

Guaranteed Retirement

Friday, 1 December 2016

As Mahesh Rao walked through the shop floor of his factory, eyes of all the staff followed him. Wearing his usual navy-blue suit, power blue tie, his bald head was shining in the evening light peering through giant glass windows of the shop floor. His gentle gait, kind eyes accompanied by a semi-permanent smile on his face belied the sharp business mind of a first-generation entrepreneur who owned a pharmaceutical giant in the State of Himachal Pradesh. All the employees standing still and watching him walk towards his son Rajesh's office, instead of being busy with their work was not a usual occurrence. Everyone knew that today was Mr. Rao's last day in office. They were paying their respects in a constrained manner since Mr. Rao had prohibited any 'retirement party'; 'Retirement parties generate nostalgia and unnecessary expense, I hate both equally', he had remarked to his secretary last week shutting down her idea of a grand retirement party.

It was with similar clarity that 35 years ago, Mr. Rao decided to quit his job as a sales agent with a US pharmaceutical company and start his own manufacturing facility, in a nondescript town in the State of Himachal Pradesh. While the State did offer tax incentives to new manufacturing units, Mr. Rao would not have been able to get his factory off the ground without his friends in the pharmaceutical industry providing him generous loans when the banks turned their back on Mr. Rao. Those days are long gone now. Two of India's biggest banks are lenders to Mr. Rao's company while bank managers of other banks wait outside his office daily hoping for an opportunity to do business with him. As Mr. Rao was walking

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through the shop floor, he acknowledged the workers with a barely noticeable nod of his head. He took a big breath before entering his son's office and soon both would have a conversation - that neither knew at the time - but would eventually decide the fate of Mr. Rao's company.

As Mr. Rao walked into Rajesh's office, he opened the door gently.

'I see you are busy reading something', Mr. Rao opened the conversation with an obvious fact.

'Just the loan documents. Both the banks seem to be offering us generous terms. Who did you bribe to get such a low interest rate?', Rajesh responded calmly.

'Only the Chairpersons and the branch managers. Rest fell in line after receiving their cut.' Mr. Rao tried to lighten the mood and laughed at his own joke before Rajesh even had the chance to fully hear what he said.

'You are in a good mood, given the circumstances', Rajesh said getting up from his seat.

'What circumstances? I'm only retiring, not dying. It's hard for me to see how it is a somber occasion', Mr. Rao resisted Rajesh's attempt to color his last day in office with sadness.

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'You built this Dad. You created a giant pharmaceutical manufacturing company. For 35 years you toiled hard to build this factory and now are you walking away from it. Don't you feel even a tinge of sadness?', Rajesh said resisting his father's resistance.

'I would have felt extremely sad, but I know the business is in good hands. You will take care of it, the way you have for the past 2 years. I've been practically superfluous since you joined the business', Mr. Rao said only half believing what he said and sat down on the couch.

Mr. Rao had some doubts if Rajesh could handle the responsibility. But it was guilt that had made Mr. Rao decide that he should retire. The guilt of having neglected his wife for 35 years. His only abiding memory with his wife was 20 years ago when Rajesh was born. For an entire week after Rajesh's birth, both he and his wife were so engrossed in welcoming their child that neither was bothered by the gossip surrounding his birth.

'She must be younger than she looks,' commented one worker when sweets were distributed in the factory on Rajesh' birth. 'How else can a 48-year old woman give birth to a kid?

'It must be a surrogate kid', Mr. Rao's secretary mumbled to herself when she heard the news.

Mr. Rao and his wife had for years been trying for a kid, but with no success. And then, at the age of 50, Mr. Rao became a father.

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As fate would have it, one week after Rajesh's birth Mr. Rao secured a huge export order. Mr. Rao immediately rushed back to his factory, and his wife reminded him on his 70th birthday, 'you never came back.'

'I will, once Rajesh is ready,' he had replied.

'He is ready. He is a special kid. Anyways, as long as you keep going to the factory, he will not be ready and independent,' Mrs. Rao reasoned back.

Despite his resistance, Mrs. Rao's comment had sent Mr. Rao into a thought spiral which ended with him deciding to retire. Armed with a conviction to spend his remaining life with his wife, Mr. Rao had announced one week after his 70th birthday, that he will be retiring within a week and Rajesh would be his successor.

Ever since the appointment, Mr. Rao had endured calls from banks, customers, his friends that he should rethink. It was not wise to leave such a huge business in the hands of a 20-year old boy who had an experience of only 2 years.

Mr. Rao refused. He assured everyone that the business will be in able hands and that he had not taken the decision in haste.

But, today, as he sat in the couch in Rajesh's office and looked at the shop floor from the glass window, he felt a tinge of regret and a dread of what the future held. He was equally

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worried about his business and how he would travel the world with his wife who was now a stranger to him.

Rajesh disturbed his thought flow and handed him a pen and papers and gestured Mr. Rao to sign the papers he was reading when Mr. Rao had entered his office. Mr. Rao nodded, lost in his thoughts. And perhaps for the first time in his 35-year career as a businessman, he didn't read the loan documents. He simply signed as a personal guarantor to a 50-crore loan that his company had secured from two of India's biggest banks.

Monday, 30 December 2021

'Why hasn't the company paid its loan instalments in 4 months?', Mr. Rao thundered. He was in office after 5 years and his attire left no doubt he had sauntered to the office from a beach. He was wearing khaki shorts, an open button half sleeves shirt, and chappals which still carried beach sand.

And Rajesh' secretary didn't know how to handle a guy who looked like he belonged at the beach but had more knowledge about the company than she would ever gather.

A day before, Mr. Rao was on a conference call with general managers of his company's two lender banks where they informed him that they were planning to initiate insolvency proceedings against his company for a 50-crore loan default. The bank managers informed Mr. Rao that he they were making a courtesy call due to their long and cordial relationship, but also informed Mr. Rao that he would be impleaded in the proceedings since

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he was a personal guarantor of the loan on which the company had defaulted. The bank managers were candid that they would try to recover the loan from Mr. Rao by initiating proceedings against him in his capacity as a personal guarantor, since they knew his pedigree, while his son Rajesh, the de facto CEO, could not be trusted to take any prudent decision regarding the business.

Mustering enough conviction to speak, Rajesh's secretary finally replied: 'Rajesh had told us to expect calls or notices from banks, but it seems the banks made a mistake and called you.'

'They didn't make a mistake, you idiot!', Mr. Rao thundered. 'They have made a blunder. They are trying to hold a personal guarantor responsible for loan default without first demanding repayment from the corporate debtor!'

'Where is Rajesh?', Mr. Rao finally asked, fully aware of the answer.

In the past 3 years, Rajesh had barely come to office or home. In fact, he had not entered the State of Himachal Pradesh. He was *supervising* the business from London, Amsterdam, Prague or whichever city caught his fancy for a few months.

In the 2 years after his retirement, Mr. Rao had kept a regular check on how the business was doing. He had found it hard to break his work habit.

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'You are absent physically, present virtually' was how Rajesh described his role during one of their conversations. But, once he finally managed to shake off the habit and started enjoying the company of his wife, their renewed companionship, and travels, Mr. Rao took a step back. And Rajesh, waiting for that exact moment, immediately moved out of the small industrial town in Himachal Pradesh, rented apartments in big cities, stayed in each for a few months at a time - and started to run business via remote control. His travels were, of course, financed by company money, most of which was from the 50-crore loan.

Unsurprisingly, the business unraveled after 3 years as production targets were not met because workers hardly showed up, managers twiddled their thumbs, and clients held back their payments for non-fulfilment of orders and the company started defaulting on its loan repayments.

After a quick change of clothes in the office, Mr. Rao sat in his chair for a virtual meeting with his lawyer. Mr. Rao hated these conversations because he hated the law which stemmed from his inability to understand law and the feeling of inadequacy it generated in him.

'So, you are telling me that under IBC, 2016 creditors can pursue the personal guarantor without first pursuing the corporate debtor for non-payment of loan?', Mr. Rao asked after his lawyer gave him a 30 minute lecture on how IBC, 2016 works.

'Yes', said the lawyer, without bothering to speak more. *I've spoken enough and I'm not even sure if Mr. Rao can afford my fee anymore, the lawyer thought to himself.*

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'How is that fair?', Mr. Rao asked.

What an impractical and irrelevant question, the lawyer thought. He finally answered 'Law and life, both are unfair.'

Mr. Rao, not in the mood for wisecracks, kept his irritation in check. He had to keep the conversation on track. *The banks aren't making a blunder after all*, he thought to himself.

'But, will I, as a personal guarantor, be off the hook if a resolution plan is approved and the new loan repayment terms are agreed?', Mr. Rao asked.

Finally a pertinent question, the lawyer said to himself. Amused and surprised at his own patience when handling clients.

'Yes and No', he answered. But before Mr. Rao could burst into anger, he helpfully added.

'The guarantor is not discharged. *Per se* a resolution plan does not discharge a guarantor from its liability. The creditors will retain the right to pursue action against you even after the resolution plan is approved by NCLT.' It was perhaps the most succinct and relevant answer in the entire conversation until now. And the reality of this statement hit Mr. Rao immediately as he sunk lower in his seat.

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Mr. Rao had a million questions now, but he was tired. He had flown from Miami to Delhi and travelled 8 hours by road to reach the factory. The lawyer, having known Mr. Rao for 30 years, for the first time saw Mr. Rao as a 75-year old man who had lived a long life, not Mr. Rao, the savvy businessman. Something was amiss today. Acknowledging Mr. Rao's condition, the lawyer suggested that they meet the next day. Mr. Rao readily accepted the offer.

Sitting in the back of his car, on his way home, Mr. Rao wondered how could he be so wrong? Everyone, except his wife, had told him not to give Rajesh the responsibility of running the business. But that is how everyone reacted when I announced my decision to leave my job and start this factory, but I proved everyone wrong. How could I go so wrong in assessing Rajesh? His thoughts were abruptly as he entered his home with his wife waiting anxiously for him.

'You think you can salvage the situation?', she asked him immediately. He had predicted that this would be her first question and smiled. 45 years of togetherness had created a unique bond between the two. And in the past 5 years where they had spent every moment with each other travelling the world, had made this bond full of love, compassion, and understanding.

'Sorry to disrupt your holiday', Mr. Rao replied. And now Mrs. Rao replied because she had predicted that's what he would say.

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Mr. Rao continued, 'I think I can salvage it, but it will take a lot of inner strength. First, though I need to set that fool Rajesh right. I going to command him to come back here right away.'

'What good would that do?', Mrs. Rao replied instantly.

'What do you mean? He created this mess, and he should be here to see the consequences,' Mr. Rao said a bit angrily.

'He created this mess. If he comes back, he will only add to it. I suggest you get your priorities right,' Mrs. Rao uttered her suggestion like a half puzzle.

Mr. Rao looked at her and raised his hands as if asking what she meant. She, of course, took the hint.

'Handle the banks first. Rajesh can be handled later. You calling him here won't automatically make the factory efficient again or restart payment of loans. Sort this legal problem first, we can talk to Rajesh later.'

Or maybe not talk to him, EVER!, said Mr. Rao with all seriousness at his command. Mrs. Rao's response was non-committal. She only responded by gesturing him to come to the dining table and eat food.

The couple ate a quiet dinner and retired for the day.

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Tuesday, 31 December 2021

‘What does ‘per se’ mean?’, Mr. Rao continued the conversation with his lawyer.

The lawyer, a bit more attentive today didn’t know how to respond. Habituated to speaking in jargon and using legalese, he had never in his more than 3-decade long career been asked such an elementary question by a client. The bigger problem was that he didn’t know the correct answer.

‘By itself,’ the lawyer’s junior, quiet all this while, chimed in. And for the first time, and perhaps the last, the lawyer didn’t give his junior an angry look.

‘Okay’, responded Mr. Rao. ‘So that means approval of resolution plan will not discharge my liability as a personal guarantor, ordinarily.’

‘Yes’, the lawyer replied, immediately.

‘What if I request the creditors to make my release as a guarantor, part of the resolution plan,’ Mr. Rao asked.

The lawyer was stumped for the second time. Until this moment, he hadn’t thought this was possible.

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Could you repeat your question, the lawyer replied, hoping to gain additional time to think.

‘What if the creditors, what you call them ... Committee of Creditors are persuaded to agree that they will release me, the personal guarantor to the loan, as part of the resolution plan? Do you think that it is possible?, Mr. Rao asked, unaware of the cluelessness of his lawyer.

‘Possible as in factually or legally?, the lawyer asked, still avoiding answering the core question.

‘Legally,’ Mr. Rao replied confidently.

The lawyer was amazed at the turn of events. Last evening Mr. Rao looked haggard and spent, but in less than 24 hours he was back to his usual self as if he was dealing with a minor hiccup and not his potential bankruptcy.

The lawyer was right. Mr. Rao, extremely, tired had slept like a baby last night. He woke up in the morning with a clear mind – *handle the banks first, Rajesh immediately after. Even if Mrs. Rao may not have been completely right about Rajesh being ready to handle the business, she was right about getting the priorities right*, Mr. Rao concluded after his morning coffee and set the wheels in motion.

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Mr. Rao set a conference call at 9am with the bank managers and assured them that he would repay the loans from his personal savings, and he was good for it. He told them to initiate the process under IBC and he would next discuss the repayment conditions thereafter, not hinting at what he was specifically thinking. He then sat for the 10am video call with his lawyer, fully aware of what needs to be done.

‘If we earmark a portion of payment specifically towards release of personal guarantor, I’m almost certain you can be released of your liability’, the lawyer finally remarked.

‘But you will need to persuade the Committee of Creditors’, he hastened to add.

‘I think I can do that. I will have to capitalize on my past reputation, of course. And dilute my ego,’ Mr. Rao said in a matter of fact manner, trying to hide his wounded pride.

‘Why don’t you repay them before they initiate the process under IBC?’, the lawyer suggested an alternative as a query.

‘I need to negotiate a haircut. I still have some years to live and need some money for that,’ Mr. Rao responded in a tone that suggested that the lawyer should know the strategy.

‘Sounds prudent, at least from your viewpoint,’ the lawyer tried to close the conversation.

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'One more thing,' Mr. Rao interjected.

'Yes,' said the lawyer.

'I want to change my will,' Mr. Rao said sternly. 30 years of providing legal advice to Mr. Rao, the lawyer immediately knew what was about to follow. *Poor Rajesh*, he thought to himself and chuckled at the literal truth in his thought.