

**Speech by Dr. Bibek Debroy, Chairman, Economic Advisory Council to the Prime Minister  
at the Conference on**

**“Insolvency and Bankruptcy Code, 2016: Impact on Markets and the Economy” at New  
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Dr. Sahoo, Dr. Kristin, Mr. Mukherjee, ladies and gentlemen. Let me congratulate Dr. Sahoo personally and also IBBI, Vidhi and the Oxford Centre for organizing this Conference and I am delighted that such a Conference is being hosted. I am particularly thankful that this is the fag end of the inaugural session where after the introduction by Dr. Sahoo and the comprehensive presentation by Dr. Kristin, there is actually nothing for me to say, but to say thank you and sit down.

Let me step back a little from what has already been said. A mention has already been made of the World Bank’s Ease of Doing Business rankings and, indeed Dr. Sahoo is absolutely right that the World Bank’s Ease of Doing Business rankings are not really the primary intention for doing what India has done in this area or in other areas. A better rank in World Bank’s Ease of Doing Business rankings is at best a by-product. Having said this, I don’t know how many people in this room are aware that the World Bank’s Ease of Doing Business indicators are based on surveys in just two cities and the sample sizes on those questionnaires for India are around thirty. For some of the countries, the sample size is two or three. But nonetheless, it is the World Bank which does various things. Most people here are aware that the World bank’s Ease of Doing Business rankings are based on 11 heads, ten of which are actually included in the over-all ranking and one, Labour, is not. And there is one, which is the ‘enforcement of a contract’, that has not just the subjective responses to the questionnaires, it has also some objective data. In that particular head, there is a 25% weightage attached to a cross-country index of the legal infrastructure that the World Bank has. I have not been able to find any information despite this world of transparency, about how that index of legal infrastructure is constructed. So, I had urged Vidhi, which everyone present here knows, does phenomenal work in the area of broadly law, to probe how this legal infrastructure index is constructed.

Dr. Sahoo began with a quote from an article in Economic Times, which effectively invokes the motto of the Olympics, *Citius, Altius, Fortius*. India’s track record in the Olympics has not always been very good. It has incrementally improved but at one point, it was essentially Hockey. It has improved but most of the medals in the Olympics are in track and field and swimming. So, until India does better in track and field and swimming, the Olympics record will not improve. Notice that track and field and swimming are individual sports. So, the country may provide a conducive environment for competition, but it is the individuals that compete.

It is the individual companies that compete. Some of us are Economists in this room and Economists will talk about competition. Competition definitionally means free entry and free exit.

You cannot have competition with free entry with no exit. In India, we are very unfamiliar with the phenomenon of exit. When the 1991 reforms were introduced, in the initial years, it was always about liberalising entry. Very little was said about exit. Today, in the newspapers and elsewhere, there is a debate or a discussion, on what needs to be done to step up the growth trajectory and there are some people who talk about structural reforms. If you go down the list of structural reforms, depending on who is writing, you will find a reference to privatisation of central public-sector enterprises, which is fair enough. But I don't know how many members of the young generation present here, are aware that half the sick public-sector enterprises were originally sick private-sector enterprises, which were not allowed to exit but were nationalised through a series of statutes particularly concentrated in the 60s and the 70s. In that list of structural reforms, people will mention labour reforms and will particularly focus on Chapter VB of the Industrial Disputes Act, 1947. Chapter VB of the Industrial Disputes Act, 1947 is invariably labelled as an exit policy for labour, but it is not. It is an exit policy also for companies. The phenomenon of exit has, therefore, been unfamiliar. And, however way you define reforms and whichever aspects of reforms you talk about, it is about competition. We need exit of companies. We also need reforms for efficient capital markets, so that that exit can take place. This exit is not only about the corporate sector but also for unincorporated enterprises as mentioned by DR. Kristin earlier. Before the Code came into being, the so-called exit provisions for unincorporated enterprises was a piece of legislation that went back to 1926. It is the first time that we have actually witnessed exit and, particularly, the exit of promoters. Fifteen years ago, if you would have asked anyone if these promoters are likely to ever exit, the answer would have been a flat no, because we know that there was a kind of nexus, a way of doing business that ensured that the errant promoters did not exit.

The Code, like many other pieces of legislation, is a work in progress. If it is a work in progress, it is welcome that the piece of legislation should be tweaked as one goes along in order to improve it and make it better. Particularly in an area where you don't know what that template is, this tweaking of the legislation - and both Dr. Kristin and Dr. Sahoo mentioned the recent amendments which are pending, is desirable per se. Having said that, firstly the subtitle [*of today's Conference*] says 'Impact on Markets and the Economy' and Dr. Sahoo drew an analogy with GST, which is also a work in progress. When GST was introduced, there were people who said that GST would lead to incremental GDP growth between 1.5-2%, disregarding the fact that this estimate was calculated by NCAER for the 9<sup>th</sup> Finance Commission for a terminal year of ideal GST. Whereas, as GST is a work in progress, it would take, may be 20 years, to achieve this and it is not as if we are going to get the 1.5-2% GDP growth overnight.

Dr. Sahoo did not give a precise figure but he said a few a percentage points in GDP growth [*would be increased as a result of the Code*]. Obviously, this would be achieved eventually. But in the process, there will be costs because these efficiency gains, which are indisputable, would happen in the longer run, but in the short run, there will be costs. Not just for the Code, but generally as we switch from the old way of doing business—which we were familiar with and which was inefficient—to a new way of doing business—which is likely to be more efficient but towards

which we haven't yet moved—there will be short term costs, including growth costs. So, let us accept that.

Secondly, the Code involves a certain judicial process. I ask you to cast your minds back to the amendments that were done to the Civil Procedure Code in 2001 and 2002, when it was argued that the amended Civil Procedure Code would reduce the duration of an average civil dispute to 1.5 years. However, this has not happened because there is a judicial process which can also be circumvented. Many years ago, when I was involved with a law reforms project, I was introduced to a lawyer and asked about his expertise. I was told that his expertise was a certain section in the Civil Procedure Code which enabled him to ensure adjournments and delays. So, it is all very well to talk about the Code but we should also talk about NCLT and the processes in NCLT which can be used to delay the process.

Third, anyone, who has worked in India, would say that one should be legitimately be skeptical about the so-called independent professionals. Independent professionals in other areas have not exactly covered themselves with glory. So, there is a broader issue of corporate governance or, corporate mis-governance. Because we are still testing the waters, we are still in very preliminary stages.

Finally, I congratulate all the three partners of Vidhi for having organized this Conference and would strongly urge some of you to look at also the functioning of NCLTs.