

Speech of Shri Arun Jaitley, Hon'ble Union Minister of Finance and Corporate Affairs delivered through video link at the Conference on 'Insolvency and Bankruptcy Code - A New Paradigm for Stressed Assets' at New York on Wednesday, 5th December, 2018 (Organised by IBBI jointly with the Consulate General of India, New York and FICCI).

Dr. Sahoo, Mr. Sanyal, Mr. Chakravorty, Ladies and Gentlemen, I am extremely grateful to the Consul General, who in coordination with certain friends in the United States has organised this interaction between the Indian delegations of FICCI along with the subject experts to discuss the new paradigm of the stressed assets in India.

Well, India struggled literally for decades to find a response to this (the issue of stressed assets). We had a regime which was fairly scattered, not focussed, which continued, and continued without really being able to produce any results. We had a provision for commercial insolvency conventionally under our Companies' law. We had about three decades ago, a prime law with relation to certain stressed assets, which was SICA law, but really it did not produce any significant results. The central bank and the Government had in the earlier decades come out with various schemes of restructuring of the debt which was owed to the State sector banks in particular. It did produce subtle, marginal results but not very significant.

And things came to a pass, that we were in the middle of this decade, faced with a realistic situation where on the one hand, we were a fast-growing economy, we were expanding, our corporate sector was expanding, but as far as the private investment was concerned, particularly domestic private investment, that was not expanding at the same rate as the economy required it. Public investment had increased extensively. A very large amount of foreign investment was coming into the Indian economy, but the domestic private investment was still lacking. It was lacking because in the earlier decades, surplus capacities had been created, that is one important reason, the banks had very large number of NPAs and they were not able to realise them and, therefore, their lending for further growth suffered, and a lot of companies themselves were stressed.

Coupled with this, one regrettable phenomenon which we witnessed for decades in India, that many were unwilling to service debt owed to banks and financial institutions. This debt along with other corporate debts has been mounting and, therefore, we needed a radical solution. When the new Government has taken over four and half years ago, in the first 6-7 months we swung into action. We had a small group of experts working on the subject and with the extensive support of parliamentary institutions, we were able to enact the Insolvency and Bankruptcy Code for India at a very fast pace.

And even in a little less than two years that the Code has become operational, it was anticipated that in the initial stages, there would be some teething trouble, the law had to be laid down and infrastructure had to be created, people had to become aware of it. I must confess that it has moved on and its effectiveness is proved far better than what I had anticipated. We have a very large number of companies, big and small, which have gone into commercial insolvency. And, our experience of the last one and half or two years indicates that a very large number of cases have resulted in a situation where the lender-borrower relationship in India has now significantly changed. You are supposed to service your debt; you are supposed to pay back your debt; you are to service debt with interest; and if you do not do it, there will, well be a situation, when you cross the redline and get into to the NCLT, which would be mandatory, if certain conditions arose and would be out of management. Now, in family run businesses and corporate houses, this was something which was unthinkable, but this did really happen.

Along with the Government, the central bank was also quite active. They selected the first big 12 cases, which were large in terms of volume and the whole country witnessed the management of these 12 large big companies being removed overnight, and resolution professionals being put into place. This was the first shock to register with those who did not ever envisage that the consequences of non-servicing the debt would be so severe. Many started arguing that is this law conducive for India or is not conducive for India. But that debate is something, which I think, we have long overcome and moved far away.

The next stage of process is that there is a Committee of Creditors. The Government has made sure that it maintains an arm's length distance from this process. The process is now governed by regulations; it is governed by rules. The NCLT, which is a quasi-judicial body; the Presiding Officer is a Chief Justice retired from a High Court, the Appellate tribunal is headed by a retired judge of the Supreme Court. The Government maintains a complete arm's length distance. It has no favourites in case of any bidding process. It has been demonstrated in all the cases which have happened and the following results have emanated in the last few years, that two years that have been put into operation. An extraordinary large number of people who are debtors appear on the day one and try to resolve their issues. So many more cases have actually been resolved at the very initial stages, rather than to go into further complicated resolution processes, by just repaying back the debt it had owed to private individuals, in particular.

The second stage has been that once it goes into the hands of Committee of Creditors, they all maintained a very fair procedure, they all invited bids, they evaluated each and every bid and then the best one is put up for action. This has resulted in an early harvest, as far as the IBC is concerned and, in a large number of these big cases, either the resolution has taken place, or the resolution is in the final stages today.

The only downside has been that, in some of the cases, because of appeals and counter-appeals and litigations, the process has got some what delayed, but then the Supreme Court has stood up to the occasion and realising the imperative which are involved because in the initial years we had anticipated this, we had factored this in, the law was to be laid down, so you have the appellate tribunal which has laid down the law, the Supreme Court has confirmed the law, re-laid down the law, re-laid down the guidelines and because the process has been delayed because too many appeals have been filed and even interlocutory orders have been challenged, the court has laid down strict judicial guidelines as to when the appeals can be filed, and they cannot be filed. Hopefully, all this will be followed in all future cases, which will expedite the process.

As a result of which you have a large number of companies now which have actually become dead assets. The managements are no longer in a position to really operate them. And, this is a great opportunity as far as entrepreneurship in India is concerned and a large number of investors have been coming in and showing a lot of interest and then bidding and counter bidding, so that they are able to get hold of these companies.

The other unintended consequence of this has been that, post the IBC becoming operational, a very large number of potential debtors, who fear that they are about to touch or cross the redline, after which they will be in the NCLT because of the amendment, which we have made that, once you go into the NCLT, the existing management will be debarred from being a part of the bidder. This was done primarily because of the reason, unlike in many of the jurisdictions, including the United States, that, if you have actually run company down to the

ground and only you expect the banks and the financial institutions that were creditors to take the hair-cut, otherwise the management remains the same. Given the constraints of India's politics, India's politicians and Parliament and policy framers will not have been able to digest that everybody else takes the hair-cut and the person who ran the company down continues to remain deeply in management. And, therefore, this amendment debarring those people had been brought keeping this purpose in mind.

The unintended consequences of this has been that, there are a large number of potential defaulters, who are likely to touch the redline, and likely to become future defaulters, are now refraining themselves from becoming defaulters. They are borrowing, they are bringing in partners, they are selling other investments, but they are making sure that they do not cross the redline by virtue of which they may be before the NCLT under the IBC jurisdiction. As a result of which, even without resorting to the IBC process, the mere danger that you will get into that process is resulting in a lot of recoveries for banks and other creditors.

Our experience so far has been extremely good and even though we had anticipated many more road blocks in the process during the initial years, in my own assessment, these have been resolved faster than what I had anticipated. In the coming months and years, because the initial law itself has been laid down, I expect this process to be much more expeditious than what it has been in the past.

Just a final word, as far as investors are concerned. A large number of those who are bidding are actually domestic investors, they may be in partnership with foreign funds or foreign financial institutions or funding agencies or some joint venture arrangements. But this is a great opportunity in India for investors to come and bid for these assets. I say this because of more than one reason. The number of assets which are going for takeover through the IBC process is extremely large. There are limitations on the extent of availability of domestic capital also, and, therefore, inevitably seeing the attractiveness of the proposal, I think it is inevitable that foreign investors would have a lot of interest as far as many of these projects are concerned. Each project is governed by the sectoral guidelines and most sectors we are allowing very large quantum of foreign direct investment to come in and, therefore, those problems really would not arise.

This also would be directly related to how we see the Indian market, the Indian economy over the next one or two decades, because any long-term investor would obviously be interested in looking at the potential as far as these cases are concerned, depending upon the market available in India. Unquestionably, it has now been established over the last few years that India is a fast-growing economy, faster than some of its contemporaries amongst the emerging economies, and my own view is that, India, over the next decade or so, is likely to maintain this high growth rate of at least 7 to 8 percent. Seven percent by Indian standards is now considered to be the lower end of the moderate growth rate. In fact, aspiration is to touch or cross 10 percent.

Adding to this, I now find that there is very large middle class in India which is already in existence. The pace at which urbanisation in India is increasing, the extent of the aspirational class in India is increasing, and the kind of public investment which is going to rural India, a lot of aspirational people over the next one or two decades are going to be added to this big slab of the Indian middle class. This is the middle class which have large amount of purchasing power. Its size is going to expand; its thickness is going to expand; and once it expands, its impact not only on its consumer potential in the Indian economy but its impact as far as the global economy is concerned is also going to be quite significant and, therefore, if this is a

potential road map as far as Indian economy is concerned. I do anticipate a situation where anybody who invests in these assets, which are now available through a bidding process at very attractive prices, is going to invest in a market which is going to be one of the world's largest markets and, therefore, given the future potential of the Indian economy, given the fair manner in which the IBC now is proceeding, it is a great opportunity as far as investors are concerned and, therefore, those seriously thinking about investment in India, there cannot be a better opportunity than the present one which is being offered through the IBC process. I am quite sure, this is the right time in the right place to be in India for these kinds of investments. You shall all bear in mind, and considering the fact that a very large number, I am told, almost of 1200 applications have been filed as far as resolution is concerned. Almost over 1000 of them are still pending and, therefore, many of these assets over the next few months are going to go into a bidding process. It is a great opportunity to come and look at some of these assets.

Let me once again thank all of you for having invited me over this video link to come and be a part of this interaction which has been organised today.

Thank you very much once again.
