ASKED & ANSWERED

Ashish Joshi on Indian Politics and Law

By Jo Mathis
Legal News

A pro-business government is now in power in India following a landslide victory last month of the Bharatiya Janta Party (BJP) led by its Prime Ministerial candidate Narendra Modi.

Ashish Joshi is an Ann Arbor attorney who was admitted to practice law in India and whose practice includes cross-border litigation/dispute resolution between U.S. and Indian businesses and individuals.

Mathis: What is the significance of the recent election in India?
Joshi: Government has always been at the heart of India’s underachievement. The few strong governments India has enjoyed were dominated by the Nehru-Gandhi dynasty and the Congress party. Their economic agendas left much to be desired. And, if the economic agendas were admirable, the government or the party lacked the clout to implement the policies. It is after a very long time that the people of India chose a single party giving it enough stability to last for the next five years and more importantly, giving it ability to take decisive actions and financial reforms.

Mathis: How does this election result in India affect Americans?
Joshi: A reboot of Indian economy would be a great thing not just for Indians, but also for the world. It is expected that the incoming government will take up significant measures in the coming months. Indian stock markets soared on the BJP/Modi victory and resilient public markets are likely to encourage a flurry of public offerings, deals, and provide opportunities for private equity investors for making optimum exits, which in turn are likely to attract further investments in India.

American businesses and investors are likely to find tremendous opportunities in India especially in the areas of manufacturing, healthcare, energy, infrastructure and technology.

Michigan has a special connection to India – from the huge influx of human capital to the University of Michigan’s schools to Indian businesses opening their research and development centers in Michigan. Recently, one of India’s automotive giants, Mahindra & Mahindra, announced that it’s setting up a factory in Ann Arbor to build its GenZe scooter.

On the other side of the coin, Michigan businesses are more than ever making deals in India and expanding their business interests in India. Ann Arbor’s Arbor Brewing Company launched an outpost in Bangalore, India after partnering with a University of Michigan student of Indian origin. Of course, the pub’s best selling and flagship Sacred Cow IPA was renamed as Ragin Elephant IPA for the Indian market to respect the local culture and sentiments.

Mathis: You were admitted to practice law in India. Did you actually practice law in India?

See INDIA, Page 3.
India’s legal system closely resembles English model

Joshi: Yes, I did. I was a litigator and my practice focused on business and commercial litigation. My knowledge of the Indian marketplace and my experience as a lawyer in India has been extremely valuable in advising my U.S. clients to navigate the Indian courts, bureaucracy and in resolving disputes.

Mathis: What’s India’s legal system like?

Joshi: India follows the common law system and essentially adopts the English—and up to a point, the American—legal system. However, unlike England, India has a written constitution and unlike America, India does not have jury trials. The constitution identifies and allocates the areas of legislation between the federal and state legislatures through the Union list, the State list, and the Concurrent list.

Mathis: What kind of cases do you handle as a part of your cross-border India practice?

Joshi: My practice focuses on dispute resolution, by litigation or through alternative methods. I have handled a broad range of cases ranging from litigating a case involving theft of trade secrets by an agent of a U.S company in India to litigating business disputes between U.S. and Indian businesses to negotiating a resolution of a dispute surrounding a World Bank project in India without resorting to litigation.

Mathis: Can you describe the court system in India?

Joshi: The Supreme Court of India is the highest appellate court in the nation and adjudicates appeals from the state High Courts. The state High Courts are the principal civil courts of original jurisdiction in the state with some exceptions. Below the High Courts are the district courts consisting of District and Sessions judges that sublinate civil and criminal matters and have the power to impose any sentence including capital punishment. Certain specialized areas of law have dedicated tribunals to ensure speedy adjudication of the matters. These include the Commercial Appellate Tribunal, the Labor Appellate Tribunal, the Copyright Board, Securities Appellate Tribunal, the Competition Appellate Tribunal, the Debt Recovery Tribunal, and the Securities Appellate Tribunal. The Supreme Court of India is the apex court in the nation and adjudicates cases of appeal from the various courts of lower jurisdiction.

Mathis: Do American lawyers have any common misconceptions about enforcing U.S. judgments in India?

Joshi: Yes, usually on the issues of jurisdiction and ex-parte adjudication. It is important to note that even if a foreign court did not have jurisdiction over a defendant, its judgment can still be enforced in India if the defendant appeared before the foreign court and failed to dispute its jurisdiction. In addition, while a decision of a foreign court must be based on the merits of a case, the mere fact that it was ex-parte does not preclude enforcement in India. The test is whether it was passed as a mere formality or penalty or whether it was based on evaluation and adjudication of the parties’ claim and defense. Also, because a particular judgment does not conform to Indian law does not preclude enforcement.

Mathis: What about alternative dispute resolution mechanisms? Does India have these?

Joshi: Absolutely! Indian businesses are big on arbitration. India’s first arbitration legislation was enacted prior to its independence in 1940, the Arbitration Act, 1940. However, arbitration under this act and ancillary legislations was not proactive and often to litigation that it was designed to avoid in the first place. The Indian legislature thereafter enacted the Arbitration & Conciliation Act of 1996 to make arbitration—both domestic and international—more effective in India.

Mathis: We have heard that legal proceedings in Indian courts can take inordinate amounts of time before final resolution. Is it true?

Joshi: Unfortunately, that is true in a general sense due to a heavy case load and other budgetary factors. However, in analyzing dispute resolution mechanisms in India, it is crucial to understand the practice of intermediation relief such as injunctions. Given the time constraints, it is common for a litigant in India to supply for urgent interim reliefs such as an injunction requiring the opposite party to maintain status quo or restraining certain action or freezing orders or deposit of security into an escrow etc. Interim orders are those orders that are passed by the court during the pendency of a suit or proceeding and while they do not finally determine the merits or substantive rights of a party, they have the potential to be a “game changer” in litigation. Battles over interim proceedings and their timing play a crucial role in the conduct of litigation between the parties.

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