

Editorial – January 2012

When truth falls victim to propaganda, justice is denied. Two theories advanced by serial entrepreneur C Sivasankaran, coercion and quid pro quo in the Maxis-Aircel deal had everyone, the media, echelons of the investigative machinery, petitioners in the 2G spectrum scam, glued.

Truth be told, Mr Siva shrewdly used the fervour of anti-2G spectrum climate to overturn his contractual obligations with Maxis and wring out excess capital from them. He managed proper audience in the CBI arranged by Mr Louis Freeh, a former FBI Director in the US. Actually all along Mr Siva has been trying to recover a punt of \$100 million while selling Aircel to Maxis. In the depositions before the Madras High Court as well as the International Arbitration Body in Singapore, legal documents show that Mr Siva was a willing seller.

What is the issue at the heart of the matter? Aircel was cash strapped. Mr Siva did not have money even to pay entry fees of Rs 17.40 crore for Madhya Pradesh license; there were defaults in rollout obligations. Mr Siva was looking for a buyer. It is at this time that negotiations started between Maxis and Mr Siva. There were four options, of which two engaged his attention.

One option before Mr Siva was to sell his entire equity of 100 pc to Maxis and its Indian partner for \$900 million. The other offer and one which excited Mr Siva was a multi-tiered deal. First, Mr Siva would get \$800 million for 100 per cent equity sale. Second, Maxis would invest \$280 million for offsetting company's debt and opex/capex requirement, and third Mr Siva will be entitled to an uncertain amount on the upside of 26 per cent of equity in case the company goes for an IPO within 3 years of sale, alternatively if there is no IPO, payment as per a fixed formula which was linked to EBITDA of the company. This option had clearly stated that upside amount is "not-guaranteed." Even Mr Siva had said in his mails to Maxis that he was taking a punt/gamble of \$100 million. There were no troubles in the relationship; Mr Siva's brother-in-law was at the helm of Aircel for months after the company had been sold out to Maxis.

The turning point came when the IPO did not happen and Maxis said that since its net debt was 10 times greater than EBITDA, hence no upside was payable even in the case of non-occurrence of IPO according to the Share Purchase agreement. Mr Siva approached the Madras High Court, which disposed of his matter. He tried his luck at Arbitration, here too he failed, and additionally he had to pay legal damages to Maxis. It was under these circumstances that he started his web of guile and deceit. Read our cover story which nails Mr Siva's Goebbelsian lies and analyses comprehensively the facts in the Aircel-Maxis deal.

