

# Will the government bite the reforms bullet?

SUDIPTO DEY

The recent Supreme Court order that upheld the ban on foreign law firms from setting up an office, or practice Indian law, in the country could pave the way for the government for liberalising the legal services sector. Does the government have the political will to bite the bullet on long-pending reforms for regulating the legal profession?

Most legal experts feel the Supreme Court order does not push back the efforts of the government over the last two-three years on the opening of the legal services sector. "It gives legitimacy to the efforts being made as the Supreme Court has consciously left it to the government and the Bar Council of India to frame appropriate legislation, rules, regulations," says Lalit Bhasin, president, Society of Indian Law Firms, an association of large and mid-sized law firms that has advocated phased opening up of the domestic legal market. Any move to liberalise the legal services sector will be in line with India's commitments at the World Trade Organisation (WTO) as part of the trade negotiations, say experts.

Bhasin argues that the order has put to rest any uncertainty around the outcome of the legal proceed-

ings in the apex court. "This is the best time for the government to consider the opening of the legal services sector," he says.

To start with, the government and the Bar Council should remove the restrictions on the operations of domestic law firms, he suggests. Among other things, the legal fraternity has pushed for relaxations around the use of advertising to market their services, allowing limited liability partnership (LLP) ownership structure for a law firm, while entering into more reciprocity arrangements with other countries for acceptance of the Indian law degree.

Some foreign law firms do not consider the SC order as any sort of setback for their India aspirations. "We are pleased that this litigation has concluded and for the guidance it provides. The resolution of this case is an important step set by the government ahead of the introduction of a proposal to liberalise the legal sector," says Gary Seib, global executive committee chair, Asia Pacific, Baker & McKenzie, a global legal powerhouse.

Seib says India is a strategic and important market for Baker McKenzie. The firm engages more than 300 lawyers globally for managing India-related matters, he adds.

## NO GAIN, NO PAIN: WHAT THE SC SAID

■ Foreign law firms are not allowed to set up offices in India; foreign lawyers cannot practise in Indian courts

■ Foreign lawyers can give advice to Indian clients on a 'fly-in and fly-out' basis, casually

■ Foreign lawyers can appear in international commercial arbitration proceedings in India

■ The government and the Bar Council of India will frame rules clarifying the regulations



However, foreign law firms are patient and watchful as the government and the Bar Council go about laying the ground rules for liberalising the sector. "Framing rules of this nature is a process that requires careful and coherent consideration," says Seib.

There are some among foreign legal fraternity who feel this order makes the path to liberalisation even more difficult. "In face of this decision I don't know how you can address it on a regulatory basis without an interpretation that conflicts with a Supreme Court ruling," says Erik Wulff, partner, DLA Piper LLP. Wulff is of the view that the only apparent path forward is to amend the Advocates Act, which he thinks will be extremely

difficult to achieve.

Experts expect lobbying by different stakeholders – domestic law firms, foreign firms, legal practitioners, Bar Councils – to intensify in the coming months. The elections in various state-level Bar Councils are likely to set the tone for the next level of reforms, experts add.

"The next logical steps would be pushing through an amendment in the Advocates Act or enacting a new law focused on regulating foreign lawyers," says Ramit Singh, advisor to the Indian Corporate Counsel Association. However, these steps are dependent on whether the government has the political will to do so, he adds.

Experts point out while the SC order largely maintains status quo

in the current scheme of things, it could pose some challenges going forward. For instance, the Supreme Court order says that the practice of law as covered by the Advocates Act, 1961, is not restricted to Indian laws. "This gives teeth to future claims by the Bar Council of India to being the only body which can regulate all lawyers, whether Indian or foreign," says Singh.

Further, the SC order allows foreign lawyers to offer advice to Indian clients on "fly-in, fly-out" basis on international law, only for casual visits. The power to decide what amounts to casual visits, and what does not, has been left with the Bar Council. Foreign law firms won't be comfortable with this move, say experts.

Most foreign law firms currently run practices focusing on India out of markets such as Singapore, London and Hong Kong. A lawyer asks: "How could a visit to the country fall under the interpretation of casual when their entire business is predicated on India?"

Singh says the apex court could have set up a test by way of which the determining factor of permissibility would simply be whether the advice given by a foreign lawyer requires an interpretation of Indian law, directly or indirectly.