

Endless Moratorium on Peace!

Mr. Chidambaram hailed from a small town on the outskirts of Thirunelveli, the largest district of Tamil Nadu in India. A district with pro-industrial spirit running across every household. He had a very humble background as he grew up in a middle-class family, along with 2 sisters and 1 brother, he being the eldest of them all. His father had deceased when he was 11 years old and his mother had the responsibility to take care of the household. He accepted it at a young age, that he has been bestowed with immense inherent responsibilities to ensure welfare of his family. He was never very good in studies so he knew that he had to write his destiny with hard work and dedication.

Understanding his responsibilities, he started working from his teenage, at times delivering morning newspapers, often cleaning cars, delivering groceries, working at a departmental store, and as a waiter in a small restaurant. As he grew up, he was helping his siblings grow, by taking care of their needs at cost of sacrificing his own requirements.

In the beginning of his 20's, he had joined an engineering service provider, in Chennai, capital of Tamil Nadu, which used to manufacture conveyor systems and spares. Although he had no formal education in this field, the machines, the systems and the process felt like magic to him, a magic which he was waiting for to happen in his life. He had finally found his passion, and key to writing his destiny. Now he knew, his purpose in life and what he is supposed to do. He learned the tricks of trade and the intricacies. Looking at his hard work and dedication, the seniors taught him and mentored him about the products and the industry. He gained considerable experience which gave him the confidence to make the boldest move of his life.

Chidambaram was fortunate to have some ancestral land, which was leased for agriculture, which provided a marginal income and sustained the basic needs of the family. Taking a big step in life, and the most risky, Chidambaram, with support from his family, planned to set up a small engineering service providing unit on the same lines as the one he worked at. He understood the potential of such a service in his growing town, which could not only change his destiny, but also provide employment and bring food on plate for many families of the town. So he took advise from a known financial advisor and started a Sole Proprietorship Firm.

As a first generation businessman, or you may say, a small town entrepreneur, Chidambaram, approached a renowned public sector bank of his locality and requested for loan to set up his engineering unit. He struggled hard to lay the foundation of his dreams, learning about the legal framework of setting up business and the complexities one has to battle to start something of his own. Finally, Chidambaram could obtain necessary approvals for change in land use and could raise credit facility based on mortgage of his land. Chidambaram built premises of his dreams based on this credit facility. A small, effective engineering services provider unit. Further, he bought some much needed machineries and equipments for the unit.

With his hard work and passion, Chidambaram burned midnight oil to strive for success in his entrepreneurial journey and soon became a known, reputed and reliable service provider in his town. He started making newer clients based on word of mouth about his excellent services. As the business grew, he understood he requires to structure his business to make it more organized. Hence, he converted his company into a Private Limited Company and obtained registration as a MSME (also known as SME). The lenders, happy with his success, supported his endeavours.

The transition in the business structure, led to the scenario, wherein the land and premise was in the name of Chidambaram, and the fixed assets were in the name of the Company, wherein he was the Managing Director. Both held as collateral with the same bank. Chidambaram had a dream run for almost 6 years, where the Company posted a year on year growth of 20% on its turnover and was multiplying its profits by cutting down cost and using scale of production.

However, as they say, all things come to an end, sooner or later! Chidambaram's two biggest customers, who constituted almost 75% of his turnover, had sudden business failure and went into insolvency, a subject he had never heard of before. With lot of receivables stuck, Chidambaram understood more about the insolvency process from his known lawyer friend, who advised him to file a claim form with the Resolution Professional of the customer entities. However, he was clearly forewarned that he being an operational creditor, might not receive any settlement at all under the provisions of Insolvency and Bankruptcy Code, 2016. This shattered Chidambaram's hopes and he was numbed to the soul. Though he was considerate and worried about his long standing customers financial position, but this cascading effect is making him stare into insolvency triggering in his own entity. With the help of his lawyer friend, he filed the claim form accepting his fate of nominal recovery.

Soon enough, due to losing of his two big and main customers, Chidambaram soon saw his dream run tumbling and his business becoming unviable and unsustainable. He was hardly able to meet the salaries of his staff, forget about making a profit. And this lead to the vicious cycle of debt default. A situation he is forced into, without any fault of his. A situation, as a result of industry and market dynamics.

However, the bankers, who had supported him for so many years, understood his troubles, and extended him helping hand, by providing loan restructuring. But the business never picked up. But Chidambaram never lost hopes. He somehow wished to revive his Company again, the Company in which he had put in his soul and life. But luck was not on his side, he failed to service even the restructured debt. And then, the worst day came, when he received notice from lenders on default. Chidambaram proposed a One Time Settlement, and after much negotiations, the banks had agreed. Out of the aggregate outstanding credit facility of INR 20 Crores, INR 12 Crores was interest component. Chidambaram could strike a OTS deal for 15 Crores. However, he could pay only INR 10 Crores and the OTS failed.

The Lenders triggered insolvency petition against his Company under IBC and he saw the Company slipping away from his hands. He filed a petition before Appellate Authority, however, the same could not sustain, as the provisions of debt and default was aptly laid down in the framework.

An RP was appointed, who took over the company management and ran the resolution process. Chidambaram, accepting his fate, and respecting the law, assisted the RP as per the legal framework in the resolution of the Company which was so dear to him. He assisted the RP in conducting valuation, attended the CoC Meetings and made sincere endeavours to act in interest of stakeholders of Company. There were times, when he had sleepless nights, as he could not imagine losing his Company to anyone else.

While the CIRP process was going on, the lenders, invoked security interest over land, which belonged to the personal name of Chidambaram, under SARFAESI Act and put it on sale. This pulled the carpet out from under Chidambaram's feet. That was his ancestral land. Not only his

Company is premised there, he also has emotional and sentimental value attached to the land. The lenders, apparently exercising their rights under a parallel recovery framework, sold the land to a potential buyer. Chidambaram was told that the moratorium under IBC was for the Company assets and hence there was no bar on lenders to sell the mortgaged personal land of Chidambaram to achieve their recovery.

Now, Chidambaram's world collapsed, and he felt helpless and suddenly confronted with the obligations he has towards his family, his employees, workers, and families of all those dependent on this unit. Chidambaram shared his pain with the RP, the court appointed officer, who Chidambaram saw as a neutral torch bearer for balancing interest of the bankers as well as the debtor.

The RP, informed Chidambaram regarding the legal provisions and judicial precedents, wherein promoter of MSME has certain flexibilities to provide resolution plan for his MSME entity. He also explained Chidambaram that he could acquire the Company free from past liabilities and start again on a clean slate. The town had very few units offering such services, and there may not be many potential buyers for the unit as not everyone could understand the intricacies of such service and run it efficiently.

However, the RP, shared with Chidambaram, that the IBC framework, as on date, does not discharge promoter's debt on resolution of the entities debt. He shared with Chidambaram, that such a proposal was made by international institutions like IMF and World Bank and may soon be a reality in India as well. It is a known fact that fate of MSME and the Promoter of such MSME is interlinked and interdependent. Discharge of one's debt, without due discharge of other's debt, will result in a total collapse of the business and there can be no going concern of

business. The RP also shared certain recent judgements with Chidambaram, wherein the courts have allowed discharge of personal guarantees and other private debts as part of resolution plan, provided certain consideration is allotted for same and the lenders agree by requisite majority.

This raised new hope in Chidambaram's eyes. He thanked the RP and using his financial advisor and lawyer, and with support of friends and family, he raised some money, and prepared a resolution plan proposal, offering certain upfront payment and proposing a deferred payment on a reduced restructured debt. His main contention was that, he had already paid the lenders more than the principal outstanding, and its only the interest component which was not serviced, for which he is offering a resolution plan. He further emphasized that, the lenders will not be able to maximize their value by selling the assets piecemeal and nor will they find a suitable and competent buyer who can enable better value maximization for the lenders. Based on the learnings he got from the RP, he also ventured into the unventured zone in insolvency framework, and incorporated clause on discharge of promoter debt along with discharge of Company's Debt.

As anticipated, when the 180 day timeline of CIRP neared completion, only Chidambaram's resolution plan was available for the Committee of Creditors to consider. Either they could accept it and realize the maximum while allowing revival of Company, or they could liquidation and thus trigger value destruction for everyone. The CoC in its commercial wisdom approved the resolution plan of Chidambaram with complete majority. The CoC, not only understood that this results in value maximization for them, but also for the workers, the Government by way of taxes, and in generation of employment and contribution to GDP of nation.

The RP placed the approved plan before Hon'ble NCLT, which noting the commercial wisdom of the CoC, blessed the resolution plan with its approval. Soon thereafter, Chidambaram, a man of his words, followed the implementation schedule of the plan and remitted the upfront amount to the lenders, executed restructured loan documents with a revised payment schedule. This settlement proposal not only took care of the Company's debt, but also his obligation to the lenders. The RP was appointed as a monitoring agent for the period of deferred implementation and oversaw the settlement.

With support of the lenders and the RP, Chidambaram completed the deferred payments quicker than he had proposed. The day he received the No Dues Certificate from lenders, removing all security interest from the Company and his personal assets, he felt as if he has found a new life, again. Learning from this adventurous experience, now Chidambaram spreads awareness amongst fellow startup and MSME entrepreneurs regarding running of business, fail checks, back up plans, and revival mechanisms like IBC.

The boy from Thirunelveli, pulled his Company out of abyss, and showed once more, that he could re-write his Destiny and that of others!....