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A STUDY ON THIRD PARTY FUNDING IN COMMERCIAL ARBITRATION

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Abstract:

The growth of third-party funding is inevitable given the complexity of international commercial disputes and the variety of requests for dispute resolution. The third-party funding model compensates for the absence of a legal aid system in the arbitration field, which indirectly enhances the quality of arbitration trials, thereby promoting the better development of arbitration as a dispute settlement method. It also provides investment opportunities for the funders and shares the financial burden and arbitration risks with the parties to disputes. However, the practice of arbitration also faces considerable difficulties due to resulting conflicts of interest, case confidentiality, enforcement issues, and other dangers. Therefore, it is essential to set up reliable regulatory frameworks to safeguard the advancement of third-party finance models. The hazards that the model faces in practice are examined in this study, and the pertinent issues that prevent the model from developing more effectively are made clear. This foundation allows for the consideration of all subjects' interests, the detailed regulation of each stage of the process, and the overall organisation of the "regulation" of third-party funding.

Keywords: Arbitration, Third party funding

Introduction:

Third-party funding is the practise of a third party, who is otherwise unrelated to the proceeding, funds the proceedings for one party in a dispute in exchange for a financial benefit, which may be in the form of a portion of the damages determined in the case or a settlement reached between the parties. Although international arbitration has some advantages as a method of resolving disputes in international business transactions, it may be quite costly for the parties. As a result, if third-party funding can be used efficiently and appropriately in the context of transactions, it can be beneficial by improving the parties' access to justice and have the impact of levelling the field for all parties during the dispute resolution process. Historically, the theories of maintenance and champerty prohibited third parties from supporting an unrelated party's litigation in a number of jurisdictions. Historically, the theories of maintenance and champerty prohibited third parties from supporting an unrelated party's litigation in a number of jurisdictions. There are no regulatory restrictions in India that prevent third-party funding from accessing the commercial market. India should regulate third-party funding by adopting various approaches established by top arbitration countries, so long as the contracts are not against public policy or illegal in any other way. While being well-known and frequently used in the international arbitration community, TPF itself is not completely determined. The UNITRAL, ICC, and other arbitration rules take into account and govern arbitral proceedings and other matters, however third-party funding is not strictly regulated while playing a significant role in the secrecy, transparency, and independence of the arbitration process. In contrary to England and Wales, Australia, Hong Kong, and Singapore, there has never been law prohibiting maintenance or champerty in India.

Literature Review:

Deb, *Third party funding in investment arbitration: the India story* (2019)¹³⁹. The author has given a brief on the third party funding, stating it is a developing arena and the TPF method entered the minds of all players in the industry on a global scale. The understanding of TPF by the author is: The third party funder is a person or institution who invests their money in a claim they believe will result in a favourable arbitral judgement with the intention of making a profit and who has a significant interest in the dispute's issues beyond a purely financial one. Author further states that the scope of TPF in India is yet to be discovered and the circumstances in which India need TPF might be when financially disadvantaged parties may be reluctant to convey their concerns regarding paying the high arbitrator fees, which will prejudice the other party who has agreed to pay the fees in the first place. The international development is a hint for the developing nations to adapt the trends, and move forward by suggesting to bring a code of conduct for the market player, checks on the fees, and the funding agreement, and in order to prevent any illegal activity on its side, the third party funder should engage in internal governance, the author suggested.

Sahu, *Third party funding in India's arbitral proceedings* (2021)¹⁴⁰. The author in this article has given a detailed account of third party funding. The author further moved upon to the legality of third party funding in India, Supreme court have decided on the law on champerty. However, it is yet to decide on the legality of third party funding. The author has further discussed the need of third party funding arbitration in India, Financing organisations or businesses in society zones may be prevented from catching their acquisitions in by a sophisticated trade body

that runs on a risk-return basis, permitting them to proceed with their intended task after adjudication without failing to meet their essential. The author has also touched on the world trends with regard to third party funding, in which Singapore has been recognised with the Civil Law (Amendment) Act, 2017, which recognises third-party funding methods as well as repeals maintenance and champerty valid for established dispute settlement procedures as long as they don't conflict with public policy. Moreover, it specifies the funder rights and their limitations. In light of the research done, the author could have further discussed the suggestion to bring in amendments and provisions relating to the recognition of the third party funding in arbitration in India.

Krishan, Tyagi, *New trend in International commercial arbitration third party funding* (2021)¹⁴¹. The authors have given a brief explanation of the third party funding and the factors which contribute to the global success of the third party funding. With recognition given to third party funding in the international commercial arbitration, this has become popular according to the authors. Further the authors touched upon the issues related to the third party funding, such as no privacy, conflict of interest, when the funders and arbitrators in two separate conflicts are the same, joinder of parties will influence the arbitration, the transparency might be compromised. The authors have also dealt with the views of the Indian courts, numerous rulings demonstrating that one cannot conceal under the cover of public policy, and the involvement of the court in arbitration is due the lack of the institutional set up. With no legislation regarding the legality or illegality of third party funding, it is difficult for the courts to interpret this concept. The author concluded the paper stating that TPF's recent years of development have seen a lot of issues. Due to the limited nature of applicable regulations (including the definition of "party"),

¹³⁹ Deb Aratrika, "Third party funding in investment arbitration: The India Story", *Gibs law journal*, Volume 1, Issue 1, Pg.No. 13-21 (2019)

¹⁴⁰ Prithiv Raj Sahu, "Third Party Funding in India's Arbitral Proceedings", 4 *INT'L J.L. MGMT. & HUMAN.* 1330 (2021)

¹⁴¹ Prashant Krishan & Gaurav Tyagi, "New Trend in International Commercial Arbitration Third Party Funding", 4 *INT'L J.L. MGMT. & HUMAN.* 1671 (2021).

there is currently no arbitral practise in connection to third-party funding and "expense"), as well as the courts' unusually exercised jurisdictional authority over third parties (except for the traditional agency principles and assignment)

Jillani, Saqib, Rasheed, Rizvi, A *Preliminary Study of Third-Party Funding Regulation for International Commercial Arbitration* (2021)¹⁴². The authors have given an understanding on the third party funding in international commercial arbitration, which they have put it as by signing the funding agreement, it is agreed to receive the benefits of the partial winning award under the premise of winning the case or to obtain the funding return in other specific ways. During the arbitration period, a third party unrelated to the case provides the arbitration parties with cost assistance. The authors have discussed some major challenges with regard to TPF such as threat to confidentiality, funder may influence the claims, settlement conditions, selection of lawyers, sponsor don't affect the impartiality and independence of arbitrators and there will be enforcement of award risks. According to authors, TPF instead of unduly encouraging the parties to increase their claims, try to strike a balance between the number of claims recovered in the event of final success and the number of arbitration fees charged. The authors further discussed overcoming the challenges through regulation and TPF association, where credibility of funders are provided for easy access and better regulatory framework. Through these regulatory proposals, the authors believe that these issues will be successfully resolved, and third-party funding will serve international commercial dispute resolution in a flawless model thanks to the combined efforts of the international community and domestic parties.

Kandavel, Srinivas, *Third Party Funding in Arbitration: An Overview* (2020)¹⁴³. In this article, the author highlights how third party funding is helpful for weaker financial claimants for arbitration proceedings. It is a concept where a party who has no prior interest in legal dispute, provides funds for the proceeding to a party in return for certain financial gain. The author discussed about the pros and cons of third party funding and its practices in foreign countries. The author also analysed the status of third-party funding in India. India has seen a substantial growth in arbitration among Asian nations in recent years. There are already provisions in place in India to introduce the idea of third party funding. The author stated that the notion of third party funding needs to be promoted in India with the right legislation amendments and regulations to ensure that the benefits outweigh the drawbacks. In India, the idea of third-party funding is not new. Investors and funders have brought and sold several lawsuits on the legal market, which frequently results in the transfer of assets for the litigation. However, formal agreements have yet to be reached in India. It is important that India implements new legislative measures to control the arbitration market since it will improve India's position in the global arbitration market.

Sarkar, *Third Party Funding in International Arbitration: New Challenges and Global Trends* (2020)¹⁴⁴. In this article, the author examines the notion of third funding party in international commercial arbitration and the basic concept of third party funding. In general, the funding takes care of claimants' possible expenses related to the arbitration processes, including but not limited to costs for lawyers, experts, outside counsels' services, and other possible expenses. The author also identifies that one of the most significant factors influencing TPF funding arrangements

¹⁴² Muhammad Abid Hussain Shah Jillani, Kashif Mahmood Saqib, Abdul Rasheed Syed, Jafar Hussain Rizvi, "A Preliminary Study of Third-Party Funding Regulation for International Commercial Arbitration", JRSP, Vol. 58, No 4 (2021).

¹⁴³ Kandavel.K, Nithin Srinivas.J, "Third Party Funding in Arbitration: An Overview", International Journal of Law Management and Humanities, Vol. 3, Issue 6, 2020

¹⁴⁴ Swargodeep Sarkar, "Third Party Funding in International Arbitration: New Challenges and Global Trends", International Journal of Legal Science and Innovation, Vol. 3, Issue 1, 2020.

and processes in international commercial arbitration is the need for transparency and information. This analysis found the arbitral tribunals resolve those cases on a case-by-case basis. The majority of the institutions that provide specialised litigation funding are located in nations with developed third-party funding markets, including Australia, Germany, the United Kingdom, the United States, the Netherlands, Canada, and South Africa. The arbitral institutions and ad hoc arbitral tribunals must act independently and demand information from arbitrators and financially supported parties. It is claimed that arbitral institutions and ad hoc arbitral tribunals may increase the disclosure of third party funding relationships by forbidding tribunals from taking third party financing arrangements into account when awarding costs or security for expenses.

Pattjoshi, Ghosh, *Third Party Funding for Litigation in Dispute Resolution Mechanism and its Recent Developments in International Commercial Arbitration* (2022)¹⁴⁵. This article focuses on the principles of Third Party Funding practices which ultimately help to achieve justice in both domestic and international commercial arbitration, when allowed to self-governance. The direct impact of Third Party Funding lies in reducing the workloads and valuable time of the parties to the proceedings. The author also describes about the formal claimant side of Third Party Funding and English principles of maintenance for Third Party Funding. It also explains the role of Third Party Funding in various countries like Australia, England, Hong Kong and Singapore. The appropriate justifications for the Third Party Funding mechanism, which may or may not be used in further litigation and may not always, be used in this particular field of law. However, as the world has become more liberalised and as Third Party Funding in International Commercial

Arbitration has increased, certain professionals have begun to explore some significant issues related to this practise, like "conflicts of interests" and "security for costs" issues. Many nations have created their own regulations to address these issues, which in the present have become a number of more systemic concerns. Third Party Funding has just recently expanded in the liberalising world, yet it has always attracted the attention of professionals. It is challenging to take evolving Third Party Funding principles into account in ethical issues in international arbitration.

Singla, *Third Party Funding for Arbitration in India* (2021)¹⁴⁶. In this article, the author has analysed Third Party Funding legislations in some main international centres of arbitration. It brings out the importance of the need of Third Party Funding in India because of sudden onset of financial issues caused by COVID-19, affecting several company divisions with various case laws. The author has also dealt with the role OF Third Party Funding in engineering, procurement and construction and insurance sector. Since India becoming one of the top five economies in the world, has been one of the most popular locations for international investment. In light of this, one can only hope that the government actively collaborates with stakeholders to develop a solid system to support the Third Party Funding infrastructure in India and remove any difficulties surrounding this idea in the existing regulatory situation. There are no regulatory restrictions in India that prevent third-party funding from entering the commercial market. India should manage third-party funding by adopting various approaches established by top arbitration countries, so long as the contracts are not against public policy or illegal in any other way.

Third Party Funding:

¹⁴⁵ Seemasmiti Pattjoshi, Puranjoy Ghosh, "Third Party Funding for Litigation in Dispute Resolution Mechanism and its Recent Developments in International Commercial Arbitration", *International Journal of Mechanical Engineering*, Vol. 7, 6th June 2022.

¹⁴⁶ Rohith Kumar Singla, "Third Party Funding for Arbitration in India", *Scholarly Research Journal for Humanity Science & English Language*, Vol. 9, 1 December 2021.

Third-party funding is the practise of a third party, who is unrelated to the proceeding, funds the proceedings for one party in a dispute in exchange for a financial benefit, which may take the form of a part of the damages determined in the case or a settlement achieved between the parties. International Commercial Arbitration is a means in which the disputes are settled between the parties by independent decision makers, also known as arbitrators chosen by the parties. The decision of the arbitrators is final and shall be binding on the parties without any court interference. Hence arbitration provides a flexible, enforceable and easy way of resolving disputes suitable for international transactions. Because of the advantages inherent to international commercial arbitration, it has become a costlier option compared to the court proceedings.¹⁴⁷ International Arbitration is quite and expensive method for resolving disputes than an ordinary court proceedings. As a consequence, third party funding is considered as an important part in arbitration where the proceeding is funded by professional funders.

Origin:

There is disagreement around the origins of the third-party funding sector, which has been around for roughly 30 years in Australia, 20 years in Germany and the UK, and 10 years in the United States of America. Further, the 2008 financial crisis accelerated the growth of third-party funding. Since the first significant conferences on the subject were held in 2011, third-party funding is still a relatively recent legal business. Due to the novelty of this phenomenon, most of statutory law provisions do not regulate third-party funding and countries are unable to cite any reported cases dealing with this issue.¹⁴⁸ The members of the Task Force on Decisions on Costs in International Arbitration of the ICC Commission,

who investigated third-party funding in 56 nations, agreed to this.

Notion of Third Party Funding:

Third party funding is defined as “any financial solution that is being offered to a party in arbitration proceeding regarding the funding of the proceedings in a dispute in return for a share of the settlement. If the claim is unsuccessful, the funder may be required to cover the expenses of the proceedings in addition to not receiving any compensation. The main elements of third party funding includes

- An agreement
- with a party to the dispute who is not a third party
- providing provision for finance or material support
- in exchange for payment depending on the resolution of the dispute

The object of the funder is that he invests directly not only in a company which holds a claim but also in the given claim.

Subject of Third Party Funding:

The subjects of the third party funding includes a funder and a funded party.

i. Funded party:

The funded parties can be divided into two groups. The first group are those have insufficient financial resources on their own, either because of their size or because they are in financial difficulty. This specifically refers to small and medium-sized businesses, for which third-party finance may be the only way to begin the arbitration process.

The second group who have the means to pursue international arbitration but are concerned about the risks involved. Third party funding serves as a risk allocation strategy and a tool

¹⁴⁷ Bertrand, Edouard. The Brave New World of Arbitration: Third-Party Funding. ASA Bulletin. 2011, Volume 29 Issue 3.

¹⁴⁸ ICC Commission Report: Decision on Costs in International Arbitration.

for these businesses to keep funds for their operations.

ii. Third party funder:

A third party funder is generally non-signatory to arbitration agreement. A funding agreement that is made between the funder and the funded party constitute a contractual relationship that is detached from the arbitration agreement. The funder does not become a party to the arbitration proceedings and they do not acquire rights and obligations arising out of proceedings.

Funded Agreement:

A funding agreement typically includes both financial and non-financial terms, as well as auxiliary agreements.

Non-Financial Terms:

A financing agreement may also contain non-financial terms such as confidentiality and exclusivity periods, case monitoring, influence over the case, termination of funding, any type of security, dispute resolution, and non-disclosure. Moreover, case evaluation frequently occurs before the end of the funding agreement

Financial Terms:

When negotiating a financing agreement, the financial terms related to the investment and the return of a funder are typically the first to be negotiated. International commercial arbitration funding agreements primarily deal with high-value business matters. They typically have nothing to do with the funding of cases involving personal injuries, consumer issues, or divorce.

Ancillary Agreements:

An ancillary agreement is a separate legal document that typically isn't included in a funding arrangement. Their main goal is to

make sure investors get a return on their money. Moreover, parties to ancillary agreements may comprise a variety of legal entities in addition to the funder and the funded party.

Benefits Associated with Third Party Funding:

The main benefits of third party funding is that it facilitates access to justice and levelling up the procedural field.

Access to Justice:

The most significant advantage is that it emphasizes increased access to justice. As a result, many claimants are now able to file a claim that would not have been able to be handled without funding.¹⁴⁹ Increased access to justice may lead to decrease in costs of arbitral proceedings. The benefit of third-party funding on access to justice is restricted to large business cases with high predicted monetary outcomes because a funder's recovery must be sufficient to cover its investment.

Levelling the Procedural Field:

Third party funding, not only provides access to justice but it enables the funded party to arbitrate with its opponent. An unequal playing field is caused by differences in the parties' perspectives on the resources at their disposal, their tolerance for risk, or a combination of the two. Disputes should be settled on the basis of the merits, not on the basis of who can afford to fund the litigation the most.

Risks Associated with Third Party Funding:

The participation of funder may lead to certain risks in arbitration proceedings.

Conflict of Interest between the Funder and Arbitrator:

¹⁴⁹ Arkin v. Borchard Lined Ltd & Ors 2005

The impartial and independent arbitral tribunal requirement is considered to be the fundamental principles of arbitration. Third-party funding has the potential to establish tangible economic relations and links that could compromise the independence and impartiality of the arbitrator. The fact that partners from the arbitrator's law firm are involved in a separate case in which the same funder is a party may create a conflict of interest.

Breach of Counsel's Professional Obligations towards Client:

A funder's participation in the arbitration proceedings could result in a breach of counsel's ethical obligations to a client who is being paid for by the funder. The breach may have anything to do with the funder's financial relationship with the lawyer or the funder's control over the particular case.

Breach of Evidentiary Privilege:

The evidentiary privilege is a principle which is recognised in many national jurisdictions which protects the oral or written communication between the counsel and a party from disclosing information to the opposite party. It prohibits the opposing party from asking for such communication to be used as evidence in the arbitral proceedings. The evidentiary privilege shall be waived through documents that were exchanged between the funder and the funded party.¹⁵⁰

Breach of Confidentiality:

Confidentiality is considered to be one of the main advantages in arbitration. It is the obligation of parties, arbitrators and other persons involved not to disclose any information about the arbitration proceedings. The involvement of a third-party funder may cause a funded party to violate their obligation of confidentiality to the opposing party since

the funder may ask them for information regarding the specific case. Some authors contend that the confidentiality commitments made by third parties that provide funding are sufficient to meet the financed party's need to maintain confidentiality.

Breach of Principles of Champerty and Maintenance:

The common law concepts of champerty and maintenance, which are intended to prevent the abuse of the judicial system, may be violated as a result of third-party funding. There are two key reasons why the legality of third-party funding is significant. First, it is possible to have an arbitral ruling dismissed on the grounds that third-party funding is unlawful and against public policy. Second, a funded party may ask a court of the seat for help in order to enact interim measures. The Champerty and Maintenance can still be applied to assess the enforceability of funding agreement.¹⁵¹ The abolition of criminal and civil liability for maintenance and champerty shall not affect any rule of that law as to the cases in which a contract is to be treated as contrary to public policy or otherwise illegal.¹⁵²

Breach of Corporate Governance Rules:

The relationship between third-party funding and corporate governance laws that forbid insider trading and stock price manipulation has not yet been established. Third-party funding is a relatively new sector. Third-party funding may interfere with corporate governance rules prohibiting stock price manipulation and insider trading and may jeopardize stakeholders' interests. A duty of disclosure of third-party funding is suggested as a solution to overcome these issues and protect stakeholders' rights.¹⁵³

Third Party Funding in Indian Scenario:

¹⁵¹ Campbells Cash & Carry Pty Limited v. Fostif Pty Limited 2006

¹⁵² Section 14 Para. 2 of the Criminal Law Act of 1967

¹⁵³ Oxus Gold v. Uzbekistan 2015

Third party funding in litigation was historically prohibited under the doctrine of maintenance and champerty. Maintenance is the aid or assistance provided by unconnected third party by way of assistance in maintaining litigation financially and champerty is also a form of maintenance which allows unconnected third party to pay full or partial of the litigation cost in exchange of benefits or share of the profits.

In India, there is no bar on the maintenance or champerty, whereas countries like England and Wales, Australia, Hong Kong and Singapore there were laws which prohibited and/or said to offence. The Privy Council decided on *Ram Coomar Candoo vs Chunder Canto Mukherjee*¹⁵⁴, it was held that "a fair agreement to supply funds to carry on a suit in consideration of having a share in the property, if recovered, is not opposed to public policy and not illegal. However, such agreement ought to be carefully watched, when extortionate, unconscionable or made for improper objects, they ought to be held invalid". And subsequently in *Raja Rai Bhagawat Dayal Singh vs Debi Dayal Sagu*¹⁵⁵, the Privy Council held that the English law of maintenance and champerty cannot be applied in India.

The concept of maintenance and champerty or third-party funding in litigation has never been expressly discussed in any of the Indian legislation. The concept is fairly put in Order XXV Rule of Civil Procedure Code, which states that courts have the authority to order a financier to pay the costs of a lawsuit by inviting it to join as a party and disposing of the costs in court. The Apex court, in *In Re GA Senior Advocate case*¹⁵⁶, held that unless the third party is the attorney, a third-party funding agreement with returns based on the case's outcome is not always prohibited. Therefore, the third-party funding even matters of litigation are dealt in India by the judiciary with no proper laws on the

regulation of the third-party funding or the maintenance and champerty.

International Standing on Third Party Funding:

In most of the countries which adopted the common law system, arrangements of third-party funding were illegal or void, on the grounds that it was contrary to the doctrine of maintenance and champerty. However, in recent times these traditional aspects have evolved, and third-party funding is permitted in a large number of jurisdictions for commercial arbitration and court proceedings in international arbitration.

The new ICC Rules of Arbitration, 2021, has made explicit reference to third party funding and included in Article 11(7) requiring parties to declare any third-party funding arrangements in order to identify and manage any potential conflicts of interest. England has relaxed the common law rules of maintenance and champerty, bringing in a rapid growth in the funding market. England and Wales have become a prevalent legal market with the growing of third-party funding. The Code of conduct for Litigation Funders published in 2011 along with the formation of Association of Litigation Funders of England and Wales¹⁵⁷. The Code provides a duty and responsibility of the funders and sets the standards for them. The association membership is voluntary, and they are credible funders.

Hong Kong does permit third-party funding in international arbitration and mediation. The Arbitration and Mediation Legislation (Third party funding) (Amendment) Ordinance 2017 has been in enforce, providing measures and safeguards regarding the third-party funding and also implemented the Code of Practice for third party funding of Arbitration by the law reform commission of Hong Kong in 2018. Through this code of practice, it sets out the practices, obligation and standards of the third-

¹⁵⁴ 1876 SCC Online PC 19.

¹⁵⁵ (1908) 10 BOMLR 230

¹⁵⁶ (1955) 1 SCR 490.

¹⁵⁷ Ridhima Sharma, Third Party Funding in International Commercial Arbitration, 12 NUALS L.J. 61 (2018).

party funders in Hong Kong. With that being in place, Singapore being a leading Asia Pacific International dispute resolution hub has permitted third party funding since 2017. The Civil Law (amendment) Act, 2017¹⁵⁸ makes a mandate that only professional funders are allowed in Third party funding, and they must carry a principal business to qualify. Singapore allows foreign lawyers to represent in international arbitrations in Singapore and they are not regulated with Singapore legislation, which eventually has more flexibility in relation to Third party funding as the lawyers can make recommend on third party funding.

Historically in Australia, the principles of maintenance and champerty forbade third parties from contributing to an unaffiliated party's litigation or arbitration¹⁵⁹. Maintenance and champerty, however, are no longer considered to be crimes under common law. In order to raise accountability of Australian-based funders and to increase transparency surrounding lawsuit funding, the Australian federal government has established new restrictions. The Corporations Amendment (Litigation Funding) Regulations 2020 (Cth) went into force on July 24, 2020. They give effect to the Australian government's declaration that lawsuit funders must possess an Australian Financial Services License and adhere to the rules governing managed investment schemes, which was made public on May 22, 2020.

As on 2021, the UNCITRAL model law has made draft provision in respect of third-party funding and possible reform of investor-state dispute settlement, in which it includes the definition and regulation model. With that it also includes disclosure of third-party funding and other provisions such as scope of covered investor and investment, security for costs and code of conduct for third-party funders.

¹⁵⁸Prithiv Raj Sahu, Third Party Funding in India's Arbitral Proceedings, 4 INT'L J.L. MGMT. & HUMAN. 1330 (2021).

¹⁵⁹ Jason Geisker, Dirk Luff, The Third Party Litigation Funding Law Review - Edition 3(Australia), The Law Reviews, Dec 2019 <https://thelawreviews.co.uk/edition/the-third-party-litigation-funding-law-review-edition3/1211998/australia>.

The prominent places where seat of Arbitration for international arbitration have made changes in their legislation and rules to regulate and build a more efficient practice of Arbitration with legal status given to Third party funding and which helps the parties to arbitration and also the funders.

Conclusion and Suggestions:

The emergence of third-party funding of disputes in India has to be investigated since promoting the success of such a system creates a new asset class where investors can potentially produce more liquidity in addition to outsized rewards. Third party funding has its own risks which can be a concern, yet it can be minimized through proper regulation. The current Arbitration and Conciliation Act, 1996, has no mention of third-party funding or any regulation as to investors or funders. Third party funding is a developing arena in the commercial arbitration and in India. Even though there is no restriction in India that prevent third party funding, yet a lack of regulation may create conflict and may act as hindrance to the arbitration process.

India should manage third party funding by making the required amendments in the Arbitration and Conciliation Act, 1996, by adopting various approaches established by top arbitration countries so long as the contracts are not against public policy or illegal in any other way. With the draft provision of UNCITRAL Model law, India could make the step toward the amendment in a better way which will attract more players in the commercial market.

Reference:

- Deb Aratrika, "Third party funding in investment arbitration: The India Story", *Gibs law journal*, Volume 1, Issue 1, Pg No. 13-21 (2019)

- Prithiv Raj Sahu, "Third Party Funding in India's Arbitral Proceedings", 4 INT'L J.L. MGMT. & HUMAN. 1330 (2021)
- Prashant Krishan & Gaurav Tyagi, "New Trend in International Commercial Arbitration Third Party Funding", 4 INT'L J.L. MGMT. & HUMAN. 1671 (2021).
- Muhammad Abid Hussain Shah Jillani, Kashif Mahmood Saqib, Abdul Rasheed Syed, Jafar Hussain Rizvi, "A Preliminary Study of Third-Party Funding Regulation for International Commercial Arbitration", JRSP, Vol. 58, No 4 (2021).
- Kandavel.K, Nithin Srinivas.J, "Third Party Funding in Arbitration: An Overview", International Journal of Law Management and Humanities, Vol. 3, Issue 6, 2020
- Swargodeep Sarkar, "Third Party Funding in International Arbitration: New Challenges and Global Trends", International Journal of Legal Science and Innovation, Vol. 3, Issue 1, 2020.
- Seemasmiti Pattjoshi, Puranjay Ghosh, "Third Party Funding for Litigation in Dispute Resolution Mechanism and its Recent Developments in International Commercial Arbitration", International Journal of Mechanical Engineering, Vol. 7, 6th June 2022.
- Rohith Kumar Singla, "Third Party Funding for Arbitration in India", Scholarly Research Journal for Humanity Science & English Language, Vol. 9, 1 December 2021.
- Bertrand, Edouard. The Brave New World of Arbitration: Third-Party Funding. ASA Bulletin. 2011, Volume 29 Issue 3.
- Caroline Overgaard & Johan Tufte-Kristensen, "Disclosure of Third-Party Funding in Commercial Arbitration", 2020 NJCL 1 (2020)
- Collin R. Flake, "Third-party Funding in Domestic Arbitration: Champerty or Social Utility?", Dispute resolution Journal, volume 70, No 2, 2015
- Ridhima Sharma, "Third Party Funding in International Commercial Arbitration", 12 NUALS L.J. 61 (2018).
- Bernardo M. Cremades, "Third Party Funding in International Arbitration", 7 ROM. ARB. J. 1 (2013).
- Jennifer A. Trusz, "Full Disclosure: Conflicts of Interest Arising from Third-Party Funding in International Commercial Arbitration", 101 GEO. L.J. 1649 (2013).