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The Corporate and Regulatory Affairs (CRA) E-Bulletin is an initiative of ASSOCHAM's Department of Corporate, Legal and Regulatory Affairs. The aim of the E-Bulletin is to provide a platform for stakeholders to bring forth the evolving dynamics of corporate and regulatory sectors, challenges and plausible way forward. The quarterly E-Bulletin shall engage with the stakeholders on various contemporary themes and market dynamics.

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Interviews

Lawyer's Insight

“The most important attribute of a successful partner is the ability to internalise pressure without passing it to the team and lead from the front”: Siddharth Srivastava, Partner, Khaitan & Co.

A seasoned Partner with diverse experience in banking and finance. An Alumni of Columbia Law School, Mr. Siddharth gives his valuable insight on various developments in IBC and its interface with other legislations.



Siddharth Srivastava is a Partner in the Banking and Finance / Restructuring and Insolvency practice group in the New Delhi office. Over the past years, he has extensively worked for leading banks and financial institutions and advised clients on syndication, debt restructuring, project finance and structured finance matters. He has also advised clients in the sphere of insolvency resolution process in various capacities such as counsel to resolution professionals, representative of financial creditors and operational creditors and advisor to investors / bidders.

We would love to hear about you and your journey so far.

My journey in the field of law started from the National Law Institute University, Bhopal (NLIU) where I completed my B.A LL.B. (Hons.). Post completion of my course in NLIU, I worked with ICICI Bank Limited and the IL&FS Group, in the initial days of my legal career. After working for a couple of years, I decided to pursue Masters of Law (LL.M.) from the Columbia Law School, New York. I returned to India after LL.M and worked with Luthra & Luthra Law Offices, Delhi primarily in the banking & finance, project finance and infrastructure projects practice. After a fruitful stint at Luthra, I got the opportunity to lead the Banking & Finance practise at Linklegal. During my stint at Link, I also established the restructuring & insolvency practise at the firm. In Feb 2020, I joined Khaitan & Co. as an equity partner to focus on banking & finance, project finance, restructuring & insolvency, private credit and debt capital markets practice.

You have many titles, awards, recognitions under your name. What sets your practice apart from your counterparts?

First, I would like to show my gratitude to all my clients who have always appreciated my work and made it possible for me to be distinguished

and recognised. I am also thankful to my seniors and mentors for all the guidance and opportunity given to me. Last but certainly not the least, a big thank you to my solid team which has stood by me all these years and have provided continuous support.

In my view, the most important aspect for growth of any lawyer is the comfort and the confidence that one can give to their clients. In this regard, timely and consistent delivery of quality work is essential. Further, considering the work-flow, efficient prioritisation of work is another vital quality that aids in effective management of work.

Having said that, I feel what really sets me apart from others is my ability to connect with the client and understand his business requirements. Also, I strive to give clear instructions to my team regarding the deliverables. This helps me offer the best possible strategic advice to the client.

Can you tell us about some of the major challenges that you encounter in the legal regime along with a way forward?

Legal practice is an ever-evolving practice as it is constantly changing and developing. It is therefore important for lawyers to keep themselves updated on all latest legal developments relating to their practice. Further, being a transactional lawyer, it is pertinent to have know-how of not just the legal aspects of a transaction but to also be privy and known to broad business-related issues in the transaction. This helps in one getting not just a better understanding of the transaction but also in ensuring efficient and effective servicing of Clients.

The most challenging deals of your career? And what sets them apart from any other deals?

I would say my first insolvency deal where I was acting as the counsel for resolution professional was perhaps the most challenging one. What made the deal even more interesting, was the fact that it was one of the first insolvency deals in the market (being one of first of RBI's dirty dozen matters). We created practices and provided opinions on matters which had no precedent. It was a great learning experience which ultimately paved way for future matters.

How has your experience been working under the tenets of the IBC, 2016?

Considering the advent and development of Insolvency and Bankruptcy Code, 2016 (IBC) in the past few years, I got the excellent opportunity of working on various big-ticket insolvency matters in India. I have had the opportunity to advise resolution professionals, liquidators, bidder/resolution applicants, lenders, etc. in various matters. Working on IBC matters has been an exciting experience considering that insolvency related laws have been evolving and requires one to be fully aware of and updated. The most enriching experience about working on IBC matters has been the process of understanding and being involved in IBC practice since its inception and to see the jurisprudence develop over the years.

What was the most difficult leadership challenge you have faced while working amid the covid crisis?

Most challenging task as a leader during covid crisis was to keep the team motivated. It was extremely important during that time to be mindful of the mental health of the team and give them enough comfort and space. I believe I was able to provide the team enough support to help

them navigate through difficult time while working on matters.

The IBC regime in India has evolved tremendously in a short span. What is more that can be done towards government agenda of ease of doing business.

India's position on the global Ease of Doing Business Index has drastically improved over the years since the inception of IBC regime. The IBC regime coupled with other existing recovery regimes provide multiple avenues to the lenders to explore for recovery of their debts.

However, one of the major challenges encountered by lenders while exercising their rights under the various enactments is the delays of courts/ tribunals including DRT and NCLT in disposing of matters resulting into erosion of asset value of the borrowers, even though the said regimes provide for timebound and speedy enforcement mechanisms. In this regard, as a way forward, it is pertinent that the government ensures that relevant courts and tribunals are strengthened enough (in terms of infrastructure and capacity building) and made more efficient to handle such matters swiftly. Timely resolution of assets and effective enforcement of rights of creditors is the need of the hour to give a further fillip to India's ranking in ease of doing business.

Your thoughts on business landscape in India on global scale.

India is amongst the fastest-growing economies in the world. Despite the repeated COVID-19 pandemic waves, India showed a strong economic performance to overcome the United Kingdom as the 5th largest economy in the world. India's Gross Domestic Product (GDP) is growing exponentially and is expected to surpass \$7 Trillion by 2031. It is also predicted to become the world's third largest economy within this decade.

The momentum to India's economy is expected to be driven by exponential growth in various sectors. The impetus in the manufacturing sector could be attributed to Government's increased focus on tax reduction, infrastructure development and investment incentivization. Similarly, energy sector has benefitted from the targeted focus of the Government by introducing schemes towards achieving domestic renewables capacity target of 500 gigawatts (GW) by 2030 and the net zero emissions by 2070, etc.

Your thoughts on Interplay of competition law and IBC.

The interplay between competition law and IBC is critical. The provisions of IBC clearly provide that that in case a resolution plan contains provision for combination, the resolution applicant shall be required to obtain approval of Competition Commission of India ("CCI") under the Competition Act, 2002 prior to approval of said resolution plan by the committee of creditors.

The intent of the lawmaker in having the above provisions in IBC is well understood as it is important for CCI to ensure that there is no abuse of dominance by the parties because of such combination under a resolution plan in terms of IBC. While at the time of insertion of the above proviso, there were certain concerns specially with respect to timelines considering IBC is a timebound process and CCI approvals may take time even beyond approval of resolution plan by the committee of creditors, the Government has introduced the 'Green Channel' approval criteria, by way of which, combinations meeting certain criteria are deemed to be approved upon filing of a valid short form (Form-I) with the CCI. In such a case, notifying parties are required to self-assess that the Green Channel criteria have been met

and accordingly file valid and complete Form-I, along with relevant declarations. Upon receipt of such filings CCI shall issue 'acknowledgement' considered as 'deemed approval' of CCI.

The Government has also introduced the Competition (Amendment) Bill, 2022 ("Bill") seeking to amend the Competition Act, 2002, to inter alia regulate mergers and acquisitions based on the value of transactions (more than Rs. 2,000 Crores) and to reduce the timeline for CCI approval from 210 days to 150 days on such transactions.

The above efforts of the Government shall aid in aligning the requirements of IBC vis-à-vis the Competition Act.

Finally, what makes a good partner in a law firm?

It is a balance of everything. A good partner and leader should be commercially savvy with razor sharp legal skills whose larger goal is to grow the practise while giving abundant opportunity to the team to grow and develop independently. Most importantly, one of the most important attributes of a good partner is the ability to internalize pressure without passing it to the team and lead from the front.