Speech of Shri Arun Jaitley, Union Minister of Finance, Corporate Affairs and Defence at the National Conference on 'Insolvency and Bankruptcy: Changing Paradigm' at Mumbai on Saturday, 19th August 2017.

The Honourable Governor of the RBI, Dr. Urjit Patel, the Chairperson of SEBI, Mr. Ajay Tyagi, Dr. Sahoo, Mr. Chandrajit Banerjee, ladies and gentlemen:

It has now been a few months since the IBC has been implemented. I don't think many of us, including those who participated in demanding a law of this kind, and worked in the process of making it happen, realised what the implications of this law would be. Because, for endless number of years, we lived in a system which effectively protected the debtors and allowed the assets to rust away. If we look at the situation as it existed, effectively there was hardly a law as far as individual or partnership insolvency was concerned. You had insolvency laws in the States which were almost ineffective. You had a provision in the Companies Act which provided for commercial insolvency, the inability to pay debts, and a remedial action, but in an extremely slow-moving process, which usually resulted in some sort of a settlement in the court. If a company eventually did go into liquidation, the bulk of the assets got rusted and recoveries were almost impossible.

The SICA experiment was an absolute failure. It was brought in with an idea that companies which are sick would be revived irrespective of whether they were capable of being revived or not. The only effective purpose it served was that the debtors got an iron curtain around them. Then the iron curtain, which prevented the creditors from making recoveries, continued indefinitely. Therefore, effectively there was very little purpose that the SICA was able to achieve for which it was created.

As I heard in the later part of Dr. Urjit Patel's speech just now, he was mentioning, the alternative mechanisms the RBI did create for the banking system. These were intended to give the banking system a lot of flexibility, in order to restructure the debts, in order to distinguish the sustainable part of the debt from the unsustainable part of the debt, and to bring all the banking creditors together and frame a scheme by which effectively some realisations could take place. This did meet with some success, but eventually, I think, it was still extremely difficult for the creditors to be effectively able to chase the defaulting debtors.

If we look at the mechanism of the Debt Recovery Tribunals which were created, it was intended that the court procedure took too much time and, therefore, we must liberate these tribunals from the rigidities of the court procedure, and enable our banking creditors at least or the financial institutions to have a fast track process. But eventually the Debt Recovery Tribunals were somewhat faster, but not as effective as envisaged.

I think, for some period of time, the effective law which did serve the meaningful purpose was the SARFAESAI law. And I do recollect, I was in the Government at that time when the law was conceived in the year 2000 or 2001. The overwhelming opinion was that it would be a *per se* unreasonable process. Unreasonable, because our normal was that you have to wait till the cows come home in order to realise the debt, and here is a procedure by which you go on day one and take over, after notice, the assets of the debtor. Being a creditor, in our jurisprudence, was inherently putting you to disadvantage. I remember, the officer concerned in the expenditure ministry and I had then teamed up, framed and reframed the law, got it through a group of ministers, had difficulty in having it cleared by Parliament, had greater difficulty in having the challenge sustained before the Court. Finally, I do remember, from 12% or 13%, very large NPAs, it did succeed in bringing them down radically over the

next 2- 3 years. So that was probably one exception to this whole principle which proved to be effective.

Now when the IBC was conceived, there was a small group of experts and the officer guiding them was Mr. Tyagi, and they went into long consultations and did draft this law, made repeated presentations. Much that Parliament comes in for criticism, I think, this probably would be a record of some sort that in December 2015, the law got introduced in Parliament. It got referred to Joint Committee which sat almost day after day, and presented its report in the month of March. Within 3 or 4 months, by May 2016, we had the law in place. Today, almost 15-16 months thereafter, we are now already discussing the last 9 to 10 months of the implementation of the law.

I think, this has significantly reversed the debtor-creditor relationship. And when I am talking of debtor, I am talking essentially of defaulting debtor. To raise a debt is nothing improper, that's how businesses work. Now the reasons for insolvency could be many. It could be genuine business losses because of a particular sector of an economy, or some company getting into difficulty. It could be a case of mismanagement. It could also be a case of deliberate mismanagement, including some malfeasance on behalf of the promoters. And on account of multiple reasons, these insolvencies may occur. I think, now that the law has been put in place, the competent authority, the NCLT has been constituted. We are taking special effort to make sure that the infrastructure there is also strengthened and brought in consonance with the requirements of this particular law.

How does one make it effective? For one, there are strict timelines which the legislation has, and I think, it is extremely important that these timelines have to be adhered to. Conventionally Indian courts always have two standards. When timelines are made for the executive, they normally maintain these are binding. When timelines are made for judicial institutions, courts have conventionally held that these are only directory. A typical case in point is, I remember as law minister, I had amended the Code of Civil Procedure and put strict timelines. So pat came the judgement of the Supreme Court that said that courts will decide their own time table, and that these are all directory, which are mentioned by Parliament, these are not mandatory on us. So, I do hope, these remain as mandatory as possible and these timelines are adhered to, because that is really the essence of the law. Speed really will help in the effective implementation of the law itself.

The creation of the institution of the resolution professionals, because these are people with expertise in different fields of finance, who are now going to be transformed into resolution professionals. They will have to remain detached, they will have to avoid any possible conflict of interest, and they will have to be extremely objective. Therefore, when they step into the shoes of management itself, it's their quality of professionalism which will ensure how quickly the resolution takes place.

It is not merely the resolution which will be the eventual target, it will also be as to what happens during the pendency itself. That is where there is a grey area. It is the judicial pronouncements which really resolve all the grey areas and then define them in black and white. A legislation is a skeleton structure normally. The flesh and blood to it is provided by the judicial interpretation. Therefore, the manner in which a company before the IBC is to run during the proceedings, does its business comes to a standstill? How does the normal operation take place? And I think, the powers in my own reading under section 17 and the subsequent paragraphs and clauses of the section of the Act are absolutely clear, and if some purposive interpretation is given to them, the resolution professional itself, by themselves or upon the direction of the tribunal, could be further empowered to make sure that the effective functioning of the company doesn't come to a standstill. Because if it comes to standstill, then let alone resolving the insolvency, one will only be adding to it by allowing existing operations to come to a standstill, with its assets getting devalued over a period of time. That is something they will

probably have to avoid. Therefore, you will require effective supervision and directions to that effect as far as the tribunals are concerned, therefore, the powers of the Resolution Professional will also have to be very clearly defined. There is a role for the Committee of Creditors which has been provided for, who has a direct and positive interest in making sure that all those assets and business themselves are preserved.

This is not the only law that we have changed. We have changed the procedures as far as DRTs are concerned, and we have changed the provisions of the SARFAESI law also, which provide for a very liberalized regime as far as ARCs are concerned. I think, if we take the cumulative effect of all these laws, the message now in the legislation is loud and clear, that the debtors will have to certainly make sure that their debts are serviced. If they don't, then there is an effective alternative mechanism by which you exit, or you take in a partner, and some alternative mechanism by which businesses can be saved. The ultimate object really is not the liquidation of assets, the ultimate object as a preference is to save these businesses, get either the existing promoters with or without partners, or new entrepreneurs to come in and make sure these valuable assets are preserved.

I think what is extremely important also is that 9-10 months may be too short a period to have any major reactions on what improvements are further required. We probably will have to wait for a period of time and then ensure as to how much of this law is made effective by various pronouncements of the tribunals, the appellate tribunal, the courts which takes place and then over a period of time, I think, what are the improvements in the law which are required to make sure that the purpose for which it is been created is the purpose which is sub-served.

But one thing is very clear that the old regime by which the creditor would get tired chasing the debtor and end up recovering nothing is now over. If a debtor has to survive, he will have to service his debts or else he will have to make way for somebody else. I think this is the only correct way by which businesses would now be run and this message I think has to go loud and clear to all.

I am extremely grateful to all of you, who are here, because most of you would be somewhat directly or vicariously connected with this issue and we will be too eager to know from you as to what further evolution either by a legislative process or by a process of judicial pronouncements in this branch of the law would be required.

Thank you very much once again, Dr. Banerjee for having this conference.