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Deal Destination

Market for Stressed Assets: Truly 'Stressed' or Disguised 'Desserts' Spelt Backwards?

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Market For Stressed Assets: Truly 'Stressed' Or Disguised 'Desserts' Spelt Backwards?

Over the past year, India has witnessed a resurgence in the market for distressed assets. The promulgation of the Insolvency and Bankruptcy Code, 2016 (**"Bankruptcy Code"**) was a significant step forward by the Indian government; by which it lent a defined and regulated structure to the debt restructuring process. Distressed assets are being viewed as a lucrative investment opportunity by several investors, who are now in a position to dip into the secondary debt market and acquire well-established undertakings or companies at competitive prices. In this manner the investor does not incur any fixed incorporation costs, and acquires formerly debt-laden assets which are now wiped free of all legacy liabilities and issues. Further, several investors have already recognized the regulatory privileges of acquiring an asset under the Bankruptcy Code as opposed to a usual acquisition. Investors such as Liberty House, Arcelor Mittal, Vedanta, etc. have made bids for multiple insolvent entities.

Last year, the Reserve Bank of India issued directions to several leading banks across the country to initiate insolvency proceedings against the top 12 loan defaulters identified through specific criteria, who collectively comprised approximately 25% of the NPAs in India. June 2018 marks the anniversary of the RBI's foray into cleaning up non-performing assets in India's debt market, and Bhushan Steel, Electrosteel Steels, Jyoti Structures, Amtek Auto and Lanco Infratech (among other cases) have made it to the end of the tunnel, with Bhushan Steel, Electrosteel Steels, and Amtek Auto successfully implementing a resolution plan, and Jyoti Structures and Lanco Infratech proceeding to liquidation. However, observing the progress of the proceedings initiated against the 12 loan defaulters, and their impact on the insolvency resolution regime in India, it is apparent that the government is leaving no stone unturned in its efforts to 'clear up this mess'.

One of the major hurdles investors are facing is the newly introduced eligibility criteria for participating in the bidding process under the Bankruptcy Code. Two of Essar Steel's bidders Arcelor Mittal and Numetal were declared ineligible by the NCLT under Section 29A of the Bankruptcy Code, due to their group members being loan defaulters; both have since taken measures to cure their ineligibility. Two rounds of bidding took place with Vedanta joining the fray in the second round, and the matter remains before the National Company Law Appellate Tribunal (NCLAT). Similarly, Liberty House's eligibility to bid for ABG Shipyard was questioned by the CoC due to certain pending loans within its group, which potentially barred it under the Bankruptcy Code; Liberty House went on to clear the dues so as to make it eligible.

In another interesting application of Section 29A, two of the bidders of Electrosteel Steels, namely Tata Steel and Vedanta, were accused of criminal misconduct, rendering them ineligible to bid. The allegations were that Tata Steel had violated the UK Health and Safety at Work Act, while a subsidiary of Vedanta had violated pollution norms in Zambia nearly a decade ago (for which it had already paid a fine). The NCLT in this instance ruled that the offence committed by Vedanta's subsidiary was less serious, and Vedanta, whose bid was approved by the CoC, could not be held ineligible on this ground. Vedanta's plan was approved by the NCLT, with lenders taking approximately 50% haircut on the outstanding loan amounts. In an appeal before the NCLAT, Vedanta was directed to pay the bid amount upfront, and judgment on its eligibility was pronounced its favour. In the interim while judgment was pending, Vedanta was permitted to acquire control over Electrosteel Steels and is currently effecting a delisting of the company.

As a result of this wide and vague eligibility criteria, many otherwise potential bidders were placed outside the scope of the bidding process. The ultimate objective of the Bankruptcy Code is to ensure resolution/restructuring of insolvent companies and ensure maximization of returns for lenders, promoters other stakeholders. However, the slowly increasing pool of potential bidders was being abruptly truncated in an irrational manner because of the eligibility criteria.

In order to address these issues in respect of the eligibility criteria of bidders, the government has passed an Ordinance in June, which has amended the eligibility criteria to provide exemptions to financial institutions and encourage investors to participate in the process. The changes are now incorporated in the Insolvency and Bankruptcy Code (Second Amendment) Act, 2018 (**"2018 Amendment"**) dated August 17, 2018, which has been made effective from June 6, 2018, i.e. the date of the Ordinance. The government has tried to provide a wide and all-encompassing definition of financial institutions who are provided crucial exemptions for compliance with the eligibility norms. This will encourage institutional investors to participate in the bidding process without being bogged down by the erstwhile restrictions. Further, exemptions have been provided to companies who acquire stressed assets under the Bankruptcy Code, to further participate in future bidding processes without being struck down by the restrictions for holding non-performing assets. Also, financial institutions have been exempted from being treated as a related party on account of holding equity in the corporate debtor undergoing insolvency if the equity has been obtained through conversion of a debt instrument.

Although some respite may have been provided through these relaxations and exemptions, the field is still not completely open for investors to participate in the bidding process. It is therefore important to understand the revised eligibility norms before evaluating a possible bid, so as to avoid facing future hurdles with a prospective resolution plan. To assist in this task, we have prepared an in-depth comparative analysis of the eligibility criteria postulated by Section 29A, and the changes introduced by the 2018 Amendment. We hope this would assist potential investors to evaluate themselves vis-à-vis any potential investments under the Bankruptcy Code.

Comparative Analysis of the Eligibility Criteria Under Section 29A

Section	Original Position	Amendment by the 2018 Amendment	Comment
Opening language of Section 29A	The Bankruptcy Code states that the disqualifications under Section 29A for submission of a resolution plan shall be applicable to a person or any other person acting jointly or in concert with such person.	No changes have been made by the 2018 Amendment.	Interestingly, the Committee Report had recommended doing away with the phrase *"person acting jointly or in concert"* [1], given that the phrase includes a wide gamut of persons within its scope, and would make the restrictions under Section 29A applicable to all such persons, and it would be unclear whether such persons would be included within 'connected persons' in clause (j) of Section 29A. Additionally, ARCs, banks, and alternate investment funds, which are specifically excluded from the definition of 'connected person', may be caught within the net of 'person acting jointly or in concert with such person', thereby creating ambiguity around the exemption. However, these recommendations have not been reflected in the 2018 Amendment. [For our analysis on the implication of the term *"in concert"*, please refer to our analysis here]
Amendment of Section 29A(c)	Under the Bankruptcy Code, the disqualification under Section 29A(c) applied to a person (or a person acting jointly or in concert with such person) who has an account which has been declared as non-performing asset (**"NPA"**) in accordance with the guidelines of the Reserve Bank of India issued under the Banking Regulation Act, 1949. Further, a person was eligible to submit a resolution plan if he made all the payments with regard to the NPA prior to submitting the resolution plan.	The 2018 Amendment has inserted language at the outset of Section 29A(c) recording that the disqualification would apply at the time of submission of the resolution plan. Further, the 2018 Amendment expands the classification of an NPA. It is now to be ascertained in accordance with guidelines of the Reserve Bank of India issued under the Banking Regulation Act, 1949 or the guidelines of a financial sector regulator issued under any law for the time being in force.	1. To be disqualified under this provision, it has been clarified that the NPA must be held at the time of submission of the resolution plan. 2. In the Essar Steel case, the reason Arcelor Mittal's bid was deemed to be disqualified was because it was in management/control of a company which had NPAs. Arcelor Mittal was in a position to pay off these outstanding debts or hive off its stake in the errant company, however, if the date for determination of disqualification for a potential bidder started from the insolvency commencement date then no such measure would be of any help, thereby deeming the world's largest steel maker incapable of bidding for Essar.

1. Para 14.3 of the Committee Report.

3. In order to avoid such situations, the amendment has sought to provide a bidder with the opportunity to regularize its outstanding liabilities and make itself compliant with the requirements under the Code. Once a company has been put under insolvency and prospective bidders have had the opportunity to go through relevant information and take a decision on participation in the process they will have the ability to regularize their outstanding liabilities before submission of their bids.

4. However, it may now be that bidders could simply remove the connection to the entity holding an NPA account instead of paying off the dues. For instance, when Arcelor Mittal was deemed disqualified from bidding for Essar Steel, it sold its stake in Uttam Galva, the NPA that was causing such disqualification.

The NPA classification criteria has been extended beyond the Banking Regulation Act, 1949. The Committee Report had noted that several NPAs are declared under other guidelines, like the guidelines issued by the Housing Finance Bank[2] and thus these must be incorporated within the ambit of disqualification as well. The amendments are in line with the suggestions of the Committee Report. This will help harmonize the effect of the eligibility criteria across all sectors and will avoid any further litigation to determine the applicability of this section to such previously excluded sectors.

2. Para 14.7 of the Committee Report.

Amendment of 29A(d)	The Bankruptcy Code provided that a person, or a person who is acting jointly or in concert with such person is disqualified from submitting a resolution plan if he/she has been convicted for an offense punishable with imprisonment for over two years.	The 2018 Amendment amended the provisions of Section 29A(d) by disqualifying a person (and a person acting jointly or in concert with such person) from submitting a resolution plan if such person has been convicted for an offence punishable with imprisonment for two years or more under the Acts specified in the Twelfth Schedule. Further, if such person has been convicted for an offence punishable with imprisonment for over seven years under any other law, he/she will be disqualified from submitting a resolution plan. The 2018 Amendment has also inserted a proviso explaining that the exclusion under this clause will not apply to (a) a person after the expiry of two years from the date of release from imprisonment, and (b) a connected person referred to in clause (iii) of Explanation I, namely a holding company, subsidiary company, associate company, or related party of the promoter / person in control of the resolution applicant or corporate debtor.	The Committee Report had noted that the original language of this provision provided a very wide disqualification criterion which may also include in its ambit offences which have no nexus with the ability to run a corporate debtor successfully. [3] The disqualification has now become applicable for persons who are convicted for offences that are punishable with imprisonment of two years or more only under the 25 Acts mentioned in the newly inserted Twelfth Schedule. Further, the Central Government has been given the power of amending the Twelfth Schedule by notification. Most of these legislations are also found in the Fifth Schedule of the Companies Act which provide for disqualification of directors. For imprisonment under laws not identified in the Twelfth Schedule, the resolution applicant will be disqualified only if the offence was punishable with imprisonment for over seven years, thus potentially reducing the number of persons who may have suffered disqualifications for frivolous offences. The disqualification criteria are further narrowed by stating that it will not apply after a period of two years has passed since the release of the individual from imprisonment. The Committee Report had recommended that this ought to have been six years in tune with the criteria laid out in the Representation of People's Act 1951[4] but this recommendation appears only have been partially accepted. The Committee Report had further suggested that if the decision of imprisonment it itself stayed, then this section would not apply.[5] But this suggestion has not been specifically reflected in the 2018 Amendment. However the wording *"has been convicted of an offence punishable with imprisonment"* might be interpreted to mean that a stay on conviction would not mean discharge from disqualification. It is unclear, whether in case of an offence punishable with fine or imprisonment or both. If only fine is imposed, then automatically upon payment of fine will the bidder become eligible, or will it have to wait for two years to become eligible. Ideally it should be immediately upon payment of fine, however, this is still unclear. This will ensure that potential bidders are not being disqualified for a sentence of imprisonment which has no economic implication or nexus with the bid.

3. Para 14.9 of the Committee Report.
4. Para 14.10 of the Committee Report.
5. Para 14.11 of the Committee Report.

Insertion of a proviso to Section 29A(g)	Under the Bankruptcy Code, Section 29A(g) read that a person (or a person acting jointly or in concert with such person) would be disqualified from submitting a resolution plan if such person was: i. The promoter or in the management and control of a corporate debtor in which a preferential transaction, undervalued transaction, extortionate credit transaction or fraudulent transaction has taken place; and ii. and an order has been made in this regard by the Adjudicating Authority under the Code;	The 2018 Amendment has inserted a proviso to Section 29A(g), stating that the clause will not apply if a preferential transaction, undervalued transaction, extortionate credit transaction or fraudulent transaction has: i. taken place prior to the acquisition of the corporate debtor by the resolution applicant or ii. pursuant to a scheme or plan approved by a financial sector regulator or a court; or iii. and such resolution applicant has not otherwise contributed to the preferential transaction, undervalued transaction, extortionate credit transaction or fraudulent transaction.	The Committee Report had recorded that a person must not be punished for acts of its predecessors if she had no nexus with such past acts that led to the preferential, undervalue, fraudulent or extortionate credit transaction. [6] Therefore, the amendment codifies the basic tenet that an entity must not be penalized for an act that it had no control over. This will help ensure that potential bidders do not carry out prolonged due diligence activities before an acquisition or request for forensic analysis of the target company's financials and books of accounts.
Insertion to Section 29A(h)	Under the Bankruptcy Code, an applicant was disqualified from submitting a resolution plan if it had executed an enforceable guarantee in favour of a creditor for a corporate debtor against which an insolvency resolution application was made by the creditor and admitted under the Bankruptcy Code.	The 2018 Amendment changed the language of this sub-section by stating that the disqualification will apply only if such a guarantee has been invoked by the creditor and remains unpaid in full or in part.	The provision as it originally stood may have been interpreted in a manner to disqualify every guarantor only by virtue of issuing an enforceable guarantee for a corporate debtor in favour of a creditor. Therefore, this amendment has clarified that the disqualification is only applicable if the guarantee has been invoked by the creditor and dishonored by the guarantor in full or in part. The objective seems to be to disallow a defaulter from using its resources in acquiring assets when it fails to honour its existing obligations.

6. Para 14.12, Committee Report.

Amendment to Section 29A(i)	Under the Bankruptcy Code, a person could be disqualified if he has been subject to any disability, corresponding to clauses 29A (a) to (h) under any law in a jurisdiction outside India.	The 2018 Amendment modified the language to read that such disqualification applies if the person is subject to any disability, corresponding to clauses 29A (a) to (h), under any law in a jurisdiction outside India.	The "has been" requirement under the previous position of law, being in the past continuous tense, did not clarify as to how far in the past the disqualification would stretch. Therefore, it was possible to make a case that any disability under this section ever accrued in the past could have led to a disqualification of that entity from submitting a resolution plan. For instance, Vedanta's eligibility was questioned on the ground of violations of pollution norms committed by its subsidiary about a decade prior to its bid for Electrosteel Steels, for which Vedanta had already paid a fine. This amendment has now clarified that the disqualification must be a present and subsisting.
Insertion of Proviso, Explanation I and Explanation II under Section 29A(c); Insertion of Proviso to Section 29A(d); Insertion of proviso to Section 29(A)(e), Insertion of Provisos and Explanation II to Section 29A(j);	The Bankruptcy Code states that if an applicant has a connected person not eligible under clauses (a) to (i), then such an applicant would be disqualified from submitting a resolution plan. Connected person was defined as: i. any person who is the promoter or in the management or control of the resolution applicant; or ii. any person who will be the promoter or in management or control of the business of the corporate debtor during the implementation of the resolution plan; or iii. the holding company, subsidiary company, associate company or related party of a person referred to in clauses (i) and (ii): A proviso explained that the disqualification in sub-clause (iii) above will not apply to:	The 2018 Amendment has replaced a proviso and inserted an "Explanation II" after Section 29A (j). In the proviso replaced after Explanation I, it is explained that nothing in Clause (iii) to Explanation I will apply to a resolution applicant where such applicant is a financial entity and is not a related party of the corporate debtor. In the second part of the proviso, it is explained that a financial entity which becomes a related party solely by way of conversion or subscription to equity linked instruments before the insolvency commencement date, will not be considered as a related party.	language of Section 29A stretched the umbrella of disqualifications a bit too far, extending from promoters and those in the management of the company on one hand to banks and financial institutions on the other hand who had no actual control over the financial performance of the company. In order to facilitate resolution, it is necessary to have a competitive pool of resolution applicants. However, the erstwhile language of Section 29A disqualified an extremely broad range of persons and entities from submitting a resolution plan – including investors and banks who had ineligible 'related parties'. If there is a dearth of eligible resolution applicants to submit a resolution plan, the entire purpose of the Code is defeated, as companies would be forced into liquidation. The 2018 Amendment has narrowed down the bucket of persons that could be deemed ineligible from submitting a resolution plan: 1. Three tier scope of disqualification Under the un-amended Code, a resolution applicant would stand disqualified in the following circumstances a. If the resolution applicant itself was ineligible b. If any person acting jointly or in concert with the resolution applicant was ineligible c. If a connected person of the resolution applicant was ineligible

	a. a scheduled bank; or b. an asset reconstruction company registered with the Reserve Bank of India under section 3 of the Securitisation and Reconstruction of Financial Assets and Enforcement of Security Interest Act, 2002; or c. an Alternate Investment Fund registered with the Securities and Exchange Board of India.	The 2018 Amendment has inserted Explanation II which provides a wide definition of a financial entity, which includes (a) a scheduled bank; (b) any entity regulated by a foreign central bank or a securities market regulator or other financial sector regulator (c) any investment vehicle, registered foreign institutional investor, foreign portfolio investor or a foreign venture capital investor, (d) an asset reconstruction company (e) an Alternate Investment Fund (f) such categories of persons as may be notified by the Central Government. **The following Sections have been specifically amended to state that they would not apply to a <u>financial entity that is not a related party to the corporate debtor:</u>** *i. Section 29(A)(c), which disqualifies persons for holding non-performing assets.* **The following Sections have been specifically amended to state that a <u>related party will not include a financial entity who is a related party solely for conversion of debt to equity in the corporate debtor:</u>**	The definition of "connected person" was wide enough to encompass not only the promoter/ownership/controlling entities of the applicant but also the holding company, subsidiary company, associate company or related party of the promoter/ownership/controlling entities (**Clause III**). The definition of connected persons and especially Clause III is so wide that it ensnares unintended entities within its grasp, thereby disqualifying the applicant. Instead of amending the text of disqualification criteria, the 2018 Amendment has exempted certain categories of applicants from the ambit of the disqualifications. Thereby increasing the pool of potential bidders. The categories are discussed below. <u>2. Financial Entity</u> Financial entities, which are not otherwise related parties to the corporate debtor, are excluded from the disqualification criteria provided for under Clause III. Therefore, even if the holding company, subsidiary company, associate company or related party of the promoter/ownership/controlling entities of the applicant financial entity is not qualified to bid, still that ***<u>would not automatically disqualify the financial entity</u>*** to participate in the bidding process. Therefore, financial entities that would have otherwise fallen within the ambit of the definition of 'connected persons' have been explicitly excluded from being disqualified from submission of a resolution plan. This is a welcome move as financial entities may have been disqualified from submitting a resolution plan merely because of the nature of the business they undertake and for reasons beyond their control.

		i. Section 29(A)(c), which disqualifies persons for holding non-performing assets. **The following Sections have been specifically amended to state that they <u>do not apply to connected persons</u> referred to in clause (iii) Explanation I, as described above:** *i. Section 29A(d), which disqualifies persons for conviction for an offense punishable with imprisonment.* *ii. Section 29A(e) which disqualifies persons who are disqualified from acting as a director under the Companies Act, 2013.*	Explanation II also brings a larger breadth of entities within the definition of financial entity, including entities which were regulated by institutions outside the jurisdiction of India. Therefore, the amended position significantly reduces the number of financial entities that could have been disqualified under the erstwhile regime. Further, the Government has been given the power to notify entities as 'financial entities' in the future. This will significantly increase the ability of financial entities to participate in the bidding process without diluting the ultimate objective of Section 29A, i.e. to disallow errant promoters/willful defaulters from participating in the proceedings. <u>3. Related Party</u> The 2018 Amendment has added a further proviso stating that a financial entity which becomes a related party solely by way of conversion or subscription to equity linked instruments will not be considered a related party. This specific carve out has been provided for entities from being subjected to certain disqualifications such as holding NPAs or being disqualified as a 'connected person', if the financial entity is considered a 'related party' solely for conversion of debt into equity before the insolvency commencement date. This insertion provides necessary relief to financial institutions and creditors who may have converted their outstanding debts into equity - and may not have had any other interest or role in the functioning of the corporate debtor. Thus, such entities are not considered ineligible from submitting a resolution plan.

4. Entity Acquiring assets under the Code.

The Committee Report had noted that in order to ensure that the underlying objective of the Code to promote resolution is furthered, resolution applicants who hold NPA accounts solely due to acquisition of corporate debtors under the CIRP process of the Code, must be given some time to revive the corporate debtor without being disqualified from bidding for other corporate debtors if they fulfil all other criteria.[7]

The 2018 Amendment follows the Committee Report's suggestions by insertion of Explanation II to Section 29A(c), which provides that an entity holding NPAs that were acquired through the insolvency resolution process under the Code must be carved out from the ambit of disqualification from submission of a resolution plan. A period of three years from the date of the previous resolution plan being approved has been provided as a leeway period. This is a welcome and necessary amendment as it does not disqualify those who have acquired NPAs under the four corners of the Code.

The specific exclusions and carve outs provided to financial entities and also the expansive definition of a financial entity have effectively provided a much better platform for investors, lenders and institutions to enter the secondary debt market and back buy-out of stressed assets as a going concern.

7. Para 14.4 of the Committee Report.

About NDA

Nishith Desai Associates (NDA) is a research based international law firm with offices in Mumbai, Bangalore, Palo Alto (Silicon Valley), Singapore, New Delhi, Munich and New York. We provide strategic legal, regulatory, and tax advice coupled with industry expertise in an integrated manner.

As a firm of specialists, we work with select clients in select verticals on very complex and innovative transactions and disputes.

Our forte includes innovation and strategic advice in futuristic areas of law such as those relating to Bitcoins (block chain), Internet of Things (IOT), Aviation, Artificial Intelligence, Privatization of Outer Space, Drones, Robotics, Virtual Reality, Med-Tech, Ed-Tech and Medical Devices and Nanotechnology.

We specialize in Globalization, International Tax, Fund Formation, Corporate & M&A, Private Equity & Venture Capital, Intellectual Property, International Litigation and Dispute Resolution; Employment and HR, Intellectual Property, International Commercial Law and Private Client. Our industry expertise spans Automobile, Funds, Financial Services, IT and Telecom, Pharma and Healthcare, Media and Entertainment, Real Estate, Infrastructure and Education. Our key clientele comprises of marquee Fortune 500 corporations.

Our ability to innovate is endorsed through the numerous accolades gained over the years. We are happy to say, we are consistently, ranked amongst the world's Most Innovative Law Firms. We have recently unveiled, a state-of-the-art campus '*Imaginarium Aligunjan*' at Alibaug near Mumbai'. This is meant to be a platform for unifying, developing and distilling ideas and thought. It seeks to be a bridge that connects the futuristic advancements of diverse disciplines. It offers a space, both virtually and literally, for integration and synthesis of knowhow and innovation from various streams. In doing so, we will co-create solutions to the diverse and complex problems confounding the world today. Ultimately, AliGunjan will be a private place for public good – an instrument of change for a better world.

NDA was ranked the 'Most Innovative Asia Pacific Law Firm in 2016' by the *Financial Times - RSG Consulting Group* in its prestigious **FT Innovative Lawyers Asia-Pacific 2016** Awards. While this recognition marks NDA's ingress as an innovator among the globe's best law firms, NDA has previously won the award for the 'Most Innovative Indian Law Firm' four years in a row from 2014-2017.

As a research-centric firm, we strongly believe in constant knowledge expansion enabled through our dynamic Knowledge Management ('KM') and Continuing Education ('CE') programs. Our constant output through Webinars, Nishith.TV and 'Hotlines' also serves as effective platforms for cross pollination of ideas and latest trends.

Our trust-based, non-hierarchical, democratically managed organization that leverages research and knowledge to deliver premium services, high value, and a unique employer proposition has been developed into a global case study and published by John Wiley & Sons, USA in a feature titled 'Management by Trust in a Democratic Enterprise: A Law Firm Shapes Organizational Behaviour to Create Competitive Advantage' in the September 2009 issue of Global Business and Organizational Excellence (GBOE).

A brief below chronicles our firm's global acclaim for its achievements and prowess through the years.

- **IDEX Legal Awards**: In 2015, NDA won the "M&A Deal of the year", "Best Dispute Management lawyer", "Best Use of Innovation and Technology in a law firm" and "Best Dispute Management Firm". Nishith Desai was also recognized as the 'Managing Partner of the Year' in 2014.

- **Merger Market**: has recognized NDA as the fastest growing M&A law firm in India for the year 2015.

- **Legal 500** has ranked us in Tier 1 for Investment Funds, Tax and Technology-Media-Telecom (TMT) practices (2011, 2012, 2013, 2014, 2017, 2018). We have also been ranked in Tier 1 for Dispute Resolution, Labour & Employment and Investment Funds (2018)

- **International Financial Law Review (a Euromoney publication)** in its **IFLR1000**, has placed Nishith Desai Associates in Tier 1 for Private Equity (2014, 2017, 2018). For three consecutive years, **IFLR** recognized us as the Indian "Firm of the Year" (2010-2013) and has placed us in Tier 1 category in 2018 for our Technology - Media - Telecom (TMT) practice.

- **Chambers and Partners** has ranked us #1 for Tax and Technology-Media-Telecom (2013, 2014, 2015, 2017, 2018); #1 in Employment Law (2015, 2017, 2018); #1 in Private Equity (2013, 2017); #1 for Tax, TMT and Real Estate – FDI (2011); and #1 in Labour and Employment (2018)

- **India Business Law Journal (IBLJ)** has awarded Nishith Desai Associates for Private Equity, Structured Finance & Securitization, TMT, and Taxation in 2015 & 2014; for Employment Law in 2015

- **Legal Era** recognized Nishith Desai Associates as the Best Tax Law Firm of the Year (2013).

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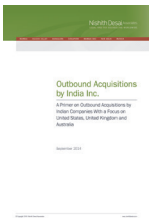

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Research is the DNA of NDA. In early 1980s, our firm emerged from an extensive, and then pioneering, research by Nishith M. Desai on the taxation of cross-border transactions. The research book written by him provided the foundation for our international tax practice. Since then, we have relied upon research to be the cornerstone of our practice development. Today, research is fully ingrained in the firm's culture.

Research has offered us the way to create thought leadership in various areas of law and public policy. Through research, we discover new thinking, approaches, skills, reflections on jurisprudence, and ultimately deliver superior value to our clients.

Over the years, we have produced some outstanding research papers, reports and articles. Almost on a daily basis, we analyze and offer our perspective on latest legal developments through our "Hotlines". These Hotlines provide immediate awareness and quick reference, and have been eagerly received. We also provide expanded commentary on issues through detailed articles for publication in newspapers and periodicals for dissemination to wider audience. Our NDA Insights dissect and analyze a published, distinctive legal transaction using multiple lenses and offer various perspectives, including some even overlooked by the executors of the transaction.

We regularly write extensive research papers and disseminate them through our website. Although we invest heavily in terms of associates' time and expenses in our research activities, we are happy to provide unlimited access to our research to our clients and the community for greater good.

Our research has also contributed to public policy discourse, helped state and central governments in drafting statutes, and provided regulators with a much needed comparative base for rule making. Our ThinkTank discourses on Taxation of eCommerce, Arbitration, and Direct Tax Code have been widely acknowledged.

As we continue to grow through our research-based approach, we are now in the second phase of establishing a four-acre, state-of-the-art research center, just a 45-minute ferry ride from Mumbai but in the middle of verdant hills of reclusive Alibaug-Raigadh district. The center will become the hub for research activities involving our own associates as well as legal and tax researchers from world over. It will also provide the platform to internationally renowned professionals to share their expertise and experience with our associates and select clients.

We would love to hear from you about any suggestions you may have on our research reports.

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