farmers are not getting the price they deserve. So, the whole farming community is on agitation. Look at the consumers, the price of all consumer items, starting from rice to edible oil, is spiralling. What is the Government going to do? Through what way are they going to control this price rise?

Now, the Food Security has been implemented. I compliment the Government on this. Almost, all the State Governments have implemented the Food Security Act. That has actually benefited the Government of India. The subsidy component on food items has come down. But where are we going? What is the policy of the Government to bring down the prices? The people of this country, the small farmers, and the traders are suffering.

My colleague Suresh has brought out the issue of bank loans given to students in Kerala. It was the SBT which gave adequate funding to the students of Kerala for higher studies. Now that has been merged with the SBI. After this merger, the SBI has to protect all the conditions in which bank loans were given to the students. But we find that SBI norms are more stringent and the students are on the streets.

Recently in Kerala, Tamil Nadu and Lakshadwip we had the Ockhi thunderstorm. After that thunderstorm, the hon. Prime Minister came to Trivandrum and Tamil Nadu. The Central Team was at Kochi and Trivandrum. They have come back. But what is the assistance given? It is a very meagre amount that has been announced. It is about Rs.300 crore. However, the loss is of more than Rs.7000 crore. In my Parliamentary Constituency Kochi, which is a coastal Constituency, thousands of houses were washed away from Chellanam which is one of

the fishermen village in my parliamentary constituency to the other end of Munambar. About 700 fishermen are missing. Fishing boats and fishing nets have been damaged. What assistance is the Central Government giving to States like Tamil Nadu, Kerala, Lakshadwip, etc? It is a meagre amount as per the norms of natural calamity assistance. It will not be enough. That is why we told the Government that this should be declared as a national calamity, but the Government is keeping mum.

Similarly, for years the coastal people are asking for construction of protective walls at the seashore and also the wave breakers. It needs money. In 1984 when I came to this House, the assistance given for the protection of seawalls was 50:50 – 50 per cent by the Government of India and 50 per cent by the State Government. Now it is zero. No assistance is given. And States like Tamil Nadu, Kerala, Karnataka, Andhra Pradesh find it very difficult. So, my suggestion to the Government is that it should help the poor people, the fishermen, the traders, and the students.

Looking at the NPAs, where have all the NPAs gone? NPAs have gone to major corporate houses. More than 80 per cent of NPAs are NPAs created by corporate houses. About 12 corporate houses have got the majority of NPAs. The clause in the Bill initiated by the hon. Minister which provides clarity as to the person who can submit their resolution plan in response to an invitation made by the Resolution Professional, is a good clause. That is because we find that when the NPAs are being examined, in many cases, we need clarity. For example, how can there be NPAs in jewellery manufacturing units? We can understand NPAs in national highways, in coal and mining, in civil aviation because it is a policy matter of the Government. Why in jewellery industry? Is jewellery industry a policy matter of the Government? I think the Government has to be strict, the Government has to be disciplined. At the same time, false promises will not help people move ahead.

With these words I would request the Government to take positive steps and not negative steps.

डॉ. संजय जायसवाल (पश्चिम चम्पारण) : उपाध्यक्ष महोदय, बहुत-बहुत धन्यवाद कि आपने मुझे इन्साल्वेन्सी एंड बैंकरप्सी कोड अमेन्टडमेंट बिल 2017 जैसे महत्वपूर्ण बिल पर बोलने का मौका दिया ।

अभी यहाँ पर श्री एन.के.प्रेमचद्रन जी नहीं है। अगर वह रहते तो मुझे बहुत खुशी होती। वह बार-बार बोलते हैं कि ऑर्डिनेन्स की क्या जरूरत थी। इस लोक सभा के सदस्यों में दो घंटे के टाइम का बराबर वितरण होता है। अगर यह कायदे से देखा जाए तो एक सांसद वाली पार्टी को 22 सेकेंड्स मिलने चाहिए लेकिन स्टेटुटरी रिजोल्यूशन के जरिए हर बार प्रेमचद्रन जी जितना चाहते हैं उतना बोलते हैं।

HON. DEPUTY SPEAKER: That is a different thing. It is not about a single-member party or a small party. He has moved the Resolution; it is not for the sake of his party.

Dr. SANJAY JAISWAL : Sir, I am coming to the topic. My point is that this thing does not happen in the Insolvency and Bankruptcy Code. That is why this Ordinance has been brought. He has opposed the Ordinance. But the reason for the Ordinance was that आप किसी चीज या सरकार के किसी नियम का फायदा उठाकर उस पर हावी न हो जाएं, इस परपज को रोकने के लिए इन्सॉल्वेंसी एंड बैंकरप्सी कोड लाया गया है, इस आर्डिनेन्स को लाया गया है। प्रेमचद्रन जी बहुत विद्वान व्यक्ति हैं और मैं उनका बहुत सम्मान करता हूं। अगर उन्होंने आर्डिनेंस लाने की जरूरत के बारे में पढ़ा होता तो बहुत अच्छा होता। हम लोगों ने देखा कि जब आईबीसी का कोड आया, मैं भी उसका पार्ट था, हम लोगों ने समझा कि हम बहुत ही अच्छा बिल ला रहे हैं लेकिन सुधार एक निरंतर प्रक्रिया है। मैं माननीय मोदी जी और अरुण जेटली जी का आभारी हूं कि वह कभी भी सुधारों से नहीं हिचकते। उसी का नतीजा है हमने जीएसटी में इतने सारे सुधार देखें। उसी तरह से आज सुधारों के बारे में बात हो रही है। यूएस में इस तरह के बिल आने के बाद 300 से ज्यादा सुधार हुए हैं। यह सुधार निरंतर प्रक्रिया है। जब हम लोगों ने देखा कि बहुत सारी कंपनियां बैक डोर से आने का प्रयास कर रही है, जिन्होंने गलत किया था वही फिर से कंपनी को लेना चाहते हैं तो इसी को रोकने के लिए आर्डिनेंस लाया गया। इससे ब्लैक मनी और डिफॉल्टर्स को रोकने में हेल्प मिलेगी।

मैं यह समझने में असमर्थ हूं कि जब कानून को कड़ा किया जा रहा है, उनको रोका जा रहा है जिन्होंने कंपनी को बैठाया, उन्होंने यह भी कहा कि इन्सॉल्वेंसी प्रोफैशनल कैसे ज्यादा अच्छे हो सकते हैं जो डॉयरेक्टर है। जिन डॉयरेक्टरों ने कंपनी का पूरा भट्ठा बैठा दिया, क्या उनको ही दुबारा मौका मिलना चाहिए। एक तरफ आपने कंपनी को डुबा दिया तभी आप रिजोल्यूशन में गए और रिजॉल्यूशन में जाने के बाद फिर वही अगर रहेंगे तो फिर रिजॉल्यूशन का मतलब क्या है, जो एक बार कंपनी को खत्म कर चुके हैं उसके बदले किसी को मौका देना यह सरकार की जरूरत है।

माननीय थॉमस जी बहुत सीनियर मंत्री रहे हैं। वऐऩ 2005 में बैंक लोन 4.27 लाख करोड़ रुपये थे, ये उसी सरकार में सम्मानित मंत्री थे उसमें लोन्स बढ़ाकर 26 लाख करोड़ रुपये हो गया, जितने भी लोन्स हैं, जिसके लिए हम लोग कानून ला रहे हैं, यह एनडीए सरकार का उधार नहीं है। यह सारा उनके समय का उधार है। उनके समय को, उधार को ठीक करने की प्रक्रिया हम कर रहे हैं। मैं माननीय मोदी जी और अरुण जेटली जी का बहुत आभारी हूं कि उन्होंने नियम बनाकर जो लोग पीछे से फिर से कंपनी को कैप्चर करने की कोशिश कर रहे थे, उसको करने के लिए किया।

थॉमस जी, यही काम अपनी सरकार में किया होता तो आज यह नौबत ही न आती, आज एनपीए कितना है? अभी हम लोग आठ लाख करोड़ रुपये जानते हैं लेकिन उनका डाटा अलग है। यह सब आपकी देन है। हम लोगों का बिल्कुल साफ इरादा है। हम लोग इंडस्ट्रियलिस्ट पर दो तरह से काम कर रहे हैं। एक तरफ हम ईज ऑफ बिजनेस बढ़ा रहे हैं, आज उसी का नतीजा है कि सरकार की पॉलिसी के चलते ईज ऑफ डुंग बिजनेस में हम 35वें पायदान पर पहुंच चुके हैं। जो भी अच्छा काम करना चाहे वह आए और आकर काम करे। जो लोग जानबूझकर विलफुल डिफॉल्टर हैं, जो पैसे को साइफनिंग करके दूसरे कामों में उपयोग करते हैं, उनके खिलाफ हम कड़े कानून ला रहे हैं और यही सरकार का ध्येय है। हम लोगों ने देखा है कि जो नियम बना है, वह क्या है? जो उधार नहीं चुका सकते हैं उनको हम लोग दुबारा इन्सॉल्वेन्सी रिज्यूलोशन में नहीं जाने देंगे, जिनका एकाउंट एनपीए हो गया उनको नहीं जाने देंगे। जो डॉयरेक्टर के गारंटर बने थे वह दुबारा गारंटर खरीद लें इसलिए उनको रोका जा रहा है। इसके अलावा डिफॉल्टर से कोई भी संबंध है उनको रोका जा रहा है। जो कानून बन रहा है वह कंपनी को रोकने के लिए दुबारा उन्ही गलत तत्वों के हाथ में हेयर कट करके न आ जाएं। इसके दो उदाहरण हम सभी ने देखें कि 950 करोड़ रुपये की कंपनी 40-45 करोड़ रुपये की हो गई और वही लोग फिर कोशिश कर रहे हैं, जिन्होंने पूरा का पूरा पैसा डुबा दिया है। मैं माननीय मंत्री जी का बेहद आभारी हूं कि उन्होंने इमरजेंसी को समझा और इसके चलते अध्यादेश लाकर देश में गलत तत्वों के हाथ में कंपनियां न जाएं इसको रोकने के लिए कोशिश की। इस बिल का बहुत बड़ा पार्ट है जो अच्छे से एक्सपलेन नहीं था, किसी भी कंपनी में बहुत से बैंक्स इन्वाल्व होते हैं, कंस्ट्रक्शन कंपनियां होती हैं, आल्टरनेट इन्वेस्टमेंट फंड्स होते हैं, अगर उनको नई कंपनियों के साथ नहीं आने देंगे तो कोई कंपनी टेकओवर कर ही नहीं पाएगी और इन्सॉल्वेंसी रिजॉल्युशन का प्रॉसेस हो ही नहीं पाएगा। मैं माननीय मंत्री जी का आभारी हूं कि इन सब चीजों को अलग रखा है और जो कानून बनाया है, बहुत ही अच्छा है।

इसमें सबसे बड़ा फायदा है कि नए उधार लेने वालों के मन में डर पैदा हो गया है। अगर हम उधार लेंगे, फैक्ट्री ठीक से नहीं चलाएंगे और जितना लोन चाहिए अगर उससे ज्यादा ले लेंगे तो कल को बर्बाद हो जाएंगे। यह एनडीए सरकार, माननीय मोदी जी और माननीय अरुण जेटली जी की सबसे बड़ी उपलब्धि है कि अब प्रमोटर्स 100 प्रतिशत सोचते हैं कि कम से कम पैसा लें क्योंकि अंत में इंटरस्ट उनको चुकाना पड़ेगा इसलिए वे किसी तरह का फ्रॉडिज्म न करें, मनी का डाइवर्जन न करें। फ्रॉड और डाइवर्ट करने की अब कोई हिम्मत नहीं कर सकता है। इन नियमों के कारण नए इन्वेस्टर्स आएंगे। इसका सबसे बड़ा फायदा होगा कि हमारा कैपिटल फ्लो बढ़ेगा, नहीं तो जो कंपनियां पहले थीं, वही फिर आ जाती थीं। इसमें नई कंपनियों को मौका मिल रहा है, अगर पिछले डायरेक्टर फेल किए हैं, तभी तो वह कंपनी इस रिजॉल्युशन में गई है। उस रिजाल्युशन में आएं, नए बिल का यही मोटिव है, इसके लिए मैं माननीय मंत्री जी को धन्यवाद देता हूं कि इन सब कारणों से हमारे देश में इन्वेस्टमेंट बढ़ेगा, नए लोग आएंगे, फॉरेन डायरेक्ट इन्वेस्टमेंट बढ़ेगा। जो लोग वाकई कंपनी चलाना चाहते हैं, वही आएंगे और जो प्रोफेशनल्स आएंगे, वह सोच-समझकर आएंगे कि मुझे अच्छे से चलाना होगा, नहीं तो पर्सनल एसेट्स भी दिक्कत में पड़ जाएगी।

इसमें बहुत से बैण्ड्स को डिस्क्रीशन से लिमिट किया गया है, क्योंकि उनका एनपीए 12 परसेंट हो चुका है, 10 परसेंट हो चुका है। ये बैण्ड्स दोबारा किसी तरह से पूरे प्रॉसेस में घालमेल न करे,

इसलिए यह बिल लाया गया है। हमारी सरकार का मानना है कि जो अच्छी तरह से और ईमानदारी से व्यापार कर रहे हैं, उन्हें हर तरह का एनकरेजमेंट दें ताकि नई इंडस्ट्री आएं और जो गलत काम कर रहे हैं, उनके लिए यह बिल इतना बड़ा डेटरेंट है जो कि अपने आप में बहुत बड़ी चीज है। गरीबों और शेयरधारकों का पैसा सेफ रहेगा, क्योंकि जो शेयर्स फ्लोट कर देते थे, डूब जाते थे और डायरेक्टर्स ऑफ प्रमोटर्स लेकर अलग हो जाते थे। अमीर ईमानदारी से काम करें, हम पैसा बढ़ाएंगे और वह पैसा गरीबों के कल्याण के लिए लगाएंगे, यही इस सरकार का उद्देश्य है। भारत की यह पहली सरकार है जिसने सारी योजनाओं को केवल अमीर और गरीब के नजरिए से देखा है जिनमें 60 से ज्यादा योजनाएं केवल गरीबों की भलाई के लिए हैं, लेकिन इसके लिए पैसा चाहिए। जब तक इंडस्ट्रियल ग्रोथ नहीं होगी, प्रॉपर इंडस्ट्री आगे नहीं बढ़ेगी, जब तक एम्पलायमेंट नहीं बढ़ेगा, तब तक यह पैसा गरीबों को देना संभव नहीं हो सकेगा।

मैं माननीय मंत्री जी का बहुत आभारी हूं कि उन्होंने बिल्कुल सही समय पर इन्टरवीन किया और इन्टरवीन करके संशोधन बिल लाए। मैं इसका पूर्ण रूप से समर्थन करता हूं। मुझे उम्मीद है कि इससे भारत इंडस्ट्री के क्षेत्र में ज्यादा से ज्यादा विकास करेगा।

DR. P. VENUGOPAL (TIRUVALLUR): Thank you, hon. Deputy Speaker Sir, for giving me this opportunity to speak on the Insolvency and Bankruptcy Code (amendment) Bill, 2017.

On the 23rd November, 2017, the Government promulgated an Ordinance amending the Insolvency and Bankruptcy Code or IBC 2016. The Bill which the Government has introduced today essentially replaces the Ordinance issued last month.

I am not sure whether the Bill has brought in some more changes to the Code apart from the changes made by the Ordinance because the Bill has been introduced at a very short notice in the Parliament for consideration and passage.

The provisions relating to the corporate insolvency resolution process of the Code were made effective from 1st December, 2016. Before commenting upon specific provisions of the Bill I would like to know from the hon. Minister the need for amending the IBC within one year of its operationalisation. Further, I would like to know from the Minister whether the Bill amends the Code prospectively or retrospectively and if it is the latter case, which in principle is bad law making, the reasons for amending the Code retrospectively.

Clause 5 of the Bill prohibits certain persons from submitting a resolution plan to resolve a defaulting company. These persons *inter alia* include wilful defaulters, disqualified directors,

promoters or management of the defaulting company, persons who have given a guarantee on a liability of a defaulting company, persons who have indulged in preferential or under-valued transactions, NPA accounts classified as such for more than one year, persons connected to any aforesaid persons. I would like to mention here that the list of people barred from the resolution process is too broad and encompassing. Having such a broad category of persons disqualified from the resolution process would hamper the competitive bidding process while attempting to resolve the company.

When the IBC was passed last year by the Parliament, the objective was to provide an enabling structured legal framework for the resolution of insolvent firms. However, the proposed amendment may push more insolvent firms to liquidation as it effectively reduces the number of applicants who may try to resolve the insolvent firm and thus the chances to revive the firm to that extent is diminished. I would like to know whether during the last six months the Government has noticed any instances where the Code has been misused by the existing management of twelve large NPA accounts, which were referred to the Bankruptcy Code by the RBI this year, to short circuit the insolvency resolution processes prescribed under the IBC. If this is the case, then I am of the opinion that this Bill is more of a knee jerk reaction from the Government to stop the existing management of these twelve large defaulting companies to get back their assets at a steep discount. I would like to mention that in the Synergies Dooray debt recast, which was the first resolution case approved by the National Company Law Tribunal, the financial institutions had to take a hair cut of more than 80 per cent in the final resolution of the company.

Now, the larger question here is that while the proposed amendment will hurt and should hurt some persons or entities who are gaming the corporate insolvency process, it also puts the resolution process of small companies in jeopardy as it effectively reduces the universe of prospective applicants who can bid for the company.

There may be numerous suitors for large insolvent firms which have been referred to bankruptcy courts but what would happen to small textile units say in Tiruppur, Tamil Nadu if in future they are referred to insolvency resolution. I think there would be not many takers for such small and medium enterprises who will be the most hurt by such reduction in the number of applicants to the resolution process.

Some of the exclusions in clause 5 are very hard to comprehend. For example, a person who is disqualified to act as a Director under the Companies Act is also excluded from

submitting a Resolution Plan. It seems to me very ironical that if a person is disqualified, as a Director under the Companies Act, for say, non-filing of returns of Company-A which may be due to lack of oversight, he stands to be disqualified from the resolution process of an entirely unconnected Company-B. Another inexplicable disqualification is with respect to persons who have given a guarantee on a liability of a defaulting company. If a resolution process is triggered in a company on account of some default, what sense does it make to debar the guarantor of such an insolvent company who has no connection with the default which has triggered the insolvency process? Keeping out such a person from the resolution process under the IBC makes no sense, as such a person is in a better position to give a fair valuation of the company's assets and viable turn-around plan on account of his knowledge of the relevant industry in general and the insolvent company's interest in particular.

The Bill also debars every person connected to the list of disqualified person given in clause 5 of the Bill from submitting a resolution plan. By virtue of this clause, say, if a company goes down under, every promoter, related to every party and associate of that company can never participate in any resolution proposed for any other insolvent company under the IBC. This is a very sweeping exclusion as it cuts down a large number of prospective applicants who may submit good resolution plans to revive an insolvent company.

With these reservations, I support this Bill.

PROF. SAUGATA ROY (DUM DUM): Hon. Deputy-Speaker, Sir, I rise to speak on the Insolvency and Bankruptcy Code (Amendment) Bill, 2017 which is there to replace the Ordinance which was promulgated on 23rd November, 2017.

This Bill seeks to amend the Insolvency and Bankruptcy Code, 2016. Now this Insolvency and Bankruptcy Code was brought in this House in 2015, then referred to a Joint Committee of both Houses of Parliament and then the Report was submitted and finally the Bill was passed. It had the support of all parties since it came through a Joint Committee of Parliament. It beats me as to why within one year it has become necessary to bring an amendment to this Act.

Sir, what I want to say is that this Ordinance is a desperate step by a desperate Government. The problem of the Government is serious. According to the hon. Minister the gross Non-Performing Assets of scheduled commercial banks were Rs. 8,50, 178 crore as on

30.9.2017. Now, under the Insolvency and Bankruptcy Code, the Reserve Bank of India has sent 12 companies which had fund-based outstanding amount greater than Rs. 5 crore, with 60 per cent or more classified as non-performing, to initiate insolvency process under the IBC. Already some action has been taken and the companies, who are big defaulters which include companies like Essar Steel, Bhusan Steel, LANCO, Alok Industries, ABG Shipyard and Jaypee Infratech. Already actions have been initiated under IBC. Twelve companies have been referred to the NCLT under this. Now, what is this Insolvency and Bankruptcy Code? When a company is going to be insolvent, then an insolvency professional will be appointed. The insolvency professional will ask for applications so that the resolution process can be initiated. The new National Company Law Tribunal has been formulated under this.

Now, what does the amendment brought by Shri Jaitley say? It has certain restrictions. Let us look at the ineligibility to be a resolution applicant. A person will be ineligible to submit a plan if he is an undischarged insolvent, he is a wilful defaulter identified by the RBI, his account has been identified as NPA for more than a year, he has been convicted of an offence, he has been disqualified as a Director under the Companies Act, or he has been prohibited from trading in securities. These are the people who will be ineligible to apply for resolution of a company.

This resolution plan says that it has to be approved by 75 per cent of the majority of the Creditors Committee. It is subject to any condition specified by the Insolvency and Bankruptcy Board. The Ordinance prohibits the Committee of Creditors from approving a resolution plan submitted before the promulgation of this Ordinance, where the plan has been submitted by a person ineligible to be a resolution applicant. This means that you are limiting the number of resolution applicants by putting certain conditions.

Now, there is also a penalty which says that any person contravening provisions of the Code will be punishable with a fine ranging between one lakh rupees and two crore rupees.

To me, this Bill, appears to be an overkill. IBC was all right. Now they have broadened the people ineligible. I will tell you what will happen because of this. The category of people barred is too broad and risks the very objectives of the original code. It is germane to remember here that the IBC is not intended to serve as a mere instrument of liquidation. That is not to close down factories, it is to revive factories. It is to provide an enabling legal framework for the reorganisation and insolvency resolution of corporate persons in a time bound manner for maximisation of value of assets of such persons.

The amendment risks of becoming an instrument of blunt force that hurts more than it helps. It has been pointed out that not all bad loans are a result of *mala fide* intent on the borrower's part. Specifically, cases where companies have ended up struggling to service debt as a result of unpredictable external factors that adversely impacted their operations and financials barring the promoters of such firms from a chance to restructure and turnaround the business merely because the loans have turned sour are unfair to both the entrepreneur and the enterprise itself.

For instance, steel companies were among the worst hit in the wake of global downturn in commodity prices and depressed demand. Some of the steelmakers were considering participating in bids to restructure the debt and businesses hoping to run them again. By widening the scope, it considers ineligible to participate in the resolution process and worse, making the amendments retrospective to cover even those cases already referred to the NCLT, the Centre may have ended up by throwing the baby out with the bathwater,.

The Government has done too much. It has barred too many people and it will hamper the resolution process under IBC.

14.00 hrs

The current Ordinance is a dangerous shortcut. It relieves the banks from judging the promoters and guides them towards a faster resolution – even if financially less attractive – in many cases.

In terms of policy objectives, the Government of India has moved towards minimising a wilful defaulter from entering the fray. But this move would have been justified if the virtue of keeping the defaulter at bay was far higher than the genuine 'sin' of driving away a defaulting but genuine promoter.

This Ordinance, as I said, will throw out the baby with the bathwater. You are actually not improving the situation in a case where the economy is already in doldrums. This morning the Minister said that the economy is in a serious condition. The rate of growth had fallen to 5.7 per cent.

Mr. Deputy-Speaker, Sir, you are from a rural area. The agricultural growth in the last two quarters has been 2.3 per cent and 1.7 per cent respectively. The farm loans have totalled to Rs. 8.5 lakh crore last year and Rs. 9.5 lakh crore this year. So, in spite of that the agriculture has not grown. So, it is in a difficult situation. I think the Minister needs to look

at it afresh. He needs to have a fresh look at the Bill instead of making amendments to the original Bill so that they do not spoil the chances of recovery of these companies which are on the verge of closure.

The Government has brought another Bill called the Financial Resolution and Deposit Insurance Bill, which is before the Joint Committee. That is most dangerous because it has got a 'bail-in' provision. That 'bail-in' provision will jeopardise the deposits of small people. People are already protesting against the FRDI Bill. The problem with lawyers as Minister is that they think that the solution to every problem is enacting laws. I would request them to desist from enacting these unnecessary laws. Rather they should implement the laws that have been enacted already to solve this problem.

SHRI BHARTRUHARI MAHTAB (CUTTACK): Mr. Deputy-Speaker, Sir, the Insolvency and Bankruptcy Code 2016 was enacted to consolidate insolvency related laws and provide a time-bound process to resolve insolvency among companies and individuals.

'Insolvency' refers to a situation where a person is unable to pay or repay his debt. The Code is in its early stages of implementation, with the first case resolved in August, 2017. Institutions under the Code such as information utilities to handle financial information related to debtors are being set up and insolvency professionals are being trained.

Over the last two years, 300 cases have been registered under the Code, some of which have been challenged in courts. In November, 2017 a Committee was set up to review the Code – I think the hon. Minister is aware of it – to identify issues in its implementation and suggest changes. The Committee has been given two months' time to submit its Report. The Ordinance was promulgated on 23rd November, 2017 to prohibit, specifically certain persons from submitting resolution plans to resolve defaulting companies. The Government stated that the Ordinance seeks to prevent these persons from misusing the Code. When we go through the Ordinance and the Bill that is before us for consideration, we find that there are marked changes. Perhaps it has dawned upon the Government later that the Ordinance is not going to give any relief to the promoters. That is the real reason though it is being said that they are restricting certain promoters to involve themselves in this process. I will come to those aspects a little later.

The Bill to replace the Ordinance amending the Insolvency and Bankruptcy Code, 2016 offers promoters of small and medium enterprises undergoing insolvency proceedings a month's window to repay overdue loans and bid for their companies. This will be applicable where those promoters are sole bidders. This is a welcome step.

This Bill seeks to give some relief to promoters in general, by tweaking the definition of one year of Non-Performing Assets on the basis of which they are disqualified to bid for their companies. This also excludes Asset Reconstruction Companies, alternative investment funds and banks from the definition of 'connected persons', protecting these entities from becoming ineligible for bidding. The Bill also tweaks the language of the Ordinance to bar promoters or those in the management or control of companies with over a year of NPAs from bidding. It broadens the definition of those barred from bidding. As the previous speaker said, it restricts, but that is just the other way. Perhaps, he was referring to the Ordinance. But the Bill actually broadens the definition of those who can participate in the bidding process.

This proposes a 30-day grace period for promoters who had bid for companies undergoing insolvency proceedings before the Ordinance was promulgated on 23rd November, barring them from the bidding process, promoters of only SMEs had bid for their companies undergoing insolvency proceedings before the Ordinance took effect. With the Ordinance it was expected that 70 per cent of SMEs would be pushed into liquidation. While providing 30 days more, the Bill seeks to retain the period of insolvency up to 180 days, extendable by another 90 days.

The Bill proposes to relax the norm for disqualifying a promoter from bidding for a company undergoing insolvency resolution. The Ordinance barred promoters whose companies have had their loans declared NPAs by banks for over a year from bidding for these. The year is counted from decalaration of a loan as an NPA till the invitation of bids. This Bill proposes to calculate this period of one year till an application of this insolvency is accepted by the National Company Law Tribunal. So, some of those promoters who were not able to bid for companies since the one year period was over could qualify as that period might not be complete when NCLT admitted the case. So, this is a welcome step which has been incorporated in the Bill.

Further, I would like to say that this Amendment Bill allows defaulting promoters to be a part of the debt resolution process of the companies. It has paved the way for Asset Reconstruction Companies, alternative investment funds such as private equity funds and banks

to participate in the bidding process. Many of these entities acquire distressed assets and the classification of these assets as Non-Performing Assets would have disqualified them from the bidding process.

Similarly, banks opting to convert their debt into equity under the RBI's scheme for Sustainable Restructuring of Stressed Assets would have inadvertently become promoters of these insolvent companies and thereby being barred from the resolution process. Through this Bill, it has been corrected. The Amendment aims to correct these anomalies.

This Bill seeks to strike a fine balance in the trade-off between punishing wilful defaulters and ensuring a more effective insolvency process.

The Bill also seeks to bring any individual who has in control of the NPA under the ambit of the Insolvency Code. It lays out that the individual insolvency law will be implemented in phases. It also allows guarantors of insolvent firms to bid for other firms under the insolvency process. This Bill has addressed concerns about some of the stringent provisions in the Ordinance that investors felt, could have made the resolution process a non-starter.

I believe, the dilution of the clauses may still not be enough for an effective resolution process. Perhaps after six month, hopefully, in the next Monsoon Session again, you would be coming back to this House with certain relevant amendments because it is in the making.

Those *bona fide* promoters, who were expecting to be ring-fenced and brand all acts of default as malfeasance have been crestfallen. This needs to be addressed.

What is the Insolvency Code all about? It was envisaged as a resolution tool, but now, it has become a loan recovery tool. The law does not recognise promoters, who may be facing genuine operational or financial difficulties because of external factors such as policy decision. The IBC was enacted in 2016 to find a time bound resolution for ailing and sick firms either through closure or revival while protecting the interests of creditors.

A successful completion of the resolution process was expected to aid in reducing rising loans in the banking system. By September end this year, NPAs in the Indian Banking System would have made up 9.85 per cent of total advances according to CARE Rating. The position of promoters has largely remained unchanged except for certain clarifications offered by the Amendment Bill. This needs to be explained that after two years of implementation of the Code, why NPAs have not come down. This Bill seeks to make some provisions of the Ordinance effective retrospectively. It proposes that the Committee of

Creditors must invite new bids if the promoters, who had bid for companies undergoing insolvency resolution, are disqualified by the Ordinance.

The situation, today, Sir is that the companies apart from 12 big ones that are undergoing insolvency resolution, have a cumulative debt of Rs. 150,000 crore. The big companies have cumulative debt of around Rs. 250,000 crore. A little over 300 companies are undergoing insolvency proceedings.

Sir, before I conclude, I should also mention that the Ordinance prohibits a person from submitting a resolution plan if he has given a guarantee on a liability of the defaulting company undergoing resolution or liquidation; and this is a problem, which needs to be addressed. For example, 'A' lends Rs. 1000 to 'B' This amount is guaranteed by 'C' implying that if 'B' is unable to repay this amount, then 'C' will repay it on 'B's' behalf. There may be a case for prohibiting 'C' from submitting a resolution plan if he does not honour the guarantee. However there may be instances where 'C' honours the guarantee but the resolution process is triggered by default on other debt of 'B'.

The question is whether a guarantor, who honours his guarantee should be barred from submitting a resolution plan for the company. That question remains unanswered. Thank you, Sir.

SHRI JAYADEV GALLA (GUNTUR): Thank you, hon. Deputy-Speaker, Sir, for giving this opportunity to speak on the Insolvency and Bankruptcy (Amendment) Bill, 2017.

Sir, I would like to congratulate the hon. Finance Minister for the very important and far-reaching legislation of the Insolvency and Bankruptcy Code, the original Code that was passed.

This Act was one of the important factors for India improving its ranking in Ease of Doing Business from 142 to the Top 100; and I look forward to more reforms coming in so that India can move up to Top 50 and then thereafter, to move up to Top 10 in the world. .

Along with GST, it was also an important factor in India's credit rating improvement as well. I am very happy to see that the Government is moving quickly to act after finding loopholes and weaknesses in such important legislation. This Bill ensures weeding out of those unscrupulous individuals who are undischarged insolvents, wilful defaulters, whose accounts have been id'd as NPA for more than a year and few others who have not repaid.

This Bill aims to change the older order under which men who presided over the debacle of a company by not paying bankers do not get a second chance. It means, the amendment looking for buyers who could turn the business around and not to give it to same men who brought it down in the first place. So, I welcome this.

Sir, we all know that before the Ordinance, most of the bankers would have been willing to enter into deals and accept haircut on loans as long as such promoters were not perceived corrupt or categorized as wilful defaulters. It means, if there is no forensic audit which shows that they had diverted funds to other group of companies or personal accounts, they are allowed to be a contender to get his company back. But here, I wish to make a point. My point is relating to insertion of proposed sub-section (c) of Section 29A. Here, you are saying that if one's account is classified as NPA and a period of one year or more has been lapsed from the date of such classification and who has failed to make such payment of all overdue amounts with interest, he is not eligible to submit his resolution plan. I feel that the period of one year is too short a period. Many industry segments run in business cycles and in these business cycles if you have a downturn and at the low point of that business cycle, it may take more than a year – generally, it takes about two to three years – for this business cycle to turn around. So, I request the hon. Minister to consider revising it for, at least, three-year period, so that genuine persons can get an opportunity. There are good apples and bad apples and, I think, this will ensure that the good apples are given a chance.

Sir, with respect to barring certain persons from the liquidation process as opposed to the Resolution process, I personally feel that the banking sector may be the loser since the Bill is reducing the number of bidders and thus minimizing the scope for finding the right price for stressed assets. A liquidated company ceases to exist, so the background of persons bidding for its assets may be irrelevant in my opinion. I am saying this because recently SEBI has classified three lakh entities as shell companies and the promoters, directors and relatives of these companies will not be allowed to bid for stressed assets. And this move hurts small and mid-size SMEs.

Thirdly, I wish to give an example since I am also an entrepreneur. To consider a case where an entrepreneur ropes in other investors and funds most of the fixed assets with equity. He then takes bank loans only as a means of working capital. If there is no charge or mortgage created on fixed assets in favour of the banks, and if the company defaults due to some unpredictable external factors, how can such undertaking be allowed to be taken over by

a person proposing insolvency resolution without working out the enterprise value and compensating shareholders?

With these few words, I thank you once again for giving me this opportunity.

SHRI B. VINOD KUMAR (KARIMNAGAR): Thank you, Sir. I rise to speak on the Insolvency and Bankruptcy Code (Amendment) Bill, 2017.

This Bill has been brought to amend the Insolvency and Bankruptcy Code, 2016. As mentioned by the hon. Minister, the Ordinance was issued on 23rd November, 2017. The reasons mentioned were that prior to the Ordinance of 2017, there was no bar on who could submit a resolution plan or participate in the acquisition of assets of a company at the stage of liquidation. This meant that promoters who are willful defaulters could bid for the stressed assets and regain control over the company at the expense of the creditors. To prevent this malpractice, the Government has brought the Ordinance which is a welcome step. Now, it has been replaced by this Bill. The Bill provides as to who can submit a resolution plan in response to an invitation made by a resolution professional. It also empowers resolution professional with approval of committee of creditors to decide who can submit a resolution plan.

The committee of creditors can approve a resolution plan by a vote of minimum 75 per cent of the voting share of financial creditors. This also provides for punishment for contravention of provisions where no punishment is prescribed.

As per clause 5 of the Bill, a person shall not be eligible to submit a resolution plan, if such person, or any other person acting jointly or in concert with such person is: (a) an undischarged insolvent, (b) a wilful defaulter according to the RBI guidelines, (c) an account holder or promoter of a non-performing company for over one year, (d) convicted for any offence punishable with imprisonment for two years or more, (e) disqualified to act as a director under the Companies Act, 2013 (f) prohibited by SEBI from trading in securities, (g) a promoter or in the management or control of a company in which fraud or extortion or undervalued transactions have taken place, (h) having a connected person not eligible under any of the above-mentioned items. This is mentioned in Clause 5 of the Bill.

There are some issues to be addressed. There are some apprehensions. Some experts say that by barring certain entities from bidding, the number of bids received will be even

lower, thus depressing the prices of assets even further. This will lead to greater losses. This is one apprehension.

Others say, this move will go a long way in preventing promoters from using shell companies to regain control of their defaulting companies. But the question is this. If the criteria to label as wilful defaulter or fraudulent promoter remain the same, how effective will the Bill be in preventing such entities to bid for such stressed assets?

The big concern among resolution professionals is that the amendments will disrupt nearly all pending insolvency proceedings as on today. Besides this, the eligibility of all bidders will have to be ascertained before examining their bids. Earlier, the resolution plan had to qualify for consideration; now the bidder must also qualify. In cases where only the promoter has submitted a plan, and such promoter is found to be ineligible, fresh bids will need to be invited.

Identification of a wilful defaulter has been left to the banks but within the guidelines of the RBI. This might lead to arbitrariness and such punitive or restrictive measures should be enshrined in the law, rather than being left to an interested party such as a lender or a bank.

A promoter may challenge his identification as a wilful defaulter in court and seek a stay on the insolvency proceedings till the challenge is decided. It may further cause delay and losses to the already stressed assets.

Sir, these are the apprehensions which are seen in the Press and media. I would like to bring them to the notice of the hon. Minister who is very much available in the House. However, our Party is supporting this Bill as the aim of the Bill is not to avoid honest bidders. It only seeks to exclude dishonest entities and wilful defaulters who cause downfall of a company and later seek to recapture the same assets at a lower price. Sister concerns and shell companies are also prevented from regaining control over stressed assets. Thus, the Bill closes the existing loopholes and rewards honest entities looking to restructure failing companies by tightening the insolvency rules. As such, our Party is supporting this Bill replacing the Ordinance.

Thank you, Sir.

SHRI P. KARUNAKARAN (KASARGOD): Sir, I would like to participate in the discussion on the Insolvency and Bankruptcy Code (Amendment) Bill, 2017. It is really an amendment to the Insolvency and Bankruptcy Code, 2016 which we have discussed last year. Within no time, the Government has come again to make an amendment to the Bill passed by the House.

The Bill was passed after a detailed discussion, as was said by the Finance Minister earlier. But, in practice, when it is implemented, it was found that there was a lacuna in the Bill. It has been explained by the Minister himself.

The Opposition always says that the Bills, either they are Finance Bills or other important Bills, can be sent to the Standing Committee. It does not mean that it minimizes the importance of the Parliament or the status of the Minister. No doubt, our Finance Minister and his colleagues are capable of tackling the issues but at the same time what we see is that even within six months, we have to go in for other amendments. It is because they are handling these issues not after an elaborate discussion. But when it goes to the Standing Committee, it is given much importance and other issues may come. So yesterday also we had taken up the same issue. But I do not think the Government is taking it in such a way that the importance of the Standing Committee has to be upheld.

Sir, the provision in the earlier Bill is for insolvency resolution and liquidation of a company or a corporate person in court. It does not restrict or bar any person from submitting a resolution plan or participating in the acquisition process. It is true. This was the provision included in the last Bill. It is correctly understood that many corporate companies or persons may misuse the situation. There may be undesirable persons. So the restriction as laid down in the Bill is essential but this was not seen by the Ministry earlier. So it has been decided to make the amendment to the Insolvency and Bankruptcy Code, 2016. In the Statement of Objects and Reasons, in paragraph five, there are about eight norms and conditions. I do not want to go into the details because other Members have made it clear.

Besides this amendment, I would like to talk about some other issues which are also touched by the other Members, especially the financial issues. Commending the Bill, our Finance Minister has rightly stated that the NPA has become the most important issue as far as our growing economy is concerned. The Government has taken a number of steps. The Finance Minister has said that there is no *status quo*. *Status quo* would not give any result. I would like to know whether there is any change as far as the NPA is concerned, though we

have taken a number of steps. So what is the decision or the step that the Government is going to take?

Now-a-days, the Government is taking all the powers in their hands. It is recommended by the NITI Aayog. We know that the GST Council has got the highest power. Their power is really above the Parliament which we have. Now-a-days, besides the taxes, there is a trend because the States are really suffering much. When the Central Government is taking each and every step, the State has to bear the burden. There is a trend of increase in the cess and surcharges from the side of the Central Government. In 2013-14, the revenue share of the Central Government from cess and surcharge was only 6.7 per cent but in 2016-17, it rose to 10.8 per cent. In 2013-14, the surcharge was 2.5 per cent and it rose to 4.4 per cent. It is increasing. Now also it has increased. But you see, on the revenue of surcharges and cess there is no devolution to the States. It goes to the Central Government's account. The people have to pay and the Central Government may get the revenue but the State Governments are not getting any share out of these revenues.

On the other side, the Central Government has made a change in the funding pattern of almost all the Centrally-sponsored schemes. Earlier in the PMGSY, the share was 90:10 basis. Now it is 60:40 basis. In SSA, earlier it was 90:10 basis and now it is 60:40 basis. That is true in IAY and all that. It means that the State has to take the burden when the Centre is implementing the schemes. I do agree that these schemes are good for the States. It was on the assumption we asked in the last Session also why the Government has changed the funding pattern. Then it said, the GST is coming; you may get much more money. It was assumed because our Finance Minister said it is a simplification of surcharges, VAT and many other taxes. Instead of them, there is only one tax. But what is the experience?

Wherever we go, we have to pay more. Even on the *masala dosa,* we have to pay more. There is an experience of my co1league, Mr. Premachandran. He is a good parliamentarian here. He said he has gone to the haircutting saloon in Delhi. Earlier he had given only Rs.300. Now it is Rs.400. He questioned that. The increase is because of GST. So, wherever we go, whether in Parliament or outside or to a tea shop, there is a price hike. It is also true that this amount is not going to the Government. Many people are exploiting it and demanding more money in the name of GST.

I would like to say that on one side, with this tax, the Central Government is getting more revenue, but on the other side, the States are getting nothing. When the GST came into

force, the States have to get the tax on the commodities, which come from the other States. But these taxes are collected from the producer States. A State like Kerala has to get IGST to be collected from other States. But it will take time. Kerala has to get almost Rs.700 crore per month to be collected from the other States. But, it is not collected and it is still deposited in the Central Government's account. Till now, it is about Rs.4000 crore, which Kerala has to receive through IGST collection, but it is lying in the Central Government account. I believe this is also true in case of other States as well.

Sir, it is on the basis of 14 per cent growth that the Central Government is giving compensation to the States. It is being given twice in a month. This is also creating new problems for the States. Hence, I would like to request the hon. Finance Minister, if the Central Government gives grant to the States from the IGST Fund, which is deposited in the Central account, it can be compensated in the IGST settlement and there would not be any loss.

It is true that when the Government gives compensation to the States, they also include revenue from the VAT, which has been collected by the State. But I would also request the Government to take into consideration the last year's arrear which might have been there on account of revenue on the VAT because the collection of this arrear is also a kind of revenue for the State.

After introduction of the GST, the Government of Kerala has been actively collecting the tax. We expected to collect around 25 per cent of revenue but our experience is that we could get only 14 per cent.

Prof. Thomas has already mentioned the issue of Ockhi Cyclone, which has caused a big burden on the State. So, the Central Government should give due importance to the issue of welfare through the Centrally Sponsored schemes. We have initially asked for an amount of Rs.433 crore for the State of Kerala. But the Central Government is giving only Rs.133 crore.

So, I conclude with a request to the Government that they should also consider these issues besides other legislative issues. Thank you, Sir.

SHRI VARAPRASAD RAO VELAGAPALLI (TIRUPATI): Thank you very much, Sir. I admire the hon. Finance Minister for his steadfast approach in trying to bring down the NPAs and streamlining the process of loaning. Our party, the YSR Congress congratulates him.

We all know that the insolvency and bankruptcy laws and processes are extremely complicated. There is a lot of ambiguity in this process. The Insolvency and Bankruptcy Code was introduced in 2016. It also adds an element of ambiguity. I am sure that it needs more time to get streamlined.

Sir, the NPAs are taking alarming proportions in our country. The NPAs are taking away 10 per cent of the advances. They also form 10 per cent of the GDP of our country. It is only the 50 top corporates which are literally forming 80 per cent part of the total NPAs. So, this issue is extremely important which needs to be re-looked.

The RBI, in consultation with other banks, has identified 12 big corporate companies, which literally form more than 25 per cent of the NPAs with an aggregate bad loan of Rs.3.5 lakh crore.

When we compare it with the global situation, the NPAs in India form 10 per cent of the advances whereas in other advanced countries like USA and UK it forms only less than 2 per cent of the advances. Even in case of China, it is less than 2 per cent.

So, it is high time that we pay attention to the issue of NPAs. I do not see any reason why the SEBI is now postponing the disclosure of list of defaulters. Two years back, the hon. Finance Minister had assured the House that the defaulters' list would be published as soon as possible so that they could be put to shame and others could learn lessons from it. But SEBI for one reason or the other is postponing the disclosure of the list of defaulters. That may be avoided.

Sir, this Ordinance is definitely required so that the bad elements, the defaulters do not find backdoor entry to claim again the ownership of a company and giving a much bigger haircut to the bankers. At the same time, while defining the resolution applicant, more number of people have been debarred. The category is too broad. It may ultimately end up to be much more ambiguous than the previous one, the Code itself. It is essential to prevent the unscrupulous elements, but sometimes, without any *mala fide* intentions, people may come under it. Due to global downturn or the prices coming down or the demand-supply situation worsening, as we have been seeing in respect of steel companies in the last two to three years, they may come under it. By debarring these people, the resolution applicants, from participating again, perhaps you are not giving any chance to the people, who do not have any *mala fide* intentions, to participate again to restructure their loans and to get one more opportunity. Hon. Finance Minister may kindly re-look at this issue because the IBC is not

merely an instrument of liquidation. It gives an opportunity and a framework for reorganisation as well as to restructure the enterprises and give an opportunity to the entrepreneur. So, it is not merely an instrument of liquidation. Hence, it needs to be little broader.

It is not fair to bar these resolution applicants, like the persons who have been convicted for two years. Tomorrow if he goes in for an appeal, where does he stand? Similarly, SEBI bars a particular person from accessing the security markets over a trivial or small issue. Can a big corporate company be debarred on the basis of smaller issues like this and can a person be disqualified to be a Director as per the Companies Act and all that? A resolution applicant should not be barred because of small issues like this. Definitely, there is a need to have a re-look at this issue.

There is no doubt that we are stressing a lot on the ease of doing business and every time, we are clapping a lot. In the comity of nations, India's ranking has come down from 140 to 100 or so in the list, but I am sure the more ease we create in doing business, might end up in more NPAs in future. As earlier speaker mentioned, the present Ordinance could end up in unintentionally throwing out the baby with the bathwater. This means that it might dilute the spirit of the original IBC of 2016.

Sir, I thank you very much for having given me this opportunity to speak on this Bill.

श्री सुभाऐ चद्र बहेड़िया (भीलवाड़ा) : उपाध्यक्ष महोदय, आपने मुझे इन्साल्वेन्सी एंड बैंकक्रप्ट्सी कोड (संशोधन) बिल, 2017 पर बोलने का मौका दिया, इसके लिए बहुत-बहुत धन्यवाद।

महोदय, जब यह आई.बी.सी. कोड लागू हुआ तो इसका एक ही उद्देश्य था कि कोई भी कंपनी लिक्विडेशन में जाए या कोई भी दिवाला हो, उससे पहले अगर उसके क्रेडिटर या लेनदार यह सोचते हों कि यह कंपनी रिवाइव हो सकती है, लिक्विडेशन में न जाए और उस हिसाब से कोई एप्लिकेन्ट्स रेजोल्युशन का प्लान दें तथा क्रेडिटर उससे सैटिसफाई हो तो उसे लिक्विडेशन में जाने से बचा कर, उसको रेजोल्युशन प्रोफेशनल के हिसाब से वापिस रिवाइव करने की कोशिश करें। इसी उद्देश्य से आईबीसी कोड लाया गया है। उस समय 1 दिसम्बर से लागू हुआ और उसमें कुछ प्रैक्टिकल दिक्कत आई। कुछ कंपनियों में यह दिक्कत आई कि रेजोल्युशन एप्लिकेन्ट वही हो गए, जिनके कारण वह कंपनी पहले डूबी और नॉन-परफार्म की। उनको रोकने के लिए यह अमेन्डमेंट बिल लाया गया है। इस बिल के क्लॉज पाँच में एक नया सेक्शन जोड़ कर 29ए लाया गया है।

महोदय, इसके साथ-साथ उनको भी लिया जो कंपनी पहले डिफॉल्टर हो चुकी हैं या उस कंपनी के प्रमोटर या उससे रिलेटेड लोग, जिनकी कंपनी का अकाउंट पहले ही एक साल से ज्यादा एनपीए हो

गया है। जो पहले ही किसी कंपनी को डूबो चुके हैं, वे दूसरी कंपनी को कैसे चलाएंगे? इस कारण उनको डिसक्वालिफाई किया गया।

महोदय, मैं इसके लिए माननीय वित्त मंत्री जी को बधाई देता हूँ। बहुत जगहों पर रेजोल्युशन प्रोसेस चालू करने के लिए खुद कारपोरेटर्स ने शुरू कर दिया और फिर दूसरे तरीके से उस कंपनी पर वापिस कब्जा करने के लिए कोशिश करने लगे। उनके प्रयासों को रोकने के लिए यह अमेन्डमेंट बिल लाया गया है। इसमें जो रेजोल्युशन एप्लिकेन्ट्स हैं, उनमें कौन-कौन एलिजिबल होगा, कौन-कौन डिसक्वालिफाई होगा, उसके बारे में पूरा डिटेल्स में बताया गया है।

इसके अलावा, आईबीसी कोड पार्ट-एक, दो तथा तीन है, जो पर्सनल और पार्टनरशिप फर्मों के लिए भी लागू नहीं किया गया और उसमें जो पुराने नियम हैं, वही अभी चल रहे हैं। पर्सनल तथा पार्टनरशिप फर्मों में काफी प्रभाव पड़ने वाला है, इसलिए इसको चरणबद्ध तरीके से लागू करने की कोशिश की गई है। सबसे पहले, जिन व्यक्तिगत कंपनियों के डायरेक्टर, जिनकी व्यक्तिगत गारंटी उस लोन में है, जो कंपनी रेजोल्युशन प्रोसेस में जा रही है और उनके खिलाफ लागू करने के लिए चरणबद्ध तरीके से काम हो, उसको डिफाइन करके लागू करने की शुरूआत इसके बाद से की जाएगी।

महोदय, इसके साथ-साथ मेरा कहना है कि मान लीजिए कोई कंपनी लिक्विडेशन में चली गई और और उसके असेस्ट्स बिक रहे हैं, तो उन असेस्ट्स को खरीदने में जो डिसक्वालिफाइड व्यक्ति है, वह उसको खरीद नहीं सकता है। यह प्रावधान भी इस बिल में किया गया है। अभी कुछ लोग कह रहे थे कि इसमें बिडर की कमी हो जाएगी, बिडर कम हो जाएंगे और बिडर में जो वैल्यू ज्यादा आ सकती थी, वह नहीं आएगी। ये जितने भी डिफाल्टर हैं, उनकी मेन्टेलिटी रहती है कि ज्यादा से ज्यादा बिड करके ज्यादा से ज्यादा उसकी कीमत लगा कर वापिस कब्जा कर लिया जाए। वास्तव में जो इनवेस्टर होता है, उसका पैसा डूब जाता है।

मैं आपके माध्यम से माननीय वित्त मंत्री जी को बहुत-बहुत बधाई देता हूं और इस बिल का सपोर्ट करता हूं।

श्री दुऐयंत चौटाला (हिसार) : उपाध्यक्ष महोदय, आपने मुझे इनसाल्वेंसी एंड बैंकरप्सी कोड अमेंडमेंट बिल, 2017 पर बोलने का मौका दिया, इसके लिए मैं आपको धन्यवाद देता हूं। मैं वित्त मंत्री जी को बधाई दूंगा कि आज एक अलग कदम इस पूरे बैंकरप्सी कोड के अन्दर उठा रहे हैं, जहां तीन ऐसे इंपोर्टेंट लोग जो कहीं न कहीं अपने एकाउंट्स को एनपीए डिक्लेयर करके बचने का प्रयास कर रहे थे, आज उन लोगों को इस बिल के माध्यम से कानूनी दायरे में लाने का काम किया।

मैं एक सुझाव और देना चाहूंगा। एक खराब सेब सौ सेबों को खराब कर सकता है। कहीं न कहीं जो एक साल का टेन्योर सरकार द्वारा इस बिल के माध्यम से लाया जा रहा है, सरकार उस पर जरूर गहन चिन्तन करे। उसको बढ़ाकर हम तीन साल करें, क्योंकि कोई भी व्यवसाय होता है, तो उसका बैड

साइकिल भी बिजनेस का आता है। छोटा दुकानदार जिसकी आज ये हालत है कि सरकार जीएसटी रिफंड भी टाइमली नहीं दे पा रही है, उस कारण भी उसका बिजनेस साइकिल डाउनफाल के दायरे में आया है तो कहीं न कहीं उसकी रिकवरी के लिए जो टेन्योर है, उसे बढ़ाने का प्रयास करे। अगर वह बढ़ेगा, तो जरूर आप देखेंगे कि जो गुड एपल्स थे, वे कहीं न कहीं इस कानून के दायरे से बाहर अपने आप हो जाएंगे।

(Hon. Speaker *in the Chair*)

एक और चीज मैं कहना चाहूंगा। बैंकरप्सी कोड हम लेकर आए और आपका एफडीआरआई बिल फाइनेंशियल सैक्टर के लिए आ रहा है। आज सबसे ज्यादा एनपीए एग्रीकल्चर सैक्टर का है, किसानों का है। सरकार जरूर उनके लिए भी कोई ऐसा प्रोविजन क्रिएट करे या ऐसा लेजिस्लेचर लेकर आए, जिसके माध्यम से चाहे कोआपरेटिव सैक्टर में हो या नेशनलाइज्ड बैंक्स में हो, जो किसान आज कहीं न कहीं एक डिस्ट्रेस झेल रहे हैं, आर्थिक कमजोरी झेल रहे हैं, उनको भी इस तरह के स्ट्रक्चर के कारण हम मदद दे पाएं। मैं यही आग्रह करने के लिए आज खड़ा हुआ था। मैं आपके बिल का समर्थन करता हूं, बहुत-बहुत धन्यवाद।

SHRI RAJESH PANDEY (KUSHINAGAR): Madam Speaker, I am grateful to you for giving me an opportunity to speak on this Bill.

Congratulating our hon. Finance Minister and rousing the thoughts of Shri Sanjay Jaiswalji and Shri Subhashji, I want to say further that the need to bring this Insolvency and Bankruptcy (Amendment) Bill, 2017 arose because the similar persons who, with their misconduct, contributed to the defaults of the companies or are otherwise undesirable may misuse this situation due to lack of prohibition or restrictions to participate in the resolution or liquidation process, and gains or regains control of the corporate debtor. This may undermine the process laid down in the court as unscrupulous person would be seen to be rewarded at the expense of the creditors.

I really find it strange as to why the previous Government did not process the perils of the old Insolvency and Bankruptcy Code. What exactly do we want to achieve by this? We

want to provide clarity to the persons who can submit resolution plans in response to an invitation made by the resolution professionals.

Secondly, it is also to provide for making certain persons ineligible for being resolution applicants. This is also a matter of concern that if a person who is responsible for the downfall of any enterprise and wants to take advantage of that situation or if he becomes ineligible for any reason for that matter, should not be permitted.

It has been, after worth consideration, provided that the Committee of creditors shall approve the resolution plan by a vote of not less than 75 per cent of voting share of the financial creditors after considering the feasibility and viability of the resolution plan.

It is not that we are giving a very open opportunity that anybody could misuse this Bill. So, at least, 75 per cent of the votes should be in his favour so that he can apply for a Resolution.

This Bill is also to disallow the sale of property to a person who is ineligible to be a Resolution applicant in the case of liquidation of the corporate. Madam, earlier, if a company defaulted, there were, at least, four different legal routes available to the debtors and the creditors. This could lead to multiple negotiations and multiple penalties etc. for the debtor compounding his plight. Moreover, such parallel proceedings had also given rise to numerous instances of conflict between the laws. Four different agencies – the High Courts, the Company Law Board, the Board for Industrial and Financial Reconstruction (BIFR) and the Debt Recovery Tribunals (DRTs) – have overlapping jurisdictions giving rise to the potential of systematic delays and complexities in the process. This new Bill addresses all these issues by bringing a new uniform Code. I am thankful to the hon. Finance Minister for the same.

Madam, current insolvency proceedings take months, if not years and the average time is four years. This delay can acutely devalue the assets involved, thus, making the insolvency negotiations redundant. The current disposition involves the institution of official liquidator which is prone to red tapism, chronic corruption and nepotism. The new Code seeks to keep the role of adjudicator to the minimum. Currently, only 25 per cent of the asset value is recovered by the creditors even after the liquidation process. That is the matter of great concern.

Now, I am coming to how to deal with it. Our public sector banks, which are compounded to the pitiable position, find themselves in rising NPAs and mounting stressed

assets have also eroded their profits, as the recent SBI reports point out. The easing of liquidation process can help the banks recover a lot of bad debts.

Madam, formerly, in our county, any change in the legal system was hard to enforce which is the reality but, now, with the changed attitude of our Government and under the able guidance of our hon. Finance Minister, this Code has proposed massive laws, procedures and infrastructure. There is no doubt that once the Code is fully implemented, it is going to be one of the best initiatives by the legislature and a boon to the economy in the broader sense. I offer my sincere gratitude to our hon. Prime Minister and the hon. Finance Minister, Shri Arun Jaitley ji for bringing this Bill and I fully support it.

SHRI GAURAV GOGOI (KALIABOR): Madam Speaker, this Bill comes to replace an Ordinance which was promulgated by the President of India on 23rd November and we are now discussing this Bill within Parliament. But we must keep in mind that if the Parliament was convened normally, as it is by the third week of November, then there would have not been an Ordinance, this Bill would have been discussed within Parliament. It is quite ironical that, while a political party which talks about simultaneous elections of assembly and Lok Sabha, and about improving the efficiency of this Government, the recent two months were examples of gross inefficiency. Only two States went to elections. While the elections were supposed to have been convened at the same time, the dates were not overlapping and dates were postponed. Important Bills have been introduced in Parliament during this Session and passed in a hurry, be it the GST compensation, this ordinance or the reform of the Medical Council of India. All this process is going in a hurry and the deliberation that might have normally occurred is not taking place.

So, it is ironical that while you talk of simultaneous Assembly and Lok Sabha elections, when two States had to go to elections, you did not do it. And if you remember, earlier this year when elections were held in West Bengal and Uttar Pradesh we had Parliament going on then. So, we could have convened Parliament to discuss and deliberate at length.

Madam Speaker, just on this larger point - because many people look towards us, our constituents look towards us to discuss important matters – Parliament now only sits on an average for 70 to 75 days, as you would know while in the First Session Parliament used to sit for 150 to 180 days.

HON. SPEAKER: No.

SHRI GAURAV GOGOI : It would cross 100, Madam, it was 120 to 130 days.

Madam, while the Constitution has only a provision that no two sittings of the session should be convened if there is a distance of more than six months, I hope that through you, Madam, we can bring about an amendment where we put in a minimum number of sittings, a minimum number of days, and a regular schedule, so that we know that Parliament will sit and come elections or any other thing, Parliament is scheduled because we are accountable to the people of India.

Madam, this Bill deals largely with the Insolvency and Bankruptcy Code. The Insolvency and Bankruptcy Code largely deals with the crisis of NPAs. What is the extent of this crisis? The extent is that total exposure of banks to bad loans is around Rs.8,00,000 crore, roughly translating to five per cent of our GDP. That is more than what we need, that is more than the budget that we have for our education, more than the budget that we have for any other important social welfare sector. There were around 300 cases in the National Company Law Tribunal.

Madam, unfortunately there is a misconception amongst the ruling party, they think that debt recovery and recovery of bad loans has only started post-2014, after the Prime Minister has taken over. Let me remind them that there have always been steps initiated by the Government of India to recover bad loans. There were multiple Acts. We used to have Lok Adalats, we used to have Debt Recovery Tribunals and they were functioning for many years. What the Insolvency and Bankruptcy Code has done is to implement the recommendations of the Bankruptcy Law Reforms Committee and codify these existing laws.

आप लोग कहते हैं कि पहले संज्ञान में क्यों नहीं लिया। यह आपका वहम है, यह पहले संज्ञान में था, विभिन्न प्रकार की कार्रवाई की गई थी, विभिन्न प्रकार के नियम थे। मैं कुछ आंकड़े पढ़ना चाहूंगा। वर्ल्ड बैंक के अनुसार, Bank non-performing loans to total gross loans percentage का एक टेबल बनाया गया है, मतलब एक साल में भारत में जितने बैंक्स ने लोन दिए हैं, उसमें से कितने लोन नॉन-परफार्मिंग बन चुके हैं।

मैं अभी भारत का आंकड़ा दे रहा हूं, वर्ना 2011 में the percentage of nonperforming loans to gross loans was 2.7. In 2012, it was 3.4. In 2013, it was 4.0. यहां तक यूपीए के समय के आंकड़े खत्म हो जाते हैं। अब मैं आपकी सरकार की समय के आंकड़े पढ़ता हूं। ...(व्यवधान) आप सुन

लीजिए, यह बिल किसलिए लाए हैं, बाद में वह भी बोलूंगा कि किसकी मदद करने के लिए लाए हैं।... (व्यवधान) In 2014, out of total gross loans the percentage of nonperforming loans was 4.3. In 2015, it was 5.9. And in 2016, it is 9.2. So, the issue of NPAs was of concern and it had been addressed through various laws during UPA, the Finance Ministry used to convene meetings of the Directors of public sector banks and we used to tell them in meetings in 2012-13 आप ध्यान दीजिए कि कौन सी कंपनियां हैं जिन्होंने पब्लिक सैक्टर से लोन लेकर वापस नहीं दिया है।

ये संज्ञान में थे। बैंक डायरेक्टर्स की मीटिंग हमारी सरकार के वित्त मंत्रालय बुलाते थे। लेकिन आपकी सरकार के दौरान, चूंकि आपकी आंख भटक गयी, एनपीए का मसला, From a concern, it became a crisis of epic proportions under your Government. You must take into account that in whose tenure it has worsened. In 2011, it was two per cent; in 2013 it was around four per cent and by now it is around 9.2 per cent and growing even further. I appreciate that there is an Insolvency and Bankruptcy Code which allows us a certain sense of predictability, which allows a certain sense of stability and gives a legislative clarity to promoters. But how does the Government intend to measure the success of the Insolvency and Bankruptcy Code?

आप जो कानून लाये हैं, वह सफल हुआ है या नहीं, इसका आप आकलन कैसे करेंगे? मैं एक उदाहरण देना चाहता हूं कि अगर आपका आकलन है कि जो भी नॉन परफोर्मिंग लोन्स हैं, बैड डैट्स हैं, उन्हें आप रिकवर करेंगे। जो क्रेडिटर्स हैं, जिनका पैसा नहीं मिल रहा था, उन्हें इस आईबीसी के द्वारा पैसा मिलेगा। मैं उसके एक केस का उदाहरण देना चाहता हूं, जो अभी हाल ही में कुछ महीने पहले एनसीएलटी में निकला, जिसमें लैंडर, क्रेडिटर को 94 परसेंट हेयरकट लेना पड़ा। मतलब उस केस में जो क्रेडिटर था, जिस पर जजमेंट आ चुका है, क्रेडिटर ने 972 करोड़ रुपये का लोन दिया था, जिसमें से रिकवरी केवल 54 करोड़ रुपये की हुई। इसका मतलब है कि एक क्रेडिटर ने यदि सौ रुपये दिये हैं, तो उसमें से केवल छः रुपये वापस मिलेंगे। अगर इस प्रकार के जजमेंट्स आते रहेंगे कि क्रेडिटर ने जितना पैसा दिया है, वह इनसॉल्वेंसी एंड बैंकक्रप्टसी द्वारा नहीं मिलेगा, पब्लिक सैक्टर बैंक्स को अपना पैसा नहीं मिलेगा। आज क्रेडिट सप्लाई की बात है, आज पब्लिक सैक्टर बैंक्स इंडस्ट्रीज को क्रेडिट नहीं दे रही, तो वह समस्या रहेगी, क्योंकि बैंक ने अपने बैलेंसशीट में यह प्रोविजन बना रखा है कि जो बैड डेट है, जो नॉन परफोर्मिंग लोन है, आईबीसी के दौरान इससे मुझे काफी रिकवरी हो जायेगी। मैं इस रिकवरी के बाद और कम्पनियों को लोन दे पाऊंगा। वे कम्पनियां इन्वेस्टमैंट करेंगी और नौकरियां बनेंगी। लेकिन वह नहीं हो रहा और एनपीए बढ़ता जा रहा है। ...(व्यवधान)

HON. SPEAKER: Please conclude now.

SHRI GAURAV GOGOI: Madam, I want only two minutes. आपका एनपीए बढ़ता जा रहा है। इसलिए आपको देखना पड़ेगा कि यह कितना फायदा कर रहा है। क्रिसल की रिपोर्ट आती है कि जो 50 टॉप डिफॉल्टर्स हैं, if they owe Rs. four akh crores, out of this Rs. four lakh crores, it is

realistic that only Rs. 1.6 crores will come back. इंडीपेंडेंट एजेंसीज भी बोल रही हैं कि इससे ज्यादा आपकी रिकवरी नहीं होने वाली है। क्रेडिट ऑफटेक, क्रेडिट टू प्राइवेट इन्वेस्टमैंट आपकी प्रॉब्लम रहेगी। मैं आपको दोबारा कहना चाहता हूं कि आज रिकवरी रेट क्या है? आप वर्ल्ड बैंक, ईज़ ऑफ डूंग बिजनेस की बात करते हैं। उस ईज़ ऑफ डूंग बिजनेस में ही लिखा है कि विभिन्न देशों में रिकवरी रेट कितना है। On one dollar, how many cents a country is able to recover. इंडिया की रिकवरी रेट 26, चाइना की रिकवरी रेट 36, Malaysia's rate of recovery on one dollar is 81 cents. थाइलैंड की रिकवरी रेट 67.7 सेंट्स है। आप इनसॉल्वेंसी एंड बैंकक्रप्टर्सी द्वारा सोच रहे हैं कि यह होगा, तो यह नहीं हो रहा है। इसलिए मैं कहना चाहता हूं कि अपनी पीठ थपथपाने की जगह आप इस बिल को दोबारा देखिये कि क्या इससे रिकवरी रेट बढ़ेगा या कम होगा, क्योंकि यह क्रेडिट से लिंक्ड है। क्रेडिट प्राइवेट इन्वेस्टमैंट से लिंक्ड है, प्राइवेट इन्वेस्टमैंट जॉब्स से लिंक्ड है। मैं जॉब्स के मामले में आपका वऐऩ 2014 का चुनावी मुद्दा याद दिला दूं कि प्रति वऐऩ दो करोड़ जॉब्स, जबकि आपकी असलियत यह है कि आप प्रति वऐऩ दो करोड़ की जगह डेढ़ लाख जॉब्स दे रहे हैं।

आप ईज़ ऑफ डूंग बिजनेस की बात करते हैं, लेकिन कभी आप इज ऑफ फार्मिंग की भी बात कीजिए। आप जो आईबीसी बिल, बड़े बैंक्स लाये हैं या टॉप 12, डर्टी डर्जन्स, आरबीआई बोलती है कि डर्टी डर्जन्स को हैल्प करने के लिए है।

आप ईज़ ऑफ फार्मिंग की बात भी कीजिए। यूपीए सरकार के टाइम में 80,000 करोड़ रुपये का लोन वेवर था, लेकिन दुख होता है कि जब आज किसान पिट रहा है, तब केंद्र सरकार के वित्त मंत्रालय से यह बात आती है कि केंद्र सरकार फार्म लोन वेवर नहीं करेगी। हेयरकट के द्वारा बड़ी कंपनीज को रिलीफ मिलेगी, लेकिन किसानों को रिलीफ नहीं मिलती है। इसलिए मुझे दुख होता है कि ईज़ ऑफ डूंग बिजनेस, जो सिर्फ दिल्ली और मुंबई की बड़ी-बड़ी कंपनीज पर ध्यान देता है, केंद्र सरकार सिर्फ उस ईज़ ऑफ डूंग बिजनेस की बात करती है, लेकिन ईज़ ऑफ फार्मिंग की बात नहीं करती है। आज इकोनोमी की असली पिक्चर क्या है? आपकी पार्टी के राज्य सभा के एक वरिऐठ सदस्य बोलते हैं, मैं उनका नाम नहीं लूंगा, कि फिच और मूडी जैसी क्रेडिट रेटिंग एजेंसीज को भारत सरकार डरा रही है, धमका रही है, उनकी आर्म ट्विस्ट कर रही है और रेटिंग्स फिक्स हो रही हैं। उनका एक आर्टिकल आया है कि सेंट्रल स्टेटिस्टिक्स ऑर्गनाइजेशन पर केंद्र सरकार के द्वारा दबाव डाला जा रहा है कि असली जीडीपी नम्बर्स को एयरब्रश करके, फोटोशॉप करके ज्यादा अच्छा दिखाना चाहिए। हम भी चाहते हैं कि रेटिंग एजेंसीज की रेटिंग्स में हमारे देश का वजूद ऊंचा हो, हम भी चाहते हैं कि भारत की इकोनोमी और जीडीपी असली हो, लेकिन हम अपनी केंद्र सरकार से 'झूठ' नहीं सुनना चाहते हैं। असली जीडीपी क्या है? वऐऩ 2014 से पहले इसका जो फार्मूला था ...(व्यवधान)

HON. SPEAKER: Please conclude now.

SHRI GAURAV GOGOI: Madam, this is my last point.

वऐऩ 2014 से पहले जीडीपी का क्या फार्मूला था, आज आप बताइए। वित्त मंत्री अरूण जेटली जी बोलते थे कि 2014 में ग्लोबल हेडविंड्स हैं, ग्लोबल हेडविंडस के द्वारा भारत की इकोनोमी जिस प्रकार से आगे जानी चाहिए, वह नहीं जा रही है। आपने देखा होगा, इस साल की शुरूआत में रुचिर

शर्मा का आर्टिकल आया था, उसमें उन्होंने कहा था कि जहां आज पूरी दुनिया की इकोनोमी वऐऩ 2007 और 2008 की ग्लोबल क्राइसिस से रिकवर हो गई है, वहीं भारत की इकोनोमी वापस पीछे जा रही है। 5.7 प्रतिशत और 6.3 प्रतिशत पर अटकी हुई है और अगर इस पर आपने वऐऩ 2014 से पहले वाला फार्मूला लगा दिया तो यह 6.3 प्रतिशत घटकर 4 प्रतिशत हो सकता है और 5.7 प्रतिशत घटकर 3 प्रतिशत हो सकता है। हम आपसे चाहते हैं आप असलियत दिखाएं। Do not photoshop the figures; do not airbrush the figures. Do not 'lie' to the people of India; they deserve transparency.

HON. SPEAKER: Please conclude.

SHRI GAURAV GOGOI : I am concluding.

प्लीज, आप इस बिल पर पुनर्विचार कीजिए। आज हम हैरान हैं कि यह ऑर्डिनेंस 22 नवम्बर को आया था। इस ऑर्डिनेंस में जो बातें शामिल की गई हैं, 9 नवम्बर को एक पब्लिक सभा में एक बड़े स्टील इंडस्ट्रियलिस्ट ने बोला था कि इस प्रकार का एक ऑर्डिनेंस लाना चाहिए, जो प्रॉविजन्स डयुबियस प्रमोटर्स को सपोर्ट करते हैं, उनको हटाने के लिए इस प्रकार का ऑर्डिनेंस लाना चाहिए। मैं काफी हैरान हूं कि जो बात एक इंडस्ट्रियलिस्ट 9 नवम्बर को एक पब्लिक फंक्शन में कहता है, उसकी इच्छानुसार वैसा ही एक ऑर्डिनेंस 22 नवम्बर को आ जाता है। मैं चाहता हूं कि आप इस पर ध्यान दीजिए कि कहीं कोई नेक्सस तो नहीं है। जिस डील के लिए यह आईबीसी आ रहा है, कहीं उसे आप फायदा तो नहीं दे रहे हैं। मैं चाहता हूं कि वह भूऐण स्टील की जो डील है, उसे पार्लियामेंट में लाकर उसके संज्ञान में लाइए, ताकि आप दिखा पाएं कि यह आईबीसी सही काम कर रहा है। यही कहते हुए, मैं अपनी बात समाप्त करता हूं।

श्री अरुण जेटली : अध्यक्ष महोदया, प्रेमचद्रन जी एवं अन्य सदस्यों के प्रति मैं आभारी हूं, जिन्होंने इस बिल पर अपने विचार विस्तृत रूप से रखे हैं।

जितने भी विऐय उठाए गए, उनमें इस आर्डिनेंस के संबंध में दो-तीन प्रमुख विऐय हैं, क्योंकि आर्डिनेंस में बहुत छोटा विऐय है, मैं उनको स्पऐट करना चाहूंगा।

सबसे पहले, अन्तिम वक्ता गोगोई जी ने जो विऐय रखा, उसे स्पऐट करना जरूरी है, क्योंकि मुझे इस बात का खेद है कि समस्या क्या है, उनको अभी भी उसका संज्ञान नहीं है। एनपीएज की समस्या इतने बड़े पैमाने पर कैसे पैदा हुई? गोगोई जी दुनिया के अच्छे शैक्षिक संस्थानों में पढ़े हैं और कई बार उन्होंने एक कहावत सुनी होगी कि there are three types of 'lies': 'lies', damned 'lies', and statistics. आज वह इस तीसरे वाली बात के स्वयं विक्टिम बन गए। एनपीए की समस्या इसलिए

पैदा हुई और उन्होंने जो दोनों उदाहरण दिए, अगर उनको समझ लें तो उनकी सरकार के जमाने में क्या-क्या पाप हुए, उनको स्पऐट हो जाएगा।

बैंक्स जितने भी आई.बी.सी. में अभी तक लोन्स इंवॉल्व्ड हैं, ये सारे वे हैं जो पुराने समय में दिये गये हैं और अगर मैं कहूं कि उस वक्त शायद उनको लगता होगा कि वऐऩ 2003 से 2008 तक विश्व में इकोनॉमिक बूम था, इसलिए बैंक अपना पैसा हरेक उद्योग को देते जाएं, उद्योग फलेगा-फूलेगा और देश का लाभ होगा तो शायद अच्छी नीयत से दिया होगा। बिना किसी सिक्योरिटी के दे देने से तो फिर नीयत पर भी प्रश्नचिन्ह आता है।

वऐऩ 2014 तक वास्तविक स्थिति यह थी कि ये सारे लोन्स उसके पहले के हैं। यह प्रतिशत कैसे बढ़ा? जिस स्टैटिक्टिक्स का आप विक्टिम बन गये कि आप एन.पी.ए. को रीस्ट्रक्चर करते रहिए और उसको एन.पी.ए. घोऐित मत कीजिए। इसको अंग्रेजी में विंडो-ड्रेसिंग कहते हैं। इसके लिए दूसरा शब्द है : You keep evergreening the loan.और देश और अपनी आँखों में धूल झोंकते रहिए कि यह एनर्प्फ एनपीए नहीं है और फिर कहिए कि मेरे वक्त में ढ़ाई प्रतिशत था, बाद में 4 प्रतिशत कैसे हो गया? वह 4 प्रतिशत ऐसे हो गया कि जिसको आपने कारपेट के नीचे छिपाया हुआ था, वह कारपेट के ऊपर आ गया। वह कारपेट से ऊपर लाने का काम 2015 में रिजर्व बैंक ने किया। जब रिजर्व बैंक ने कहा कि Let us have an asset review. Let us have a review of the assets which these banks are having. उसमें पता चला कि इस विंडो-ड्रेसिंग या एवर-ग्रीनिंग से जिन लोन्स को आप परफार्मिंग दिखा रहे थे, वह वास्तविकता में नॉन-परफार्मिंग थे। रिजर्व बैंक ने कहा कि इनको आप नॉन-परफार्मिंग की कैटेगरी में डालिए। यह प्रतिशत इसलिए नहीं बढ़ा कि उस वक्त 26 मई को या 27 मई को मोदी जी की सरकार आ गई थी। यह इसलिए बढ़ा कि जो देश की आँखों में धूल झोंकी जा रही थी कि नॉन-परफार्मिंग को परफार्मिंग दिखला देना, वह जो पर्दा डाला हुआ था, वह हट गया। इसलिए ये जितने आंकड़े आपने कोट किये कि कैसे बढ़ता गया, उसको अपने खाते में डाल लीजिए। आपको समझ आ जाएगा कि समस्या की मूल जड़ क्या है? फिर आपने उदाहरण दिया कि नेशनल कंपनी ऑफ ट्राईब्युनल का 970 करोड़ के एसैट हैं, उसके केवल 50 करोड़ मिले।

अब दो प्रकार के एंटरप्राइजेज हैं जिनको लोन दिये गये। मान लीजिए किसी स्टील मिल को दिया गया। उसकी जमीन भी है, प्लांट भी है, मशीनरी भी है, उसके एसैट्स भी हैं तो कल कोई खरीदेगा तो उसका कुछ न कुछ दाम तो मिलेगा। पर अगर आपने ट्रेडिंग कंपनी को दे दिया और सिक्योरिटी नहीं ली और ट्रेडिंग कंपनी के पास सिर्फ रिसीवेबल्स थे और आज वे रिसीवेबल्स नहीं हैं। इसलिए वह तो केवल एक कागज के ऊपर कंपनी है। किसी में 5 प्रतिशत, किसी में 10 प्रतिशत और किसी में 10 प्रतिशत है। इसलिए बैंक्स को या अन्य क्रेडिटर्स को केवल बैंक्स को नहीं, सभी क्रेडिटर्स को सैक्शन 53 में इसे वॉटर फॉल मैकेनिज्म कहते हैं। पहली बार संसद में जब इसे पारित किया गया तो पहला हक मजदूर का किया, फिर सिक्योर्ड क्रेडिटर का और फिर अनसिक्योर्ड क्रेडिटर का किया। उसके बाद सरकार का था अन्यथा कंपनीज एक्ट में पहले सरकार के ड्यूज होते थे। सरकार को नीचे ले आए ताकि वर्कमैन, सिक्योर्ड क्रेडिटर को पहले मिले। The waterfall arrangement was changed in this Act. इसलिए इसमें स्पऐट रहिए कि दो प्रकार की कंपनीज हैं। वे कंपनीज भी हैं जो केवल ट्रेडिंग कंपनीज हैं जिसमें रिसीवेबल्स थे और अगर रिसीवेबल्स बैलेंस शीट पर नहीं हैं या नहीं वसूल हो पाते,

तो फिर केवल खाली कागज है। It is probably not even worth that paper. अब आप इसमें आत्मनिरीक्षण कीजिए कि बैंक्स की फंग्शनिंग किस प्रकार से हो रही है? For us it is a legacy problem which we are trying to resolve.

दूसरा, इसमें मूल प्रश्न यह है कि ऑर्डिनैंस की आवश्यकता क्यों पड़ी? This is a question which Mr. Premachandran raised. Now the Ordinance is necessary because this Act itself provides a 180 day time period in which a resolution is to be completed. There are 12 cases referred by the Reserve Bank. But there are cases which promoters themselves have gone and presented a resolution plan. There are cases where creditors have filed applications. So, there are numerous cases pending and law will apply to all of them. Now the time period is 180 days and these are resolution processes which are at a fairly advanced stage. Our one year experience shows that an ineligibility criterion has to be introduced. Except one or two Members, most of the Members have spoken in support of ineligibility criterion.

Now what will happen to all these pending cases if we wait another couple of months and say that the Bill will come up in its usual course? Then what will happen to these hundreds of cases which are pending? You will have two kinds of insolvency applications. Ones which are pending to which the ineligibility criterion will not apply and secondly, anything that comes subsequently, the ineligibility criterion will apply. Therefore, there was an extreme case of urgency for which the Ordinance itself was required.

Lastly, the point is what was the need to bring in this insolvency criterion. I think several Members including Mr. Galla have put it very succinctly that there are promoters who have defaulted. Some promoters have been declared insolvent. Some promoters have been debarred by SEBI. Some promoters have been debarred under the Companies Act. Some are wilful defaulters. Now there is a difference between a commercial debtor and a wilful defaulter. A wilful defaulter is a person who misrepresented and took the money or diverted the money. उनके केसेज में उनका नाम डिसक्लोज करने में किसी को रुकावट नहीं है, बैंक्स डिसक्लोज करते हैं। What do you do with promoters who are themselves responsible for these NPAs, that is clause C. Therefore, clause C says that जिन्होंने खुद ही नॉन-परफॉर्मिंग एसेट बनाया है, कल क्या होगा, आप अपना उदाहरण ले लीजिए। मान लीजिए कि कोई बड़ी मिल है, कपड़े या किसी अन्य चीज की है, ट्रेडिंग कंपनीज में बहुत कम एसेट होंगे। उसके एसेट्स हैं, नया प्रमोटर आएगा, खरीदेगा और विश्व भर का अनुभव यह है कि जो क्रेडिटर्स हैं, वे हेयर कट्स लेते हैं, ताकि जितना बच सकता है, बचे। After all water fall mechanism is a process by which every creditor takes his haircut and there is an equitable distribution in the case of dissolution. In the case of resolution also, they may take some haircut. So, what will happen? The creditors

will take a haircut. The banks will take a haircut. The unsecured creditors will take a haircut. The workmen will take a haircut and the man who created the insolvency pays a fraction of the amount and comes back into management. So, nothing changes in the company. The same man manages the company except that the creditors become a little poorer. Should we allow that to continue?

Now various arguments are being given that if you declare this creditor ineligible, then bidders would not come up. If the bid is not adequate, the Committee of Creditors will reject the bid. They have the power. That is the amendment we are introducing.

There are countries in the world which allow defaulting creditor also to bid. But we have to take a conscious decision. We are not saying that you are debarred for ever. We are not saying that you pay the entire amount. If he owes Rs. 10,000 crore and the interest is Rs. 2000 crore, if he pays the interest part and makes the account operationable. यदि वह केवल ब्याज दे दे, तो बिड कर सकता है।. So, we are not debarring him. We are saying that you at least pay the interest and make it an operational account. If a man says that I made this account non-performing; I have not paid the principal; I will not even pay the interest but at a fraction of the price I want to come back into management. Should this Parliament then have a law that this man is allowed to do so or not? The overwhelming view, as expressed by the Members, is that he should not be allowed. This was a gap which was there in the original Bill and by bringing in 29(a) we have tried to fill in that gap. That is the objective. In order that this provision must apply to all existing cases of resolution which are pending, that is the case for urgency. If we had not done this, then all such defaulters would have rejoiced because they would have merrily walked back into these companies by paying only a fraction of these amounts. That is something which besides being commercially imprudent would also be morally unacceptable. That is the real rationale behind this particular Bill.

Madam Speaker. I commend this Bill to this hon. House for approval.

SHRI N.K. PREMACHANDRAN (KOLLAM): Madam Speaker, thank you for giving me this opportunity. The clarification of the hon. Finance Minister regarding the issuance of the Ordinance is still not clear. It is because the ineligibility criterion for insolvency applicants will be there. There will be two classes of insolvency applicants because even the Ordinance was

promulgated on 23rd November, 2017 and so prior to 23rd November, 2017 there was a class of insolvency applicants, may be ineligible for being an insolvency applicant. So, such a classification is there. Even after the promulgation of the Ordinance on 23rd November also those two classes of insolvency applicants will be there. So, we are posing this question because in the month of November the Session was not convened and that is not because of the fault of the Members of this House…*(interruptions)* This is retrospective only from 23rd November, 2017 because that is the date on which the Ordinance to this effect was promulgated and the provisions of this Act will also come into force from that date only.

The second point that I would like to make is about the pending proceedings. The hon. Minister rightly mentioned that according to clause 25(a) all the pending applications will become retrospectively become applicable. Applicants who come under the ineligibility criteria cannot be further proceeded against as per the amended provisions. That is why my case is this. Even if the argument of the hon. Minister for promulgation of the Ordinance were to be accepted for the sake of argument, even then the position is not clear. It is because these two aspects are still there – one is about the new amendment according to which all the proceedings, though pending before the adjudicating authority and if the person belongs to non-ineligibility criteria applicant, then he cannot be further proceeded against and so he will not be able to get the benefit. Two, it is applicable only from 23rd November, 2017.

Madam, I do agree on the issue of the GST. Though I gave a Resolution for disapproval of that Ordinance, we were in support of the GST (Compensation) Bill. Here, I would like to seek the protection of the Chair.

Another Ordinance had come up regarding bamboo. Madam, you were not there at that time. The definition of 'bamboo' was taken away from the definition of 'tree' for which also an Ordinance was promulgated. At least, it can be substantiated with reasoning. In order to remove the term 'bamboo' from the definition of 'tree' an Ordinance was promulgated. What is the justification and what is the emergency? Nothing could be substantiated for this.

Even the President of India, even the hon. Prime Minister and all the Ministers are always talking about debate, discussion and dissent.

HON. SPEAKER: So, are you moving it?

SHRI N.K. PREMACHANDRAN : Madam, I am concluding. My point is, kindly avoid promulgation of Ordinances and it is better to come before the House with a fresh Bill. Since

the hon. Minister has given a satisfactory reply, I am not moving my Resolution.

HON. SPEAKER: Is it the pleasure of the House that the Statutory Resolution moved by Shri N.K. Premachandran be withdrawn?

SEVERAL HON. MEMBERS: Yes.

The Resolution was, by leave, withdrawn.

HON. SPEAKER: The question is:

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

The motion was adopted.

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

The question is:

> "That clauses 2 to 10 stand part of the Bill."

The motion was adopted.

Clauses 2 to 10 were added to the Bill.

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

HON. SPEAKER: The hon. Minister may move that the Bill be passed.

SHRI ARUN JAITLEY: I beg to move:

"That the Bill be passed."

HON. SPEAKER: The question is:

"That the Bill be passed."

The motion was adopted.