

Mergers & Acquisitions

STATEMENT OF CAPABILITY

2012

Nishith Desai Associates

Legal & Tax Counseling Worldwide

Mumbai • Silicon Valley • Bangalore • Singapore • Mumbai-BKC • New Delhi

Nishith Desai Associates (NDA) is a research based international law firm with offices in Mumbai, Bangalore, Silicon Valley, Singapore and Basel. We specialize in strategic legal, regulatory and tax advice coupled with industry expertise in an integrated manner. We focus on niche areas in which we provide significant value and are invariably involved in select highly complex, innovative transactions. Our key clients include marquee repeat Fortune 500 clientele, of which over 60 per cent are US corporations.

Core practice areas include Mergers & Acquisitions, JVs & Restructuring, Corporate & Securities Law, Competition Law, International Tax, International Tax Litigation, Litigation & Dispute Resolution, Fund Formation, Fund Investments, Capital Markets, Employment and HR, Intellectual Property, General Commercial Law and Succession and Estate Planning.

We have been ranked as the best performing Indian law firm of the year by the RSG India Consulting in its client satisfaction report (2011). We have been named an ASIAN-MENA COUNSEL 'IN-HOUSE COMMUNITY FIRM OF THE YEAR' in India for International Arbitration (2011). For the second consecutive year, International Financial Law Review (a Euromoney publication) has recognized us as the Indian "Firm of the Year" (2011) for our Technology - Media - Telecom (TMT) practice. Our Tax, Investment Funds and TMT practices have also been consistently ranked in tier 1 by Legal 500, while Chambers & Partners have ranked us # 1 for Tax, TMT and Real Estate - FDI. We've received honorable mentions in Asian - Counsel Magazine for Alternative Investment Funds, International Arbitration, Real Estate and Taxation for the year 2010. We have been adjudged the winner of the Indian Law Firm of the Year 2010 for TMT by IFLR. We have won the prestigious "Asian-Counsel's Socially Responsible Deals of the Year 2009" by Pacific Business Press, in addition to being Asian-Counsel Firm of the Year 2009 for the practice areas of Private Equity and Taxation in India. Indian Business Law Journal listed our Tax, PE & VC and Technology-Media-Telecom (TMT) practices in the India Law Firm Awards 2009 as also Legal 500 (Asia-Pacific) that has ranked us #1 in these practices for 2009-2010. We have been ranked the highest for 'Quality' in the Financial Times – RSG Consulting ranking of Indian law firms in 2009. The Tax Directors Handbook, 2009 lauded us for our constant and innovative out-of-the-box ideas. Other past recognitions include being named the Indian Law Firm of the Year 2000 and Asian Law Firm of the Year (Pro Bono) 2001 by the International Financial Law Review, a Euromoney publication. In an Asia survey by International Tax Review (September 2003), we were voted as a top-ranking law firm and recognized for our cross-border structuring work.

Our research oriented approach has also led to the team members being recognized and felicitated for thought leadership. Consecutively for the fifth year in 2010, NDAs have won the global competition for dissertations at the International Bar Association. Nishith Desai, Founder of Nishith Desai Associates, has been voted 'External Counsel of the Year 2009' by Asian-Counsel and Pacific Business Press and the 'Most in Demand Practitioners' by Chambers Asia 2009. He has also been ranked No. 28 in a global Top 50 "Gold List" by Tax Business, a UK-based journal for the international tax community. Nishith Desai is listed in the Lex Witness 'Hall of fame: Top 50' individuals who have helped shape the legal landscape of modern India.

Our Mergers & Acquisitions Expertise

In an increasingly globalized world, Mergers & Acquisitions (M&A) are assuming tremendous significance with several corporations seeing consolidation as a quick and effective growth strategy. While Indian companies have traditionally been attractive targets for acquisition by international companies, a stronger emerging trend is that of Indian corporations scouting for international targets, especially in the US and Europe, in the quest of market share and other efficiencies. This trend is visible primarily in the IT, steel, aluminum, pharma and life sciences and automotive sectors, and is beginning to extend to other sectors as well.

We have successfully leveraged our cross-border specialization and experience to develop a vibrant M&A practice. We endeavor to combine our rich international experience and expertise in domestic laws/regulations with our research capabilities to devise innovative structures for M&A. We advise on structuring transactions and are actively involved in negotiating and drafting the documentation involved in any M&A in India and abroad. Having represented several major investment banks around the world and large global corporations in cross border as well as domestic M&A, we draw additional strength from our specialist practice groups and industry expertise. We approach transactions with an interdisciplinary team of attorneys handling the various tax, corporate, securities, intellectual property, litigation, employee benefits, tax, environmental, antitrust, and other issues inherent in M&As.

In addition to presenting papers at international and reputed seminars and conferences, our M&A team has an established track record of publishing thought leadership articles in this space. Our primer on '*M&A in India*' that includes a **Competition Law** perspective has been extremely well received. Other specific papers in the context include a detailed report on '*Doing Business in India*', '*Globalization*', '*Joint Ventures in India*' and several other incisive and detailed analyses on law and industries. In addition to our newsletters focused on the subject, a special compilation of M&A Labs that seeks to dissect large and innovative M&A deals, not necessarily only those that we have advised on, has a large following among our Indian as well as international subscribers.

Some of our accolades include:

- Among PLC's recommended firms for M&A, Private Equity, Capital Markets and Corporate Real Estate.
- Recognized by Chambers and Partners as the 'Most In-Demand Practitioners'
- Legal 500 (Asia-Pacific) 2009/10 has mentioned Mr. Siddharth Shah as "...particularly recommended by clients" for real estate. He is also listed among the highly recommended professionals in India by PLC Which Lawyer? 2009 for capital markets.
- Mr. Nishchal Joshipura specializes in legal and tax structuring of cross-border transactions and assists clients on documentation and negotiation of mergers and acquisition (M&A) deals.
- Mr. Vaibhav Parikh has been nominated as one of the world's leading practitioners in 'Who's Who Legal' for Regulatory Communications.

Scope of Services

The scope of our work extends across the following areas.

- **Structuring the M&A:** We advise on cross-border structuring issues involved in M&A deals and resolve complex legal, tax and exchange control issues through innovative structures to address 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:** We help clients in creating the most tax efficient structures with an optimum mix of tax efficient jurisdictions and instruments. We also draft and/or review transaction documentation to ensure that the clients realize tax savings and are protected from tax risks. We have advised clients on inversion transactions, reverse triangular mergers, forward triangular mergers, reorganizations etc. to make M&As tax neutral in the USA.
- **Undertaking Legal and Tax Due Diligence:** Our multidisciplinary approach and sectoral specialization gives us the advantage of being able to offer a vast set of skill sets with the necessary domain expertise. We carry out legal and tax due diligence with an industry specific focus across information technology, telecom, satellite, information technology enabled services, banking, financial services, business process outsourcing, pharma and life sciences, biotechnology, automobiles, manufacturing and various sub-sectors in the manufacturing space, real estate and construction, infrastructure and leasing, etc., to name a few.
- **Advice on Securities Law, Corporate Law and Exchange Control Law:** Our advice focuses on legal and compliance issues related to:
 - SEBI Takeover Regulations, relevant in the context of companies listed on stock exchanges in India including assisting clients with open offer process;
 - 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;
 - Corporate law requirements;
 - RBI/SEBI/FIPB approvals;
 - Exchange control regulations; and
 - Statutory filings.
- **Documentation and Negotiation:** We are committed to the highest standards of drafting, reviewing and negotiation of any documentation, and undertake drafting, review and negotiation 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, employment agreements, etc. We have developed special expertise in negotiation of tax indemnity agreements for our clients.

From our involvement in 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. A new concept in India, then, it is but an example of the several extremely innovative deals we have structured involving acquisitions of Indian companies by various global companies as well as acquisitions of US companies by Indian companies.

Representative Clients

Listed below is the role of our M&A team in some select deals.

- 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 special counsel to **Blackstone** in sale of its stake in Intelenet to UK's Serco Group for **USD 634 Million**.
- 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 **Dewan Housing Corporation Finance Limited** in its **USD 240 Million** acquisition of Deutsche Post Home Finance Pvt. Ltd. This was the largest acquisition in housing finance industry in India.
- Acted as legal counsel to **Siemens** in its **USD 125 Million** sale of its partial equity stake in Bangalore

International Airport Limited to GVK.

- Acted as 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**, 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 **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 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 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 **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 to **Cognizant Technologies** in its **USD 50 Million** acquisition of CoreLogic India.
- Acted as legal counsel to **Mid-Day Multimedia Ltd.** in demerger of its print business to Jagran Prakashan Limited for **USD 45 Million**.
- 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 the legal counsel to **Baumer**, a Swiss company in its acquisition of Waaree Instruments Ltd. for **USD 35 Million**.
- Acted as legal counsel to **Lifetree Convergence Limited**, a telecom focused technology product company, in its acquisition by Tecnomen Oyj, a Finnish company for a consideration of **EURO 33.2 million**.
- Acted as 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 for **USD 25 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 legal counsel for **i-flex Solutions Limited** (www.iflexsolutions.com), a leading Indian software product company, when it acquired Mantas Inc. (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), 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 and tax counsel for **Ravin Cables Limited** in the substantial acquisition of its shares by Prysmian Cavi E Sistemi Energia S.R.L, amounting to **INR 2,000 Million**.
- 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.).

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