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Setting The Standard For Collaboration With U.S. Firms: India's Tech Sector

The Editor interviews Navroze Palekar, Senior Legal Counsel – Americas at Tata Technologies, and Robert S. Friedman, Head of Sheppard, Mullin, Richter & Hampton LLP's Business Trial Practice Group in New York.

Editor: Mr. Palekar, would you please start our discussion by describing Tata Technologies and your role?

Palekar: Tata Technologies (TTL) is a global engineering consulting organization with core specialization in automotive and aerospace. The company delivers customized solutions for engineering and design, product life cycle management and enterprise system integration for the manufacturing sector. As lead counsel for the Americas, my role predominantly lies in supporting the sales organization with overall contract management services within a given territory, including the negotiation and drafting of contracts, developing risk-mitigation solutions, and participating in key strategic and business transactions. We also develop and frame policies and processes relating to territory-specific regulations (e.g. export control regulations), which we roll out to the company and then conduct the requisite training for employees. I also provide regular guidance to other revenue support groups, viz. providing advise on labor & employment law issues to the HR team.

Editor: Mr. Friedman, please describe your practice and role in advising Tata Technologies.

Friedman: I am a former prosecutor, and my current litigation practice is focused on representing technology companies, financial institutions and other major companies in significant business disputes. For technology companies, I work with computer networking, with software developers, and with other owners and maximizers of intellectual property. I do quite a bit of litigation related to trade secret disputes, licensing, as well as patent, trademark and false advertising litigation.

We work extensively with Indian technology companies, and I've worked specifically with Navroze since 2007 during his tenure with other companies and now Tata Technologies, on litigation, pre-litigation, and compliance matters. Prevention of litigation is a significant part of our work with all clients, including India-based companies that, like Tata Technologies, are rapidly expanding and growing in the U.S. and North America. We represent these clients in



Navroze Palekar



Robert S. Friedman

all phases of litigation; however, our main goal is to prevent cases from reaching the level of disputes, both with potential business adversaries and with respect to compliance and regulatory matters. And further to Navroze's comments, we also help with labor and employment, IP, and trade regulation.

Editor: How can multinational companies like Tata Technologies stay informed about the myriad of international legal systems and regulatory requirements?

Palekar: Most of my career has centered on international business transactions, meaning those in the APAC region, the EU and now, of course, the Americas, including South America. For corporate counsel, the focus has to be business oriented, including a good understanding of how transactions work across territories. Certainly, this is part of my role as Americas counsel in handling transactions between our Tata Technologies entity in the U.S. and customers based in the U.S., Canada, Mexico or Brazil, which for simplicity I refer to as "the Americas."

In my experience, the role of corporate counsel is not limited to contract negotiation or basic contracting principles, but also is deeply engaged in understanding the overall business and regulatory environment and any local compliance requirements for a particular territory, and in looking at how best to mitigate risks depending upon

the laws of that territory. To fulfill these requirements, we have to keep ourselves abreast with local laws through informative webinars, articles, presentations, important citations, etc. To further my knowledge on the subjects of interest, I earned my LLM from Boston University, which I mention because BU happens also to be Rob's alma mater. Discovering that we share that connection has provided an excellent foundation for our long association.

Friedman: It's true, but I will add that Navroze is from a later BU class, though I hope he won't agree too quickly.

To support the efforts of corporate counsel, our work with Tata Technologies and several other Indian clients includes offering free CLE programs and other presentations, not only to their legal folks but also to their business people. These programs ensure their understanding of issues that may arise when doing business, either in the U.S. or with a business that is connected to the U.S.

During the past two years, we have made several team trips to India to do in-person presentations, and we've also participated in calls and offered video presentations that cover key substantive areas of concern for Tata Technologies: trade regulation, labor and employment, litigation and IP. Because my practice focuses on litigation, it has been crucial to leverage firm-wide resources and invite colleagues, such as Thad McBride on the trade side and Jim Hays on the employment side, to conduct the programs that require their expertise.

The purpose of these programs is not to lecture or simply offer technical advice but mainly to give an overview of the high-level issues and practical considerations for an Indian company looking to expand in the United States. Doing business here is different than in India or other parts of Asia or Europe, and there are critical distinctions in each of the substantive areas. Thus, our goal is to highlight those differences at a high level and offer practical insights that enable them to deal with issues proactively.

Editor: How important is the personal touch in this process?

Friedman: It's crucial to visit in person and get firsthand experience with the people and operations; it allows us to dig deep in fulfilling our mandate to understand the business. There's no substitute for a handshake and the opportunity to just sit, talk and ask direct questions: What do you do? How do you do it? What business issues do you face? How can we help? And

this dynamic only becomes more important when you're dealing with a successful company like Tata Technologies, which functions on the edge of innovation and is growing and developing all the time. We need to know what they're doing day-to-day, week-to-week, and month-to-month; otherwise our advice becomes stale.

Palekar: I'd like to expand this point with an example. Rob and his colleagues visited our Novi, Michigan office last November and our Pune, India facility this past April to give a presentation on trade regulations and the related compliance. We assembled our sales and technical staff for an educational program covering the legal implications of their daily activities. Specifically, we wanted our people to understand the legal jargon in layman's terms, which would better enable them to grasp the complexities of their practical experience and, therefore, improve job performance. This is something that we do as a part of our daily job and expect that our external counsel join hands in delivering a similar impact.

Editor: How does this collaboration translate into value for your company?

Palekar: In-house counsel need strong partnerships with outside counsel to help us establish good internal and external compliance. When we approach Rob and his colleagues, it's certainly for the purpose of tapping their expertise in these areas, which in Rob's case would be litigation strategies and compliance. But further, when I bring my problems to him, I have confidence that he is operating right along with me in taking a business approach; therefore, I can trust that he will understand exactly how to respond, and do so efficiently.

My main criteria in hiring outside counsel is that they understand my business and provide opinions that are in tune with that understanding, and not merely consultative. As an in-house attorney, my internal customers demand the same kind of black-and-white advice from me. Gray doesn't work. Additionally, we are looking for time and cost-efficiency vis a vis value of legal services.

Editor: Rob, can you expand on the value discussion in the context of your litigation work?

Friedman: Without getting into specifics, the main issue for an Indian company that is growing so well in the U.S. generally relates to being prepared for a U.S.-type

litigation from a discovery standpoint. If a matter or issues in a relationship reach a pre-dispute phase, certain obligations to collect and preserve evidence are triggered. Tata Technologies has not faced major litigation in the U.S., which is fantastic, but litigation is an inevitable reality, so we've focused on preventative measures – alerting and educating them about U.S. dispute-resolution protocol, including discovery and all procedures from start to finish. If and when the time comes, they will be prepared to deal with litigation efficiently and competently.

Further, over the years, Navroze and I have discussed extensively how best to provide value from a cost side, and he has been at the forefront in representing his company and forging cost-effective alternative fee structures. So these arrangements have enabled him to optimize value from the company's legal spend on litigation and other matters.

Palekar: First I will say that the very fact that we have not faced any litigation is a testament to good legal advice. On the fee side, we are moving away from pre-negotiated, blended rates to a project-oriented, fee-based structure in which we agree upon payments at certain phases. This structure can involve hourly and blended rates, a project-specific flat fee or a combination, and it really amounts to an internal business decision about negotiating for acceptable rates and then doing the cost/benefit analysis.

Rob and the firm have been very receptive to adjustments that meet our needs. These issues have played into evaluations of other outside firms with which I did not have the same level of reciprocity, and which did not show the same willingness to adjust to innovative fee structures. Doing so is very helpful to me because I can definitely put those proposals in front of the management internally, show them how we are cutting costs without affecting the quality and efficiency of legal services, and get the approvals I need. These are the kinds of ideas that we look for in external counsel.

Editor: Does industry expertise also play into your expectations of outside counsel?

Palekar: It does, and in-house counsel should play an active role here. For example, at a prior company, I worked with a local firm that assisted our small legal department with contract reviews. This firm did have technology industry experience but sent back a document with

markups that were absolutely unnecessary from a business perspective, which meant that I had to re-draft the document. But because the firm was a good partner and we wanted to develop a long-term relationship, my senior and I visited their office and conducted a half-day session on how our company runs. As a result, the firm's associates were able to assist us with an awareness of the nuances of our daily business and a clear idea of how to approach specific matters. Bridging that gap of industry knowledge and legal expertise is extremely important, and I think that in-house counsel can play a crucial role in building that bridge.

Friedman: This training saved Navroze's internal clients thousands of dollars, so we take that to heart in making sure that all of our people, from paralegals to partners, understand the client's business. The corresponding example on the litigation side is in using it as a learning tool. Litigation is unavoidable for a variety of reasons, ranging from lawsuits filed by an aggressive adversary with purely mercenary goals to a genuine good-faith dispute with a key customer that represents the company's lifeblood. Many Indian companies face litigation relating to business issues as a result of indemnities with customers. Perhaps the stakes are very high and the parties need a legal determination. Or maybe we're just looking down the road and trying to prevent foreseeable conflict.

The point is that we can use these situations as educational tools throughout the organization to facilitate discussion of the embedded business and legal issues. If you think about it, it's just common sense to learn from experiences, use that wisdom to assess business goals and, ultimately, make informed business decisions as you approach the pre-dispute level in a given situation.

Editor: In closing, tell us your thoughts about productive collaboration between an Indian company and its U.S. law firm.

Palekar: Being an innovative company, we look for partners that take innovative approaches to addressing our issues, while being mindful of the nature and business of the company as well as costs. That really sums it up conceptually.

In practical terms, we expect knowledge sharing and expert advice that extends beyond addressing legal issues, as we've been discussing. We need a range of guidance from our empanelled firms, including on regulatory issues and contract management across territories. The latter further requires us to cope with the nuances of language, for instance, in the negotiation of contracts drafted that are not in English.

We also face challenges in doing business across multiple, and often very different, jurisdictions. If I am considering a contract that is governed by a civil law

jurisdiction in Europe, I need to understand the specific liability structure, so a partnering firm must give advice that not only enables me to complete the negotiations and execute the contract, but also envisions the ongoing challenges we will face internally as future compliance plays out. Put simply, I want to be exactly aware of what we are signing up for.

Friedman: The word partnership gets thrown around a lot, but it's especially meaningful in our dealings with overseas clients who need high-level advice beyond legal issues that pertain to U.S. culture and factors such as language differences. While the legal advice isn't simple, I can very easily discuss New York or federal procedural laws and complex discovery processes because I handle those issues every day. From a value perspective, a partnering firm will distinguish itself by paying attention to real business issues and demonstrating a commitment to sharing knowledge that enables business people to understand the full implications of their decisions in advance of making them.

Obviously, issues that are escalated require formal legal services, but we're also here to make sure that even minor decisions are addressed with a larger vision. So our goal with international clients is to conceive and deliver additional services that may not be necessary with U.S.-based clients.