Speech by Shri Arun Jaitley, Hon'ble Union Minister of Finance and Corporate Affairs at the Conference on 'Insolvency and Bankruptcy Code, 2016: A Roadmap for the Next Two Years' at New Delhi on 18th December, 2018 (Jointly organised by the Insolvency and Bankruptcy of India and Vidhi Centre for Legal Policy)

Shri Sahoo, Arghya, Debanshu and friends. Let me at the very outset congratulate and compliment Vidhi for having completed five years as a research organisation / firm which has been involved in the evolution of various policies and legislation in India in the short period of its existence. I am quite certain that in the years ahead, they will probably have much greater role to perform.

You have chosen the IBC, which has now been effective for almost two years and looking at the road ahead. Well, we had a tendency in the past, while we were searching for solutions, we create a problem. And, one of the reasons is that we were never willing to confront the problem; ask the right question so that we can get the right answers. And, that is how when we found the principles of bankruptcy or insolvency coming into existence, particularly in the post 1992 liberalisation, we delayed solutions. For non-corporates, the Provincial Insolvency Act had become completely redundant. The drafting the legislation and the history of the SICA was literally a disaster. Almost nothing revived, and it added to bankruptcy. Because the moment you place an iron curtain around a firm, which is sinking, in a hope that it will revive and payback, then the NPAs continue to exist and the mode of recovery was also being blocked. And that is what I had in mind when I said, we don't confront the problem and do not ask the right questions and create a further problem in search of half-baked solutions.

And a situation had come, where the economy literally was suffering. Banks were unable to give credit, because the NPAs were running very high. Efforts were made within the banking system by the Reserve Bank to come out with various policies of resolution. Some of them were well intended, that you cannot literally force somebody out of business and, therefore, give him an extension, restructure the debt. But all that it did was that they ended up in evergreening the debt; and that evergreening the debt led to a situation where even the financial institutions as creditors kept concealing, not from the country, but from themselves also as to what the real debt was. The effect of all those policies was that your debt was almost four times of what was disclosed. Or, the NPAs were almost four times of what was disclosed in the books. And, therefore, by concealing the problem, we were understating the problem.

And, the IBC, therefore, had to be enacted. It was a fast-moving exercise and it had to be enacted almost as of a necessity, because every other solution had effectively failed. The drafting committee headed by Mr. T. K. Viswanathan did a fascinating job in a short period at their disposal. They studied the global models and came out with a report and the report was then converted into a legislation, and we hurriedly put it in place. And, it was hurriedly put in the place, obviously, having no experience of an exit law or an insolvency law, you only realise when the shoe pinches once it is put into action. And, therefore, since its enactment in a period of two years of its effectiveness, we had to change the IBC twice in view of the Indian conditions which exist; and to bring it really in tune with the market realities.

At the first two years broadly have been more than satisfactory. It has worked on at a reasonable pace. The realisation of debt and money coming back into the system has been in three different ways. The first, of course, is some resolutions, some of which are pending at the penultimate stage. The second, the people coming up even before admission and paying up and settling, for the fear of the consequences of the IBC. And the third, of course after the introduction of section 29A, people are paying up in anticipation of crossing the redline. Because once you cross the redline and you are before the IBC, in all likelihood, at least you will be out. And since that is a civil death as far as you are concerned in relation to your company, you beg, borrow and steal and then pay up before you cross that line; otherwise you lose the company as a whole, which is a certainty. And, therefore, these three instruments of recovery have actually had effect.

The banks of course would be more at a comfort because, our bankers were, literally, ill-at-ease, coming out with commercial settlements. The other legal regimes we had, like the Prevention of Corruption Act, accountability to institutions like the CAG or the CVC, where even bonafide settlements on commercial considerations could have been rendered suspect. Hence, we amended those laws also to give them a comfort, but the fact that it now passes through a judicial or a quasi-judicial tribunal certainly gives them a curtain of protection around all bonafide acts they take. Now that we have implemented the IBC for the last two years, the early harvest has been reasonably good. Some delay in some of the major cases. How do we look ahead?

a. I think the first suggestion which has been coming from various people as to what really is the role of the smaller or the operational creditors, as far as the whole process is concerned. Once the resolutions take place, do they get almost nothing or something very marginal? I think that is a question which is for the academics and draftsmen for a future debate. Once the big cases are resolved, this issue has to be adequately addressed.

b. We are already working on the cross-border insolvency, and, Dr. Sahoo tells me that it is not merely bilateral arrangement but also multi-lateral arrangements, which will make it possible with a very large number of countries.

c. Some persons have represented to me that once we amended section 29A, is the reading too wide, particularly in relation to the definition of ‘related parties’. You cannot amend the law every time; but certainly that is a point worth consideration on the agenda, when we discuss in future, once we are able to resolve some of these major cases. Some contradictions have been pointed out to me by some sections of the industry, particularly, with regard to ‘related parties’ who may actually be business opponents or that they have nothing to do with each other business-wise.

d. Then of course, there is question of the whole MSME sector, which we were trying to segregate, because they even today have literally credit and liquidity issues.

e. And, finally, I think what is very important is that any institution like the NCLT or the NCLAT eventually will function, depending on its quality, competence and also speed. And, therefore, all institutions involved in the selection of the personnel will have to be extra careful in the years to come. It is just not putting people in these places, but putting such people, who have nexus with the subject, or some relation with the subject and are likely to perform as far as the subject is concerned. I think, there would be several other issues which will come out in the course of today’s discussion. I am quite certain that

after the recent Supreme Court pronouncement with regard to frivolity of the certain appeals which are preferred against every interlocutory order, hopefully the process of the pending cases would now be expedited and, therefore, the money, which is lying blocked otherwise, could be utilised back into the system.

f. One last point. I had in the course mentioned that even those various proposals, pre-IBC which the Reserve Bank had guided the banks to go in for settlement, restricting or doing various other things, did not yield much result. But after we have cleared the initial rush of IBC, a question may come up on a future date, that do we need to marry these with some such schemes for settlement once again? Because the reality is that financial regulation is not municipal regulation. What is revivable is only revivable through the IBC or can be revivable even otherwise. I think, today may not be the right time to go in for this, because there is huge rush of companies which have come into the insolvency process. But once this rush is off over the next couple of years, and then we think back, and business comes back to usual, with the honest creditor-debtor relationship restored on account of the IBC, a situation may well arise when you may then have to consider the need for marrying the two processes together so that they could simultaneously exist because ultimately the management of the financial system is also the 'art of the possible' and not a strict implementation of a municipal legislation. That would remain a difference.

And, I am sure that in the course of the discussions today, you will be able to apply yourselves to some of these suggestions plus, a lot others, which the participants may come out with. Thank you.