

**Nishith Desai Associates**

*Legal & Tax Counseling Worldwide*

• MUMBAI • BANGALORE  
• SILICON VALLEY • SINGAPORE



**Mergers  
&  
Acquisitions  
Practice**

## **ABOUT NISHITH DESAI ASSOCIATES**

Nishith Desai Associates (“NDA”) is a research based international law firm with offices in Mumbai, Bangalore, Silicon Valley and Singapore. The firm specializes in strategic legal, regulatory and tax advice coupled with industry expertise in an integrated manner.

The firm has received the Indian Law Firm of the Year award in the past from IFLR (a Euromoney publication). The firm has been ranked highest on ‘Quality’ in a Financial Times-RSG Consulting survey of Indian law firms and forms part of the Asian Legal Business Watchlist as one of the ‘Top 10 firms to watch in 2009’ in Asia-Pacific.

The firm’s biggest strength is the unique organization model that it has built with success – a model that has differentiated it distinctly in getting together a cohesive group of highly successful, committed and happy professionals with strong technical skills and high quality output and equally happy clients.

A detailed case study on the business model of the firm has been published by John Wiley & Sons in Global Business and Organizational Excellence (GBOE). Please visit [www.nishithdesai.com](http://www.nishithdesai.com) to view the case study.

## **OUR CORE PRACTICE AREAS**

- Capital Markets
- Fund Formation
- Fund Investments
- International Tax
- International Tax-Litigation
- HR (Employment and Labour) Law
- Corporate & Securities
- Competition Law
- Intellectual Property
- Litigation & Dispute Resolution
- Mergers & Acquisitions
- Succession & Estate Planning

## **INDUSTRY FOCUS**

Banking & Financial Services | e-commerce, IT & Outsourcing | Technology | Media & Telecom | Education | Funds | Infrastructure | Pharma and Life Science | Real Estate | Social Sector | Retail | Microfinance

## M&A IN INDIA

In an increasingly globalized world, Mergers & Acquisitions ("M&A") are assuming more and more significance, with many companies seeing consolidation as a quick and effective growth strategy. While it has been common for quite some time now for Indian companies to be targets of acquisition by foreign companies this inclination has now intensified, and there is also an emerging trend whereby Indian companies are acquiring companies in other countries, particularly in the US and in Europe. This trend is visible primarily in the IT, Steel, Aluminium, Pharma and Automotive sectors where Indian companies have been performing quite commendably, and is now spreading to other industries as well.

## WHAT NDA OFFERS

M&A is one of the areas of practice in which Nishith Desai Associates ("NDA" or the "Firm") has significant expertise. The Firm has successfully leveraged its cross-border specialization and experience to develop a vibrant M&A practice. The M&A practice of NDA endeavors to combine its rich international experience and expertise in the domestic laws/regulations with its research capabilities to devise innovative structures for M&A. The Firm advises on structuring and is actively involved in negotiating and drafting the documentation involved in any M&A in India and abroad. The Firm has represented several major investment banks around the world and large global corporations in cross border as well as domestic M&A. The Firm's M&A expertise is strengthened by specialist practice groups with detailed knowledge of specific industry sectors and their regulatory, technological and financial environment. The Firm approaches transactions with an interdisciplinary team of attorneys handling the various corporate, securities, intellectual property, litigation, employee benefits, tax, environmental, antitrust, and other issues inherent in M&As. The M&A practice of the Firm focuses on following broad areas:

- **Structuring the M&A:** The Firm advises on various cross-border structuring issues involved in M&A deals and resolves complex legal, tax and exchange control issues by creating innovative structures to address the constraints as well as commercial considerations. Generally, the structuring for M&A matters involves various aspects of corporate and securities laws, taxation, exchange control laws and determining the type of SPV, jurisdiction of the SPV, the type of instruments to be used, etc.
- **International and Domestic Tax Planning:** The Firm

advises on carrying out transactions in the most tax efficient manner with an optimum mix of tax efficient jurisdictions and instruments. The Firm also drafts and/or reviews transaction documentation to ensure that the clients realize tax savings and are protected from tax risks. The Firm has advised on inversion transactions, reverse triangular mergers, forward triangular mergers, s. 368 reorganizations etc. to make M&As tax neutral in the USA.

• **Advice on Securities Law, Corporate Law and Exchange Control Law:** The Firm advises on legal and compliance issues related to:

- Corporate law requirements
- SEBI Takeover Regulations, relevant in the context of companies listed on stock exchanges in India
- SEBI Delisting Guidelines, relevant in the context of Indian listed companies proposed to be delisted
- Disclosure and Investor Protection Guidelines, wherever attracted, (generally attracted when there are any fresh issue of securities by listed companies)
- SEBI Insider Trading Regulations
- Other securities laws requirements
- Listing Agreement and other Regulatory considerations
- RBI/SEBI/FIPB approvals;
- Exchange control regulations
- Statutory filings

• **Undertaking Legal Due Diligence:** The multidisciplinary approach of the Firm enables the Firm to carry out legal due diligence with an industry specific focus in several sectors like information technology, telecom, satellite, information technology enabled services, banking, financial services, business process outsourcing, pharmaceuticals, biotechnology,

automobiles, manufacturing and various sub-sectors in the manufacturing space, real estate and construction, infrastructure and leasing, etc., to name a few.

- **Documentation:** The Firm is committed to the highest standards of drafting and reviewing of any documentation, and undertakes drafting and review of term-sheet, memorandum of understanding, various forms of agreements in relation to any given transaction, including, share purchase agreements, share subscription agreements, stock swap agreement, shareholders agreements, non-compete agreements, non-disclosure agreements, escrow agreements,

## DEAL EXPERIENCE

Some of the key deals in which the Firm's M&A team was involved are as follows:

- Acted as the Indian legal counsel to **BlackRock Inc.**, which through its subsidiary, BlackRock Singapore Pte Ltd, acquired **DSP Merrill Lynch Limited's** 40% stake in DSP Merrill Lynch Fund Managers Limited.
- Acted as the Indian legal counsel to **Clyde Bowers**, the engineering group owned by Scottish entrepreneur Jim McColl, for their **USD 645 Million** acquisition of the fluid and power division of **Textron**, the US group that makes Cessna business jets.
- Acted as the legal counsel to **Providence Equity Partners** for their **USD 640 Million** investment in **Aditya Birla Telecom Limited ("ABTL")**, a wireless telecommunications company and a wholly-owned subsidiary of **Idea Cellular** for a 20% equity stake. Providence Equity's investment in ABTL is one of the largest private equity investments in India.
- Acted as the legal counsel to **General Atlantic Partners** and **Oak Hill Capital** for their **USD 500 Million** acquisition of **GE Capital International Services (GECIS)**. This was the largest-ever M&A transaction in Indian BPO industry at that point in time.
- Acted as legal counsel for **Providence Equity Partners**, when it acquired approximately 15% equity stake in **Idea Cellular Limited** for approximately **USD 400 million**. This acquisition was Providence's first investment in Asia.
- Acted as legal counsel to the **Huber Group** of Germany (the 3rd largest printing ink manufacturer in the world) in the **USD 300 Million** acquisition of **Micro Inks Limited**, an Indian publicly listed company and assisted the Huber Group with deal structuring, legal due diligence, deal documentation including the global financing arrangement, negotiations, open offer under the applicable Takeover Regulations and advice on a host of legal, regulatory and tax issues.
- Acted as the legal counsel to **SingTel** in its **USD 250 Million** acquisition of an additional equity stake in **Bharti Telecom**, one of the top Indian telecom companies.
- Acted as legal counsel to **Goldman Sachs**, which invested **USD 172 million** for a majority stake in Indian metal castings maker **Sigma Electric** and its affiliated companies in **India** and the **United States**.
- Acted as legal counsel to **GTCR Golder Rauner**,

employment agreements, etc.

Right from the first deal in India involving a merger of a US private company with an Indian public company, NDA has taken the lead in cross-border M&A. Since then, NDA has advised the acquirer in the first ever acquisition by an Indian public company of a US public company, which was done through the American Depositary Receipt-stock swap mechanism, which was a new concept in India at the time of the transaction. NDA has been involved in several deals since then involving acquisitions of Indian companies by various global companies as well as acquisitions of US companies by Indian companies.

one of the largest private equity funds in the world, in its **USD 100 Million** acquisition of **Zenta**, an Indian BPO company.

- Acted as legal counsel to **Sequoia Capital India**, which invested **Rs. 1 Billion** in **GVK Biosciences Private Limited**, the Hyderabad based leading contract research organization which specializes in Pharma and biotech research in the field of medicinal chemistry, informatics, clinical pharmacology and biology.
- Acted as the legal counsel to **DBS Bank Ltd.**, Singapore (Singapore's largest bank) in the **USD 50 Million** acquisition of a 37.5% stake in **Cholamandalam Finance and Investment Company Limited** an Indian publicly listed company, engaged in non-banking financial services, and assisted DBS Bank with deal structuring, legal due diligence, deal documentation, negotiations, open offer under the applicable Takeover Regulations and advice on a host of legal, regulatory and tax issues.
- Acted as the legal counsel to **eBay, Inc.** in its **USD 50 Million** acquisition of **Baazee.com**, an Indian internet portal rendering auction services.
- Acted as legal counsel to **HDFC Standard Life Asset Management Company** in the acquisition of **Zurich Asset Management**, India amounting to over **USD 40 Million**.
- Acted as legal counsel to **Quintant Services**, a company promoted by Phaneesh Murthy, in its acquisition by **iGate Global Solutions Ltd.**, amounting to approximately **USD 30 million**.
- Acted as legal counsel for **Mellon HBV Master Global Event Drive Fund LP** when it made investments along with Draper Fisher Jurvetson and Global Environment Fund worth aggregate **USD 20 Million** in **Reva Electric Car Company Private Limited** ("Reva"). Reva is the only automobile company in India manufacturing electric cars.
- Acted as the legal counsel to **Farallon Capital**, a US based hedge fund with over **USD 12 billion** under management, in its **USD 50 Million** acquisition of majority stake in **Indiabulls Properties Pvt. Ltd.**, the first foreign direct investment in the real estate sector under the liberalized regime.
- Acted as legal counsel for **i-flex Solutions Limited** ([www.iflexsolutions.com](http://www.iflexsolutions.com)), a leading Indian software product company, when it acquired Mantas Inc. ([www.mantas.com](http://www.mantas.com)), a US corporation along with its subsidiaries, for **USD 122.6 Million** in an all-cash transaction.
- Acted as legal counsel to **Clearstone Venture Mauritius**, along with **SVB Financial Group** (belonging to the Silicon Valley Bank group), which acquired a stake in Games2win India Private Limited ([www.games2win.com](http://www.games2win.com)), a leading online gaming portal, and a spin-off from Contests2win.com India Private Limited, for approximately **USD 5 million**.
- Acted as legal counsel for **Four Interactive Pvt Ltd**, a Bangalore based local information company, when it received a second round of funding worth **USD 10 million** from **Lightspeed Venture Partners VII LLP, Matrix Partners India I LLC** and **SVB India Capital Partners I LLP**.
- Acted as legal counsel for **ComVentures**, a leading venture capital firm in Silicon Valley, which invested **USD 11.5 million** in **Independent News Service Private Limited ('INSPL')**. INSPL is engaged in the business of media and broadcasting in India and owns 'India TV' news and a current affairs channel.
- Acted as legal counsel for **Mayfield Fund**, a Silicon Valley-based venture capital fund, which made its maiden investment in India by investing in **Tejas Networks India Limited**.
- Acted as legal counsel for **GCI Global Ventures** in its acquisition of **GCI Solutions Ltd.** (erstwhile Planetasia.com Ltd.).

- Acted as legal counsel for **GCI Solutions Ltd.** in its

acquisition of **Optibiz Software Technologies Private Limited.**

## CORE TEAM

Our core team comprises of group of experts with expertise across the entire spectrum of domestic and international transactions. Our team members have substantial experience in managing complex multi-jurisdictional M&A projects. Our core team comprises of:

- **Nishchal Joshipura** – Nishchal heads the M&A Practice at NDA and is a senior member of the Corporate and Securities Practice. He specializes on advising clients on legal and tax structuring of cross border M&A deals and assisting them with documentation and negotiations for the deals. His other practice areas include transfer pricing, international taxation, globalization, structuring of inbound/outbound investments, structuring of offshore funds, structuring of real estate investments, taxation of e-commerce, exchange controls, corporate and securities laws.
- **Siddharth Shah** - Siddharth heads the Funds practice group at NDA. Besides the Funds practice group, he is also a member of the Firm's M&A and Banking and Structured Finance groups and as a member of these groups he focuses on advising clients on corporate and securities law issues and on structuring of inbound and outbound investments.
- **Kartik Ganapathy** – Kartik heads the M&A Practice in Bangalore at NDA. Kartik also heads the Corporate and Securities Laws Practice at NDA. Kartik's practice areas involve private equity and venture capital investments, M&As, joint ventures and foreign collaborations, and securities law, in addition to general corporate and commercial advice. He has also been involved with various facets of transactions including structuring of investments, fund raising, client acquisition and negotiations.
- **Vaibhav Parikh** – Vaibhav heads the Technology Laws practice group at NDA. In addition to handling transactions spanning the entire gamut of Technology and Telecom Laws, he is involved in the Firm's M&A practice, and as a member of this group, he advises clients on corporate and securities issues and also helps structure the proposed transactions in a legal, exchange control and tax-efficient manner.
- **Vyapak Desai** – Vyapak is a senior member of the Corporate and Securities Practice Group, Litigation & Dispute Resolution Practice Group and Fund Practice Group at the Firm. He has advised clients on several public offerings, M&As, PIPE deals, corporate and securities laws, foreign direct investment and other exchange control laws, corporate issues relating to setting up of private equity funds and offshore investment funds.
- **Sangeeta Rana** – Sangeeta is a senior member of the M&A Practice. She has vast experience in handling complex M&A transactions.
- **Amrita Singh** – Amrita is a senior member of the Corporate & Securities Laws Practice. She has managed several M&A transactions and advises clients on structuring and documentation of the proposed transactions.

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