

HC ruling forces foreign law firms to put Indian expansion plans on hold

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MUMBAI: Foreign law firms that were aiming to build their presence in India have put their plans on hold, following a recent Bombay High Court judgement that bars them from providing services such as consultancy and advisory in the country.

At least three large foreign law firms that ET spoke to said that while they have been studying the possibilities of exploring opportunities following Indian companies' recent cross-border transactions, there is a need to amend the country's Advocates Act.

"I have been working in India and know the difficulties here," said Arianna Carlotti, head of the India services of Italian law firm Pirola Pennuto Zei & Associati. "I believe in joint cooperation and in sharing engagements for the final benefit of the client. My thoughts are related particularly to cross-border operations in which complexity of issues deserve competence in domestic and foreign laws," she added.

The judgement typically focuses on issues such as whether foreign law firms can carry on non-litigious work in India and on the regulation of the legal profession. It also includes the judicial interpretation of restrictions in establishing liaison offices in India.

Burges Salmon, a UK-based law firm, which is in the process of forging ties with two Indian law firms, said the judgement has increased requirement for firms in the UK and the US to have strong relations with firms in India to deal with all aspects of legal advisory work. Firms (like itself) that have a network of independent "best friend" firms will now have to extend this model, said Burges Salmon India head Chris Seaton.

Juhi Garg, India partner for Edge International, a consultancy for law firms, said a US firm, which she didn't want to name, has described the Lawyers Collective judgement as 'deeply disappointing'. "What any foreign law firm wants to see are clear rules that are uniformly enforced and followed by all foreign law firms. The decision, according to them, is quite broad and appears to prohibit conduct that most foreign law firms have assumed as legal, namely, the temporary practice of law in India during the representation of an Indian or foreign client. This is a terrible time for a US-based law firm. They cannot send their lawyers to India. Doing so may be breaking the law," Ms Garg added.

The US firm wanted to expand work in India. With the new decision, even though India remains a priority, it will have to concentrate more of its efforts on building the practice from the US and the UK, which is useful but not always the most effective way to serve its clients, said Ms Garg.

Meanwhile, domestic law firm Nishith Desai Associates, which has offices in Palo Alto (Silicon Valley) and Singapore, said that under the Advocates Act, practice of law in India includes litigious as well as non-litigious practice. But practice involves elements of continuity of certain activities such as frequency of stay or fixed workplace available at its disposal and the nature of work performed in India. So, Nishith Desai Associates said that a sporadic or a short visit of a foreign lawyer should not tantamount to practice of law in India.

But where practice is concerned, it would be for the government and the Bar Council to legislate and frame appropriate rules in consultation with all the stakeholders, said Nishith Desai Associates. Until such time, no one can practice law in India without due enrolment and possessing qualifications as prescribed under the Advocates Act, the law firm added.

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