

# Litigation Funding 2020

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# Litigation Funding 2020

**Contributing editors****Steven Friel and Jonathan Barnes****Woodsford Litigation Funding**

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Lexology Getting The Deal Through is delighted to publish the fourth edition of *Litigation Funding*, which is available in print and online at [www.lexology.com/gtdt](http://www.lexology.com/gtdt).

Lexology Getting The Deal Through provides international expert analysis in key areas of law, practice and regulation for corporate counsel, cross-border legal practitioners, and company directors and officers.

Throughout this edition, and following the unique Lexology Getting The Deal Through format, the same key questions are answered by leading practitioners in each of the jurisdictions featured. Our coverage this year includes new chapters on Italy and the United States of America.

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Every effort has been made to cover all matters of concern to readers. However, specific legal advice should always be sought from experienced local advisers.

Lexology Getting The Deal Through gratefully acknowledges the efforts of all the contributors to this volume, who were chosen for their recognised expertise. We also extend special thanks to the contributing editors, Steven Friel and Jonathan Barnes of Woodsford Litigation Funding, for their continued assistance with this volume.



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# India

Vaibhav Gaggar and Sumedha Dang

Gaggar and Partners

## REGULATION

### Overview

1 | Is third-party litigation funding permitted? Is it commonly used?

Third-party litigation funding is permitted in India. The concept of third-party funding is statutorily recognised under the Civil Code of Procedure, 1908 in some states (eg, Maharashtra, Gujarat, Madhya Pradesh and Uttar Pradesh) by their respective state amendments to Order XXV rules 1 and 3 of the Civil Procedure Code, 1908 (CPC). Therefore, the permissibility of third-party funding in India can be adduced from the CPC. Even though the remaining states have not statutorily recognised the concept of third-party funding, there is no express bar under any legislation against the same. In fact, the Hon'ble Supreme Court of India in *Bar Council of India v AK Balaji* (2018) 5 SCC 379 has clarified the legal permissibility of third-party funding in litigation and observed that:

*There appears to be no restriction on third parties (non-lawyers) funding the litigation and getting repaid after the outcome of the litigation.*

The same has been reiterated in 'G' Senior Advocate, *In re*, AIR 1954 SC 557, where the Supreme Court has laid down that lawyers are not permitted to fund litigation, but there seems to be no bar on the same being done by third parties:

*The rigid English rules of champerty and maintenance do not apply in India, so if this agreement had been between what we might term third parties, it would have been legally enforceable and good. It may even be that it is good in law and enforceable as it stands though we do not so decide because the question does not arise; but that was argued and for the sake of argument even that can be conceded. It follows that there is nothing morally wrong, nothing to shock the conscience, nothing against public policy and public morals in such a transaction per se, that is to say, when a legal practitioner is not concerned.*

The only restriction on third-party funding in India is on lawyers. Lawyers are not permitted to fund litigation in India. The recognition of funding by a third party who is not a party to the lis, aids litigation.

However, the concept of third-party funding in various forms of alternate dispute resolution is yet to be recognised, jurisprudentially as well as legislatively. The Arbitration and Conciliation Act, 1996 does not recognise the concept of third-party funding and remains unexplored in India.

### Restrictions on funding fees

2 | Are there limits on the fees and interest funders can charge?

There is no legislation which limits or regulates the fees or interest a funder can charge. However, the terms of the contract entered into for the purpose of third-party funding are subject to scrutiny and review by the courts. The terms of such contracts have been subject to judicial scrutiny since 1867, when the Privy Council in *Ram Coomar Coondoo v Chunder Canto Mookerjee* (1876-77) 4 IA 23, for the first time, permitted third-party funding on the ground of promoting access to justice in India. Even though on the ground of accessibility of justice, third-party funding was permitted, the Privy Council noted that:

*[Agreements] of this nature must carefully be watched, and as and when found to be extortionate and unconscionable, so as to be inequitable against the party; or to be made, not with the bona fide object of assisting a claim believed to be just, and of obtaining a reasonable recompense therefore, but for improper objects, as for the purpose of gambling in litigation, or of injuring or oppressing others by abetting and encouraging unrighteous suits, so as to be contrary to public policy, effect ought not to be given to them.*

Hence, the agreements for third-party funding must be entered into with good conscience and the courts may limit the fee or interest being charged if the agreement is contrary to these principles. The Courts in India are wary of these agreements being used as a tool of vendetta against a specific individual or entity.

### Specific rules for litigation funding

3 | Are there any specific legislative or regulatory provisions applicable to third-party litigation funding?

In India, apart from the specific state amendments (as discussed above), there is no other legislative or regulatory provisions applicable to third-party funding of litigation in India.

### Legal advice

4 | Do specific professional or ethical rules apply to lawyers advising clients in relation to third-party litigation funding?

In India, there are no specific provisions that apply to lawyers in advising clients in relation to third-party litigation funding. But there are standards of professional conduct rules made by the Bar Council of India under section 49(1)(c) of the Advocates Act, 1961, an ethical and professional guide for all advocates in conducting matters related to law and said ethical rules of the legal profession apply, not only when an advocate appears before a court, but also to practices outside of the court. Adhering to such rules is integral to the administration of justice. Therefore, on a conjoint reading of the said rules, specifically,

rule 18 (fomenting litigation), rule 20 (contingency fees), rule 21 (share or interest in an actionable claim) and rule 22 (participating in bids in execution, etc) of the standards of professional conduct rules made by the Bar Council of India, it can be concluded that advocates in India, while advising their client in relation to a third-party funding agreement, must keep in mind that such an agreement must not be:

- made for improper objectives;
- made for the purpose of gambling in litigation,
- made for injuring or oppressing others by abetting and encouraging unrighteous suits; and
- contrary to public policy.

In 2018, the Supreme Court in *Bar Council of India v AK Balaji* also clarified that advocates in India cannot fund litigation on behalf of their clients and the 1876 Privy Council decision in *Ram Coomar Coondoo v Chunder Canto Mookerjee* provides guidance in this regard (see question 1).

Therefore, the aforementioned judgments and rules are some of the ethical guidelines that lawyers must keep in mind while advising their client.

## Regulators

### 5 | Do any public bodies have any particular interest in or oversight over third-party litigation funding?

There is no specific public body that oversees or governs third-party funding of litigation. However, the terms of such a contract are subject to the Indian Contract Act, 1872, and may further be subject to scrutiny by courts in India.

In case where one of the parties to the contract for third-party funding is a foreign entity, the said contract must at all times be compliant with the provisions of the Foreign Exchange Management Act, 1999 (FEMA). FEMA classifies all transactions involving foreign exchange and non-residents into two primary categories: current and capital account transactions. Since FEMA does not unequivocally classify third-party funding as either a current or capital account transaction, it is not clear as to how such funds would attract the regulatory regime, especially since both of these transactions are viewed distinctively under FEMA rules and regulations.

## FUNDERS' RIGHTS

### Choice of counsel

#### 6 | May third-party funders insist on their choice of counsel?

There is no jurisprudence in India regarding the third-party funders insisting on a choice of counsel. However, since the engagement of the counsel is 'party autonomy' and in absence of any legislation prohibiting the engagement of choice of counsel by the third-party financiers, third-party funders may choose to insist upon their choice of counsel, provided the said counsel must not have any interest for or against the parties to the *lis*.

### Participation in proceedings

#### 7 | May funders attend or participate in hearings and settlement proceedings?

All proceedings in India are essentially open court proceedings, so they may be attended by any person, irrespective of them being a party to the suit. There are very few proceedings that are held in camera, such as those of heinous crimes and rape which the general public is not allowed to attend. Therefore, there is nothing stopping financiers or funders from attending proceedings or hearings. As and when the funder or financier is impleaded as a party to the suit, such financiers or funders must participate in the proceedings and settlement proceedings, on account

of being a third-party funder under Order XXV, as per state amendments (discussed in detail below). However, he or she may choose to attend the proceedings or hearings as and when required.

## Veto of settlements

### 8 | Do funders have veto rights in respect of settlements?

The funders can have veto rights in respect to settlements, which may arise from the terms of the funding agreement entered between the parties or on the basis of understanding between the parties to the funding agreement.

## Termination of funding

### 9 | In what circumstances may a funder terminate funding?

Termination of a third-party funding agreement depends upon the termination clause in the agreement entered between the parties. The terms and conditions of terminating the contract squarely rest on the rights and obligations of each party and non-fulfilment of the same. The parties have the autonomy to decide the conditions of the termination of such an agreement. The parties may agree to terminate the funding agreement in the event of default or material change of their funding arrangement. The termination clause in the funding agreement should cover all the circumstances and must define the rights and obligations of the party in case of termination of the agreement by the other. For example, if the third-party funder terminates the funding agreement, the third-party funder is liable to fulfil all monetary obligations accrued up to the date of termination, unless the termination is due to a material breach by the party being funded.

It must be borne in mind that a funding agreement must include a clause for automatic termination if the same falls foul of any legislation, due to fresh enactment including amendment, which is introduced during the subsistence of the funding contract.

## Other permitted activities

### 10 | In what other ways may funders take an active role in the litigation process? In what ways are funders required to take an active role?

Apart from the participation in hearing(s), the funders may engage themselves in interaction with the lawyers during the preparation of the matter, including for the hearing. In absence of any legislation defining the role of the funders and the extent of their involvement, a specific road map cannot be carved out at this stage.

## CONDITIONAL FEES AND OTHER FUNDING OPTIONS

### Conditional fees

#### 11 | May litigation lawyers enter into conditional or contingency fee agreements?

The Bar Council of India, which is the apex body controlling the conduct of all advocates across the country, has set out certain standards of professional conduct – the Bar Council of India rules under section 49(1)(c) the Advocates Act, 1961. Rule 20 of the Bar Council Rules stipulates that advocates cannot enter into conditional or contingency fee agreements. A conjoint reading of the Bar Council Rules, wherein, rule 18 prohibits advocates from participating in fomenting litigation; rule 20 prohibits stipulation of fees contingent on the result of the litigation; rule 21, which bars Advocates from receiving a share or interest in an actionable claim; and rule 22, which prohibits an advocate from participating in bids in execution etc, strongly suggests that advocates in India cannot enter into conditional or contingency fee agreements.

## Other funding options

### 12 | What other funding options are available to litigants?

Litigants who are indigent or who may not be in a position to adequately represent themselves are provided with free legal aid by the state. The principle of free legal aid is enshrined under various provisions of the Constitution of India. Article 39A of the Constitution directs the state to ensure equal opportunity for all to be represented under the legal system and in furtherance of the same enact legislations that provide free legal aid so that no citizen is denied justice by reason of economic or other disabilities. The right to free legal aid or free legal services is also an essential fundamental right guaranteed under Article 21 of the Constitution.

The Supreme Court in *State of Maharashtra v Manubhai Pragaji Vashi*, 1995 SCC (5) 730, laid down that the failure to provide free legal aid to an accused at the cost of the state, unless refused by the accused, would vitiate the trial. In *MH Hoskot v State of Maharashtra*, AIR 1978 SC 1548, Krishna Iyer J observed that providing free legal aid is the state's duty and not government's charity.

Under these fundamental guiding principles, the Legal Services Authorities Act, 1987 was enacted. The Act provides for cost effective and easy access of competent legal services to litigants. The Legal Services Authorities Act, 1987 further stipulates that *People's Courts* shall also be organised on periodical interval to secure that the operation of the legal system promotes justice on a basis of equal opportunity.

The National Legal Services Authority, State Legal Services Authority and District Legal Services Authority are established under section 3, 6 and 9 of the Legal Services Authorities Act, 1987 respectively. It additionally provides for the creation of Supreme Court Legal Services Committee under section 3A, High Court Legal Services Committee under section 8A and Taluk Legal Services Committee under section 11A of the Act. Legal Aid funds are set up by the National Authority, State Authority and District Authorities under sections 15, 16 and 17 respectively to consolidate the funds and grants received at different levels and to put them to use in furtherance of the objective of the Act.

People's Courts (*Lok Adalats*) are set up by every state authority, district authority, Supreme Court Legal Services Committee or every High Court Legal Services Committee as per their discretion. The People's Courts, consisting of retired or serving judicial members or any other person as may be specified by the authorities, have the jurisdiction to determine and arrive at a compromise or settlement between the parties to a dispute. The services of the People's Court are free of cost, funded by the government and the dispute may be contested by the parties themselves or by their advocates or counsels. On arriving at a settlement or compromise, the court fees, if any, collected prior to the matter being referred to the People's Court, shall be refunded. An award passed by the People's Court is deemed to be a decree of a civil court under section 21 of the Legal Services Authority Act.

## JUDGMENT, APPEAL AND ENFORCEMENT

### Time frame for first-instance decisions

#### 13 | How long does a commercial claim usually take to reach a decision at first instance?

With the steep increase in the commercial transactions, the need for specialised courts only dealing with such commercial disputes was felt in India. By way of the Commercial Courts, Commercial Division and Commercial Appellate Division of High Courts Act, 2015, commercial courts have been established at various levels (as per the pecuniary jurisdiction) to deal with such commercial disputes. These specialised courts under the statute have been provided with indicative timelines to adjudicate the disputes between the parties, such as conclusion of the

arguments and delivering the judgment within six months of the first case management hearing, under Order XVA of CPC.

Apart from the CPC, the Arbitration and Conciliation Act, 1996 has also undergone major changes. The Arbitration and Conciliation (Amendment) Act, 2015 provides that arbitration proceedings must be concluded in a time-bound manner by the Arbitral Tribunal within 12 months from the date of reference. A subsequent amendment to the Arbitration Act further provides that the arbitration proceedings are to be concluded within 12 months from the date of completion of pleadings.

### Time frame for appeals

#### 14 | What proportion of first-instance judgments are appealed? How long do appeals usually take?

Under section 96 of the CPC, every litigant has a right to appeal from a decree passed by the court of first instance, therefore, it is the discretion of the litigant as to whether he or she wishes to exercise this right in case of an unfavourable order or observation made by the court.

Further, under section 21(2) of the Legal Services Authority Act, 1987, the awards passed by the People's Court are final and binding on all parties to the dispute and no appeals shall be preferred from these awards. In addition to the above, the same is also incorporated under section 22E of the Legal Services Authority Act, for the orders passed by Permanent People's Court. The section reads:

4 Every award made by the Permanent People's Court under this Act shall be final and shall not be called in question in any original suit, application or execution proceeding.

Therefore, no appeal is permissible statutorily under the Legal Services Authority Act against the orders passed by the People's Court or the Permanent People's Court as the case may be.

Hence, the proportion of first instance judgments against which appeals are preferred is a matter of statistical review and study because it totally depends on the facts and circumstances of each matter.

Also, the CPC does not provide for any specific provision limiting the time period within which appeals are to be heard and disposed off. The length and duration of the proceedings in appeals is subject to the facts and circumstances of each case. However, section 14 of the Commercial Courts Act, 2015 provides for an expeditious disposal of appeals within a period of six months from the date of filing of such appeal.

### Enforcement

#### 15 | What proportion of judgments require contentious enforcement proceedings? How easy are they to enforce?

A decree, order, award or judgment may be enforced by the decree holder through execution proceedings, in case the same is not complied with by the judgment debtor. Under Article 136 of the Schedule to the Limitation Act, 1963, the period of limitation for the execution of any decree (other than a decree for granting mandatory injunction) or any order of the Civil Court is 12 years from the date when the decree or order becomes enforceable (ie, the date of decree). The proportion of judgments that may need contentious enforcement by the decree holder depends on the facts and circumstances of each case and is a matter of statistical review and research.

## COLLECTIVE ACTIONS

### Funding of collective actions

16 | Are class actions or group actions permitted? May they be funded by third parties?

The class action suit is a well-recognised concept in India. The procedure for class action suits is mentioned under Order I rule 8 Code of Civil Procedure. Apart from the civil proceedings, class actions or group actions suits are also recognised under the Consumer Protection Act, 1986 under section 12. The object of the Consumer Protection Act is to promote and protect the rights of consumers such as:

- *[The] right to be protected against marketing of goods which are hazardous to life and property;*
- *the right to be informed about the quality, quantity, potency, purity, standard and price of goods to protect the consumer against unfair trade practices;*
- *the right to be assured, wherever possible, access to an authority of goods at competitive prices;*
- *the right to be heard and to be assured that consumers' interests will receive due consideration at appropriate forums;*
- *the right to seek redressal against unfair trade practices or unscrupulous exploitation of consumers; and*
- *right to consumer education.*

Apart from the two legislations mentioned above, securities and shareholder class action suits are also legally permissible in India under the Companies Act, 2013. However, the same is fairly new.

Another form of class action suits that are prevalent in India are public interest litigations (PILs). Since there is no legislation dictating the terms and conditions of third-party funding, it is debatable if it may be allowed in PILs as well. There is nothing that bars a third-party funder from funding a PIL. Further, the Competition Act, 2002, envisages class action in cases of compensation under section 53N (4).

## COSTS AND INSURANCE

### Award of costs

17 | May the courts order the unsuccessful party to pay the costs of the successful party in litigation? May the courts order the unsuccessful party to pay the litigation funding costs of the successful party?

Costs towards litigation and adverse costs are generally sought for by both parties to the *lis* against each other. The grant of the same however, is the dependent upon the proof of costs incurred by the party towards litigation. The concrete proofs may be submitted towards proving the actual costs incurred. It is also dependent on the discretion of the judge based on the facts and circumstances of every case. The unsuccessful party may be deprived of costs as well in case of misconduct on his or her part. The concept of costs flows from section 35 of the Civil Procedure Code. Under section 35A the court may also allow for compensatory costs if the costs awarded under section 35 is not sufficient in the eyes of the judge and the same has been claimed by the successful party on grounds of a claim being vexatious and frivolous. A similar regime of cost is enshrined under section 31A of the Arbitration and Conciliation Act, 1996 wherein the discretion for grant of cost rests on the Arbitral Tribunal.

A similar regime of cost is enshrined under section 31A of the Arbitration and Conciliation Act, 1996 wherein the discretion for grant of cost rests on the Arbitral Tribunal.

### Liability for costs

18 | Can a third-party litigation funder be held liable for adverse costs?

The costs are usually awarded to the successful party to the *lis*. The court cannot pass an order against a person who is not a party to the suit before it. However, the liability of a third-party funder for costs imposed would depend upon the funding agreement entered between them. The parties have to decide whether and to what extent will a third-party funder be liable for adverse costs and liable to pay any premium to obtain costs insurance, provide security for costs and meet any other financial liability by way of the agreement entered between them. Adverse costs are usually imposed on the party engaging in vexatious and frivolous law suits and wasting the precious time of the court, while causing unnecessary trouble to the other party. In the event that such a party, initially vexatious claims has been funded by a third party, the litigant is awarded exemplary costs and the liability of the third-party funder would arise only if the third-party funding agreement between them includes adverse costs awarded as funding of litigation.

### Security for costs

19 | May the courts order a claimant or a third party to provide security for costs? (Do courts typically order security for funded claims? How is security calculated and deposited?)

Security for cost is ordered by the Courts under Order XXV of the CPC. Courts usually order for security for costs, *suo motu* or based on an application made by the defendant when the plaintiff is residing out of India and does not possess sufficient immovable property other than the property in suit within India. Security for costs may also be sought when such plaintiff leaves India causing a reasonable apprehension that he will not be forthcoming if called to pay costs subsequently.

However, some states, such as Allahabad and Madhya Pradesh, have amended rules 1 & 3 of Order XXV to include 'plaintiff being financed by another person' and 'or that any plaintiff is being financed by a person not a party to the suit' (ie, the funder), respectively, as a ground for ordering a security for costs.

By way of further state amendments to Order XXV, Maharashtra, Gujarat and Madhya Pradesh have added rules 1 & 3 to Order XXV, which is titled as 'Power to implead and demand security from a third person financing litigation'. Under rules 1 & 3 of Order XXV, added by the above-mentioned state amendments, the courts are empowered to implead third-party financers as a plaintiff to the suit and order for a payment of security for costs by such third parties for costs that might be incurred. If the third-party financier declines to be impleaded as a plaintiff, then he or she will not be entitled to claim any interest in the suit property.

The court is also empowered under Order XXV rule 3 to implead the third-party financier as a defendant in the suit in case of such party's denial to be impleaded as a plaintiff under sub-rule 1, the court may further order the third party to deposit the security for any cost that may be incurred subsequently.

From the framework under rule 3 of Order XXV, it becomes clear that a third-party financier will be required to furnish security for cost, in the above-mentioned states, as soon as the court becomes aware of the existence of a third-party funding agreement.

20 | If a claim is funded by a third party, does this influence the court's decision on security for costs?

Yes. As has been discussed in detail in answer to question 19, for the states of Madhya Pradesh, Maharashtra and Gujarat, that as soon as the existence of a third-party funding agreement comes into light, the courts

would implead such third-party financier to the suit and order them to furnish costs.

However, this is limited to only those states where rule 3 of Order XXV has been added by way of subsequent state amendments. In the state of Allahabad, being a third-party financier of a suit is one of the grounds in addition to others, under which security for costs may be imposed. For the rest of the states in India, the answer to the question would be in the negative and the existence of a third-party funding agreement would have no bearing on the decision of the court to order for furnishing security for costs.

### Insurance

**21 | Is after-the-event (ATE) insurance permitted? Is ATE commonly used? Are any other types of insurance commonly used by claimants?**

There is no concept of ATE insurance in India as of now because the concept of third-party funding in litigation is a fairly recent one. There are, however, general insurance products, such as liability insurance for directors, employees etc, that are prevalent in the market.

Also, the attorney fees that may be incurred in case of a dispute arising can be covered under an insurance policy before the cause of action for such dispute has arisen. This is a common form of before-the-event liability insurance cover provided by the insurers in India.

## DISCLOSURE AND PRIVILEGE

### Disclosure of funding

**22 | Must a litigant disclose a litigation funding agreement to the opposing party or to the court? Can the opponent or the court compel disclosure of a funding agreement?**

On a combined reading of all the provisions and precedents that pave the way for third-party funding in India, it may be deduced that a litigant must disclose the existence of a third-party funding agreement. State amendments to Order XXV of the CPC, empowering the courts to implead third-party funders to the suit and ordering to furnish security for costs from third-party financiers would become infructuous if the court was not aware of such third-party funding arrangements. Therefore, in light of the above, it becomes imperative that the existence of such arrangements by a party to the suit with a third party for funding of litigation must be disclosed.

Even though third-party funding of litigation in India is not illegal, the concept is nascent and is developing, and as such it does not have much jurisprudence, unlike other mature jurisdictions of the world. Hence, there is no authority or provision which may be used to compel the disclosure of such third-party funding agreements and their existence.

### Privileged communications

**23 | Are communications between litigants or their lawyers and funders protected by privilege?**

The concept of attorney-client privilege is applicable in India as well. Professional communications between attorney and client finds mention in section 126 of the Evidence Act, 1870:

*126. Professional communications. No barrister, attorney, pleader or vakil shall at any time be permitted, unless with his client's express consent, to disclose any communication made to him in the course and for the purpose of his employment as such barrister, pleader, attorney or vakil, by or on behalf of his client, or to state the contents or condition of any document*



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*with which he has become acquainted in the course and for the purpose of his professional employment, or to disclose any advice given by him to his client in the course and for the purpose of such employment: Provided that nothing in this section shall protect from disclosure—*

- (1) Any such communication made in furtherance of any 1 [illegal] purpose; 2 [illegal] purpose;*
- (2) Any fact observed by any barrister, pleader, attorney or vakil, in the course of his employment as such, showing that any crime or fraud has been committed since the commencement of his employment. It is immaterial whether the attention of such barrister, 2 [pleader], attorney or vakil was or was not directed to such fact by or on behalf of his client.*

*Explanation. The obligation stated in this section continues after the employment has ceased.*

From a bare perusal of the above produced provision, it becomes amply clear that the communication exchanged between an attorney or advocate with the client is privileged and cannot be disclosed to any other person. The same applies to the funder and its attorney as well.

## DISPUTES AND OTHER ISSUES

### Disputes with funders

**24 | Have there been any reported disputes between litigants and their funders?**

No, to date there have been none. Third-party funding is still an evolving area in India.

**Other issues**

25 | Are there any other issues relating to the law or practice of litigation funding that practitioners should be aware of?

While in foreign jurisdictions, third-party funding in arbitration proceedings is an established concept, the same is yet to be implemented in India. The limited extent to which third-party funding is allowed in India is through the combined reading of all the regulations and laws that remotely facilitate the same; however, there should be exhaustive rules and regulations to regulate and facilitate third-party funding in India. Such regulations must list out the rights and duties of the parties, the disclosure requirements and insurances that can be obtained while engaging in third-party funding.

The benefits of having third-party agreements in place must be highlighted to the litigants and the financers, while the court must ensure that a less stringent procedure is in place to facilitate third-party funding in India. Given the litigation scheme in India, third-party funding agreements can help the litigants to have better access to justice while the financers can gain from blockbuster damages being awarded, making it a win-win for all the parties.

**UPDATE AND TRENDS****Current developments**

26 | Are there any other current developments or emerging trends that should be noted?

Third-party funding of arbitration is yet to be implemented and allowed in India; therefore, given the rise of this concept in arbitrations in foreign jurisdictions, the same will aid institutional arbitrations in India as well. When this concept of third-party funding in arbitrations will be implemented by the authorities and when it will be legally allowed in India by way of specific rules and regulations is just a matter of time and should be closely monitored.

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