

Bankruptcy or not to be!

The noise from horns and traffic has once again overpowered the sound of birds. The roads are filling up with pedestrians and vehicles after what feels like ages. The rays of the sun filters hope into the homes of millions who are now fatigued with the pandemic's horrors.

Mr. Chadha has been following his schedule to reach his factory by 9AM every day since the lockdown is partially lifted. A flexible work routine has been extended to his employees but Mr. Chadha insists that he physically manages his work from factory. He has an honest smile on his face as he leaves the secure comfort of his home to be greeted by the pungent unpleasant odours of factory. As he parks car, he is humming to himself; as much as he enjoyed spending time with family, he has missed being at work. Now after 6 months of depleting his savings and being cash trapped but ensuring that every single employee has been paid salary, he is finally able to start production again.

Mr. Chadha is realistically optimistic that once production starts, the company will be able to pay off all its obligations. Even at home, they have made lifestyle changes and the family is hopeful to be financially stable.

A picture of his father, the man who laid the foundation of this company adorns the otherwise inornate wall. Today as Mr. Chadha balances his own reflection into the glass frame of the picture, he notices a layer of dust. He calls for Nandi, his office errands boy who is usually always in office before Mr. Chadha reaches. Nandi is not to be found; Mr. Chadha walks out of his

chamber to the main factory premises to see all employees talking suspiciously in one corner with an expression mixed with shock and sympathy.

A notice was found this morning from the National Company Law Tribunal ('NCLT') with the name of an Insolvency Resolution Professional ('IRP'). This was all that could be gathered, yet everybody started using the word 'BANKRUPT', not for the company- Chadworks Pvt. Ltd. ('Chadworks') but for him.

The day has saved the peak of its drama for the moment when almost like a movie scene, Mr. Bindra walks into the Managing Director, Mr Chadha's cabin and introduces himself as a court appointed officer. With effortless grace he assumes the role of the boss of the affairs as he announces his appointment as the IRP. The order of the court suspending Mr Chadha from the directorship of Chadworks is laid out on the table along with the newspaper publication of Mr Bindra's appointment. Mr. Chadha finds himself engulfed in disbelief; how could so much have escaped his attention!?

The next few minutes, which may have been hours, are foggy for Mr. Chadha. The creditor, Crony Pvt. Ltd. ('Crony') who filed insolvency proceedings against the company for Rs. 2 crores was a supplier of raw material who used to extend credit to Chadworks. The Insolvency and Bankruptcy Code 2016 ('IBC') proceedings were set into motion when Demand Notice as per Section 8 was sent but no reply was received. This led to Crony

filing insolvency proceedings against Chadworks under Section 9 of the IBC before the NCLT.

Since Mr Chadha was unaware about such proceedings being marshalled, Chadworks was unrepresented before the NCLT. Consequently, ex-parte proceedings were carried out against Chadworks and the moratorium was levied as per Section 14 of the IBC. This led to the appointment of the IRP and suspension of Mr. Chadha and Mr. Sharma as the directors of Chadworks.

This is a lot for Mr. Chadha to swallow. It is one thing to know that the company is cash strapped, but to know that insolvency proceedings have commenced feels like his worst nightmare come true. Mr. Bindra, an eminent member of the Insolvency and Bankruptcy Board of India leaves after completing formalities as per the rules of IBC.

Mr. Chadha now sits motionless staring, without really comprehending, at the order of the court. His phone rings; it is a picture of his wife on his phone screen. He picks it up and all he can say is, 'Hello'. Mrs. Chadha has known him long to read between his words, she only asks him if his health is fine. Such was the aftermath of the pandemic, one realised that good health was the most important asset one could possess. He tells her the situation in one line- "The company is not mine anymore, It has slipped from my hands and I don't even know my fault. Everyone is calling me bankrupt". Mrs. Chadha is calm as she hears this; she takes a few seconds and then responds with a couplet by Azeez Dehalvi, " गिरते हैं शहसवार ही मैदान-ए-जंग में, वो तिफ्ल क्या गिरे जो घुटनों के बल चले" translating to "failures are only experienced by those who try

(Only riders fall from the horse), and how can you expect anything even failure from those who never try (how can someone fall if he doesn't even walk).”

This was something Mr. Chadha used to say often to his kids and today, this was just what he needed to hear. His worries have not magically disappeared but he has now got the strength to push himself to find out about what exactly happened. He reads the order of the NCLT in detail.

The operational creditor Crony was a supplier of raw material for Chadworks. The disputed transaction was dated 14th April 2020. This was the time, when the first wave of Covid-19 had hit the country. Mr. Chadha vaguely remembers that a contract for purchase of goods worth Rs. 5 crores was signed but delivery of only half the goods could be taken as the pandemic had stalled all further operations and other half of the goods were returned with acknowledgement.

Mr. Chadha checks the concerned file but there is no document available about the delivery and the return. He calls the other Director of the company, Mr. Sharma, a childhood friend and a sharp businessman. Mr. Sharma mentions casually that a notice was received by him, and he did not pay much attention to it and did not reply to it. Some creditor made an unfair demand he said, but those goods were already returned and the receipt was taken.

Mr. Chadha is aghast at Mr. Sharma's callous attitude. However, this is not the time to pick this battle but rather to find facts around the alleged debt. Mr. Chadha gathers his strength to ask, “Where is the receipt?”.

“I will see, don’t worry, it must be lying down somewhere in the office”, replies Mr. Sharma. Mr Chadha explains that the creditor has filed a case before the NCLT, when Mr. Sharma interrupts him, saying “Nothing to worry! It’s just a civil case which will prolong for years”.

Mr. Chadha maintains his composure and asks Mr. Sharma to come urgently to the office. Mr. Chadha suspects some foul play on part of Mr. Sharma and his role in the initiation of this Corporate Insolvency Petition.

Mr. Chadha asks his security official to quickly bring him the register maintained by the guard for recording inward and outward entry of material, people and cars along with the hard disk of the CCTV camera at the main gate from the period of March 2020 onwards. As the guard walks of the Managing Director’s office, the grapevine spreads rumours about how Mr. Chadha is destroying evidence because the company is now bankrupt. Mr. Chadha receives the hard disks and calls for his Information Technology (‘IT’) engineer to view the CCTV footage. He is, however, shocked to know that the engineer has been sought after by all employees to create profiles on employment websites like Naukri.com.

The office employees’ cabinet has already convicted Mr. Chadha without any trial and declared him to be personally bankrupt. Everyone is suspecting Mr. Chadha to go underground forever leaving all the employees cashless and jobless. These are the same senior employees of Mr. Chadha’s company who were employed by his father and have witnessed the company grow

exponentially. They are now accusing Mr. Chadha of committing grave business blunders and destroying their lives.

Mr. Chadha examines the file and ledger of Crony to find out that while the material was received, it had been returned. Hence no payment was due. However, to his ultimate horror he sees an acknowledgment of debt of Rs. 2.5 crores by Mr. Sharma on behalf of Chadworks. The same Mr. Sharma who was dismissively confident of the claim being frivolous, was the one who had signed on the acknowledgment of debt of Rs. 2.5 crores towards Crony in April 2020.

Mr. Chadha can now connect the dots- the material was procured from Crony instead of the regular supplier because Mr Sharma's relatives were the directors in Crony. He abused himself for appointing his friend Mr. Sharma as a director of his company against his father's advice. Mr. Chadha found out from the CCTV footage that the goods were duly returned to the supplier and the ledger also showed no balance towards the creditor but the receipt of returned goods was missing.

There is no merit in the creditor's case, yet there is a case to defend. Mr Chadha is scared, he needs legal advice. He rushes to the only expert of IBC he knows- the IRP, Mr. Bindra. Mr. Bindra explains to him the general working and procedure under the IBC. Mr. Chadha understands that there was no reply to the notice and the company petition, therefore the NCLT proceeded ex-parte and passed a reasoned order of imposition of moratorium on Chadworks. Mr. Bindra also explains that the imposition of moratorium

does not mean that the company or the Director is bankrupt nor does it mean that the company can never revive itself from the clutches of the IBC. Mr. Chadha understands that the proceedings of NCLT as per IBC are summary in nature and they are aimed at quick disposal, unlike the civil courts which take time for appreciation of evidence. Mr. Bindra goes ahead and explains these nuances to all the employees of Chadworks and puts across firmly that the company is still solvent.

What shocks Mr. Chadha the most is that ever since the moratorium had been levied, he is being treated as a person guilty of a heinous crime and the society has already formed a judgment against him. The IRP, Mr. Bindra is the only person who is on the side of law and tries to explain to Mr. Chadha and his employees that IBC is not to be looked upon as dangerous but a dynamic legal statute in the evolving corporate landscape to facilitate ease of business and reduce debt in the industry.

Mr. Chadha hires an Advocate Ms. Swarnima Chattopadhyay, to discuss his legal remedies. An expert at corporate commercial litigation and IBC matters, she explores the possibility of filing an appeal against NCLT's order before the National Company Law Appellate Tribunal ('NCLAT') on behalf of suspended director Mr. Chadha. Adv. Swarnima, through her diligence and legal acumen, finds out that the demand notice and Company Petition by Crony and the NCLT's notice were delivered at the registered office of Chadworks as per duly laid down legal procedure but that was the old registered office whereas now Mr. Chadha operates business from a new office where no correspondence was sent.

This was the reason why Mr. Chadha neither received any notice nor got an opportunity to defend himself. Adv. Swarnima develops this line of defence to understand that the registered office of the company was changed in February, 2020 just before the pandemic. The intimation regarding the same was given by Mr. Sharma to his Chartered Accountant ('CA') to ensure further communication and compliance with the rules of the Ministry of Corporate Affairs. Adv. Swarnima and Mr. Chadha understand the connivance by Mr. Sharma who deliberately ensured that Crony sends all correspondence to the previous registered address of Chadworks as per MCA records.

Adv. Swarnima checks with the CA who confirms that he had received instructions to upload information about change in address with the Ministry of Corporate Affairs only in August 2020 when the lock down restrictions had started to ease out. The ground for appeal is discovered and developed and appropriate filing is to be made before the NCLAT seeking setting aside of the ex-parte moratorium order of the NCLT. Adv. Swarnima chooses to pursue the appeal exclusively on technical grounds with absolute professionalism to not even mention Mr. Sharma's relation with Crony.

The hearing takes place before the NCLAT on the ground that Mr. Chadha could not reply to the demand notice and petition of Crony because he had never received them as they were sent on company's old registered address. The Appellate Tribunal in all its wisdom poses a question to Mr. Chadha, "What would you have done, had you received the notice from Crony?".

Adv. Swarnima on instructions from Mr. Chadha apprises the Bench that her client would have tried to settle the matter with Crony and sort out the miscommunication to avoid the NCLT proceedings as Chadworks owes no debt towards Crony. On hearing this, NCLAT gives 2 weeks' time to Mr. Chadha to settle the matter with Crony with a direction to apprise the Bench on the next date.

Mr. Chadha now has 2 weeks to save his company. He is aware that Mr. Sharma was the mastermind of the scam against him. He invites Mr. Sharma for negotiation over a cup of tea and Mr. Sharma obliges. Mr. Chadha knows that this meeting is his best chance at saving his father's legacy and wants to play his cards tactfully. The meeting starts with usual pleasantries while Mr. Sharma acts oblivious and ignorant of his role in the insolvency proceedings. However, since they were old friends, Mr. Chadha knows how to trigger Mr. Sharma. Once Mr. Sharma opens up, he admits that he felt like he was being treated as an employee by Mr. Chadha despite being the Director and the one whose commercial decisions proved to be the most profitable for the company. Mr. Chadha tries to explain to his old friend that he at least deserved to know about such discontentment much before his company faced moratorium.

Mr. Chadha realises how best friends make the worst of enemies. Since it is time to play aggressively, Mr. Chadha threatens Mr. Sharma of criminal proceedings of fraud as he acted in bad faith to acknowledge a non-existing debt. It is also made clear that since Mr. Sharma is also a Director of Chadworks, he is equally liable for Chadworks' liability as per IBC. Mr. Sharma is now more inclined to negotiate, specially after he learns about how

the moratorium has affected the company, its employees, their families, its suppliers and above all, the reputation of the company which was the labour of their friendship.

Mr. Sharma confirms to his satisfaction about his liability from his lawyers and he understands that IBC proceedings filed against Chadworks is only summary proceedings whereas the civil and criminal charges that may be filed against him will last beyond his life. Worried about the legal repercussions, or having a change of heart, we do not know, but Mr. Sharma comes forward to settle the dispute and revive the friendship with Mr. Chadha. Mr. Sharma agrees to put the receipt of returned goods on record and get the petition withdrawn.

Mr. Chadha shares this development with the IRP who suggests that the parties resolve their dispute through mediation. Mr. Bindra himself agrees to be the Mediator and successfully gets the parties to sign a Memorandum of Understanding whereby Crony admits that they have no dues pending from Chadworks, consequently filing application under Section 12A of the IBC, which is allowed by the NCLAT, to set aside the moratorium. Mr. Chadha resumes his role as the Director of the company as per NCLAT's order and production finally resumes in the factory.

It has been a while since Mr. Chadha got the IBC proceedings set aside in his favour from the NCLAT. He is now comfortable discussing the legal, commercial and emotional lessons he learnt during this journey. He realises that the legal battle did fatigue him and he lost some precious time with his

family. He has not been able to pay as much attention as he would have liked to the education of his children, he feels distanced specially from his older child Meha.

Meha, however, has been observing her father's journey and been sympathetic to the taboos attached to business bankruptcy. All this while, she has been on a pursuit, burning the midnight oil, training and taking exams. She has been a professional Company Secretary for 2 years now. She has come to meet her father bearing news.

Mr. Chadha is in office, as usual, but he is now pedantic about systems and processes. He is learning a software from his employee when Meha walks in. She tells him that she has cleared the IBBI's examination to become the first transgender Insolvency Professional in India. Mr. Chadha blesses her daughter to be an IRP like Mr. Bindra. He is reminded of these lines which his father used to quote, *“खुदी को कर बुलंद इतना कि हर तकदीर से पहले, खुदा बंदे से खुद पूछे बता तेरी रज़ा क्या है”* written by Allama Iqbal which translates *“Raise yourself to such heights that before writing your destiny God asks you; what should I write (what is your wish)?”*