TERES

INDIA ADR WEEK 2026 – 09 SEP 2026

SESSION 1

THIRD-PARTY FUNDING: LESSONS FROM GLOBAL MARKETS FOR INDIA

SPEAKERS:

MODERATOR, DEEPTO ROY, FIVE RIVERS CAPITA

AMITA KATRAGADDA, PARTNER DEPUTY HEAD - DISPUTES, CYRIL AMARCHAND MANGALDAS

QUENTIN PAK, DIRECTOR, BURFORD CAPITAL SINGAPORE

RAJAT AGRAWAL, MANAGING DIRECTOR, TRUBOARD PARTNERS

ANUSHKA MANSHARAMANI: Good morning, everyone. We request everyone to kindly be seated and we will be beginning in the next two minutes. Good morning once again, ladies and gentlemen. Welcome back to Day-2 of the India ADR 2026 Mumbai Edition. Yesterday gave us a rich start to the week; from discussions around geopolitics and data privacy to the future of our profession and some remarkably engaging conversations throughout the day. Today promises to be every bit as engaging. As we turn to questions of funding, client expectations, the changing identity of Arbitrators and Counsel, and the everyday realities of running an arbitration from start to the finish. Without further delay, let us begin Day-2 of the India ADR week with our very first session for the day hosted by Burford Capital and Five Rivers Capital, third Party funding has transformed the arbitration landscape in mature markets, reshaping how claims are pursued and disputes are financed. As the Indian market watches closely, the question is what India can learn and what it must be must carefully avoid as third-party funding finds its footing here. Our first session takes us precisely this theme - "Third Party Funding: Lessons from Global Markets for India." The session will be moderated by Deepto. Joining him, we have Amita, Quentin and Rajat. We look forward to a candid conversation on financing the future of disputes. I would now request everyone to welcome our moderator and panellists to the stage. Thank you.

DEEPTO ROY: Good morning, everyone. Thank you very much, we know it's early morning on a Wednesday, so thank you for making the time and attending this session. Thank you to the India ADR Week and for... and to the MCIA or giving us the opportunity to, you know, discuss third-party funding in India, and in particular, talk about the global experience and what we see as the future of our... of what we hope is a very large and a very structured industry in India. To introduce myself, my name is Deepto Roy. I'm a founder at Five Rivers Capital. We are an alternate investment fund specifically looking at the legal disputes and litigation disputes as an asset class, and looking to, you know, sort of create a structured process by which litigation claims and disputes can be funded in India. I'm joined by a fantastic panel of experts and we would talk about, you know, sort of third-party funding what are the lessons from the global market and how do we see that translate into India. What are the lessons that we can learn from the global experience, what we see as the extent, breadth and challenges of the Indian market. Now, what is third-party funding, why is it necessary? Is it a structured industry? Globally, it is and let me begin with a few examples, you know, we have a Contractor who is always struggling with working capital, he has a large award, but he doesn't have the, you know, sort of the financials or the capability to pursue it he's got an award in his favour, but he hasn't seen any recoveries from that award for the first significant amount of time.

We have a promoter in a shareholder dispute who has to, you know, sort of mortgage the company. He's a shareholder of in order to have that dispute litigated and to reach a, you know, sort of recover his legitimate claims. We have a mid-sized technology company whose patent is being infringed by competitor who is 20 times... who has 20 times its legal budget. What are the options available? We have a resolution professional who has a strong claim but doesn't have the liquidity to pursue it in any meaningful manner. What are the options available, you know, in these situations? And third-party funding globally has arisen as a financial product which addresses just these situations. It addresses questions of liquidity and it forms that bridge between a Claimant and the actual sort of recovery. It addresses the question of management and, you know, sort of the ability to look at a claim from a scientific angle and to assess it as a financial product. All of these is an asset; a litigation claim in any form and manner is an asset on your balance sheet. But for a variety of reasons, whether it is the time that is going to be taken to actually see a recovery, whether it is the uncertainty of the legal process, whether it is the ability and the bandwidth to manage a large team of legal experts, nobody actually considers this as an asset. The role of third-party funding is to create a legitimate asset base out of your claims and out of third-party claims which exist in the market.

Let me just introduce the panel here. On my left is Amita. Amita is a partner and the Deputy Head of Disputes at Cyril Amarchand Mangaldas. I will be asking Amita a lot of questions on the, you know, sort of the legal infrastructure surrounding third-party disputes, what she sees as challenges and opportunities in the market for funders.

Next to Amita is Quentin. Quentin Pak is a Director with Burford Capital. Burford Capital is the largest third-party funder in the world today. It's a listed company and has operations across the world. Quentin has also been a keen observer of the Indian market and a pioneer of third-party funding in Asia in general.

Rajat on the extreme left is Managing Director of Financial Services at TruBoard. He's been a finance professional and a professional who has looked at, you know, asset financing throughout his career. Apart from being, you know, sort of a very strong background in asset recovery and, you know, considering assets as collateral, Rajat also brings a host of knowledge around funding of claims as a sector. So I'm very, very happy and thank you to all of you for joining us.

Without further ado, let me just sort of set the context of what we're talking about. One of the first questions and its worth, you know, discussing it upfront, is on the legitimacy or the legality of third-party funding, and there are, you know, sometimes you go into the market and

TERES

you hear that, oh, but I don't think it's allowed or I don't think that it's permitted in India and that's not correct, because legitimacy of a product has two aspects of it: One is, can you fund a particular kind of endeavour, and the reality in India is that you can. There is Supreme Court decisions which have said upheld the legitimacy of third-party funding. There are, you know, provisions of civil procedure codes of several of our states which actually provide for and account for funding of litigation. So, from the perspective of it being a product that you can fund or from it being an asset that you can fund, you know, there is no challenge on legitimacy what is there is obviously, you know, what is the manner of funding, what is the security you can create, what is the kind of interest that you can you can create in a claim versus, let's say an award or a judgment debt? And those are questions we would go into as part of the panel.

The second question of legitimacy turns around whether you have financial companies which are capable of investing and there of course, you know, India is a highly regulated, you know, sort of country we have very, very significant foreign exchange norms and I think, Quentin, at some point I will ask you about, you know, how those norms create challenges on funding in India. But we do have a very regulated financial services sector. Anyone who is in the funding or the financing market must necessarily be compliant with multiple laws and regulations. But if you take these two pillars and you put them together, that it is a product that can be funded or it's an asset that can be funded, and the vehicle which is funding is legitimately allowed to fund in India, I think the question of legality then becomes less important.

What does remain is questions around what is the nature of third-party funding? Is it, you know, sort of more in the sense of profiting out of misery, as some people would put it? Or is it actually a very, very... you know, sorry... it actually creates an atmosphere where you create a level playing field for litigators, you provide that liquidity to the market to, you know, sort of come in and look at this as a viable means of financing. So, let me without sort of and having talked a lot myself, but let me just, you know, bringing in the panel and I'll start with Rajat. Rajat, what do you think of, you know, India as an opportunity when we look at third-party claims and the primary premise that I kind of set out is that it is a legitimate asset in which you can invest, what is your understanding of where it sits in the asset class and how would you sort of characterize? So, two questions one is how would you characterize a legal claim as an asset and what you would look at from that perspective and second, what do you see as the opportunity of that market in India?

RAJAT AGRAWAL: So in terms of the opportunity, I think there is there is a significant opportunity, but it's quite unexplored and almost virgin territory in a manner of speaking, because if you look at the amount of funding that is there... I was reading up, I think about just about $100 million is invested in funding for such assets, whereas the opportunity would probably be in the region of about $10 billion in terms of claims etc., which are outstanding, so that's about a percent that we're talking about, which is there. So, quite unmined. And therefore, it's a matter of time, I believe that the dams break forth. But in terms of the asset that you're talking about, claim I don't think legally... and obviously the two of you are... Amita and Deepto are in a better position to advise, but claim I don't think is recognized as an asset *per se* it's an award when it fructifies into an award that it is legally considered an asset to the best of my knowledge. But importantly in terms of and perhaps the question is not so much legal as in terms of how one would look at it as a financier. Yes, it is an asset that can be looked at, and I think there's also greater conviction in the finance fraternity when it gets converted into an award, because the claim, before it gets converted into award, you know, is the percentage that's going to get actually get recognized as an asset; that is a question which is a little uncertain. It could be as low as 30%, it could be as high as 70%, probably not higher. So that is one aspect of it. And I have actually had a situation where I was looking at financing certain claims... written... not claims, an award from a bank which was in limbo for a while trying to explain to the banker that, you know, you will have the process of Section 34, Section 37 and then maybe an SLP, so it's going to be a long while before you're able to actually realize your money. So why don't you help me get some litigation financing around it? But again, the expectations in the banker's mind, whether it's an award, it's going to come. It's just a matter of time. Why should I take a discount? It was very clear. So, the reason why I give this example is more to say that the mindset of the banker changed significantly when moved from a claim to an award.

DEEPTO ROY: No, and I know that you have spent a lot of time on the stress piece, and that seems like an obvious entry point because, you know, you have companies with large claims, potentially not many other assets, particularly, in let's say infrastructure. And you then have them getting into the non-performing territory because they're not able to service your... service their loans. So, do you think that that's an obvious entry point into this market? And what are the kind of, you know, sort of the... And you already talked about a bank which had an asset or which had a claim as an asset. But what about, you know, ARCs and funds? Is that something that you see as an obvious entry point?

RAJAT AGRAWAL: Yeah, I think so because even, you know... and this now I'm talking a little more retail, not necessarily only corporate. But the number of assets that have been acquired by the ARCs from banks over the last 20-odd years, are significant. And the focus and the attention of the recovery teams in these institutions... and ARCs are specialized recovery agencies bodies. But the focus of the recovery teams is primarily on the assets that are live, that are more palpable, where you have some contractibility, and therefore, expected collectability. But a lot of these assets which are more, let's say historic, they do not... they do not get the attention they deserve. So actually, there could be a very profitable situation where a funder looks at, let's say a portfolio of assets which the ARC is not able to service and through focus from a litigation perspective is able to probably mine those assets more. So yeah, that can be a great entry point.

DEEPTO ROY: Maybe a sort of follow up on that. What do you think are sort of the opportunities and challenges in formal insolvency? So in terms of... Is that different from the stress space? Is there more opportunity in that space or do you think that it will probably be the same kind of analysis that you alluded to?

RAJAT AGRAWAL: So, I think in terms of... Again, following the concept that what is current or has... you know, recency is an important point. So, if especially from let's say a retail perspective, if you look at it, assets that have gone bad more recently, rather than historic and vintage, you will have a greater chance of collecting there. So by extension of that logic, assets that are under stress, rather than only than in insolvency, you will have a greater chance of collection there. But the problem with the question is that, it is also the ease with, and let's say conviction with which bankers will part with the assets. So I've had situations when, in my previous avatar, gone to purchase assets from banks, and the response I have received is, "This is not even five years old, how do you think I'll sell it to you?" Because they will have their own requirements from their vigilance perspective or their performance perspective of focusing on assets that are recently turned NPA before they can pass it on. So practically speaking, that might become a bit of a challenge.

DEEPTO ROY: Thanks, Rajat. Quentin, can I bring you in here? In many ways, I think Burford is a pioneer in, you know, sort of considering legal claims as an asset class and also sort of developing a scientific methodology of looking at the treatment. So what would your sense be how did that develop? And then following on from that, how do you see your sort of North American experience translate into the Asian market and potentially into India?

QUENTIN PAK: Yeah, thanks Deepto. So one thing I always notice when I speak to Indian practitioners and also end users is that India, it’s a very different market for us and it's very interesting I mean, there's a lot of potential. We started looking at Asian jurisdictions, I think back in 2017 when Singapore changed the law for arbitration funding. And the conversations that we had with people tended to be much more legalistic in nature. So there were discussions

On maintenance, on disclosure, privilege, all these issues. But what we find with India is, and I'm glad the way we started this discussion, the introduction that Deepto made and also Rajat's comments, the treating legal claims as an asset, I mean, that's actually very fundamental approach that we take at Burford. So we see it very much as corporate finance. And this type of introduction that the comments that both Deepto and Rajat made, you wouldn't necessarily hear them in other conferences in other places. So, the way the Indian market approaches legal finance, I think, as a start, is very different from the rest.

What caught our attention initially is, there was a widely reported piece, I think back in 2018, 2019 about Hindustan Construction, and they were looking for financing solutions for... or trying to find ways to reduce the debt, and they looked at arbitral awards as assets. So that caught our attention, because before there was even a lot of discussion in India about the product itself, about litigation finance, about arbitration funding, what it is, what it works, how it works? There's already thinking about how to treat this as an asset class, as a financing solution. So, in terms of mindset, India has completely leapfrogged every other jurisdiction that I can think of in Asia. But you don't hear people talking about legal finance like that in Singapore and Hong Kong at the time. So this is why it's very interesting for us. Now... So, here we have looked at a number of assets or different manifestations of legal risks. So, we've looked at funding arbitrations, we've looked at funding Indian Parties in claims in various jurisdictions.

We have looked at arbitral awards, way to monetize them, because what we do is effectively putting a price tag on the enforcement risk, where we will take over the enforcement risk from the award creditor. So, we've looked at that. And it's... For as an international funder without a presence in India, I mean the challenges are very different. First of all, it's a much more restrictive market in terms of foreign exchange, so we have to navigate firmer issues. The regulatory framework is very different. So those are the things that we did not necessarily have to think about when it came to jurisdictions like Hong Kong, Singapore. So we're much more focused on the legal aspects of litigation finance. But the experience here that we have had is, it's much more about the regulations and the structuring of deals. So, that is very... that is one big difference that we've found.

RAJAT AGRAWAL: Yeah, it's actually interesting that you mentioned the Hindustan Construction deal, because it also takes one to the earlier question that you asked Deepto on treating claims as an asset class. So, in that particular deal you had a situation where you had a certain proportion of claims and certain proportion of awards moved to an SPV, and effectively treated as assets that were backing you. There was no other security, it was just the receivables from that, from those particular claims and awards which when realized would form the cash flow for the funder.

DEEPTO ROY: Oh, thanks. Thanks, Quentin and Rajat. Amita, I'm going to bring you in now and probably talk about a couple of the risks that financiers see in the market. One is around delay, two is around procedural interference. But before that at a more broader level, how do you see third-party finance as a player in the litigation market? Do you see.... you know, I started by saying there are some sort of negativity associated. Are you taking advantage of, let's say a Plaintiff's misery in some form or manner, or are you actually, you know, sort of creating something which, in a sense, might balance the litigation process? So how would you see the role of third-party finance in, you know... and we're talking complex commercial disputes in most cases. But what is the role that you see? Does it impact the economics? Is there a positive or a negative impact? What sort of... What would your thoughts be around that?

AMITA KATRAGADDA: So, good question Deepto because like you said, you know, third-party funding as we see it today, which we're discussing in the context of sophisticated third-party funding on complex commercial disputes. That seems to be in the organized sector as what I would call it, that seems to be a very nascent emergence in the Indian market, and we're expecting that the next decade will look very different on it. But the construct of third-party funding or what you know, in the native is called *Muqadmah Khareedna*, you know, that has been around for centuries. It's been centuries and you speak to every moneylender, they have taken some exposure or the other where the asset that they have put that investment into is, some claim before some court. As a result, there has built up this negative association that mostly the Plaintiffs who are... you know, who go to these usurious moneylenders, who take a stake in the claim, have been in the context of people who had no other option and needed to do this. And so, I would say that there is that hangover that perhaps continues to perceptibly be found, even when we hear conversations come up where benches of the Supreme Court or the High Court as a passing reference would say, "Oh, we do not want to encourage that behaviour." But that's completely different context from the context that we are discussing in this room today, which is about sophisticated players with big balance sheets and complex commercial disputes, looking to monetize an asset class by external funding, which is, you know, it's a completely different conversation, and the first step would be to separate the two. That's part of the exercise. It needs to be done, it needs to be presented in that particular format. And I think the law is also evolving to make... to deal with some of the unpredictability

TERES

that was historically... significantly set the Indian market back on third-party funding horizon, and Quentin will probably speak about that as well.

But everybody is like, you know, fine, you may get a great award, but enforcing it in India is going to be a nightmare, or it will take 15-20 years and I cannot price that kind of risk, and that's a that's a reality. What the government and what the legislature is trying to do is, to fix it by way of actual amendments. And what's happened post 2019, we see a huge trend where, after you get an award under the Section 34, if somebody was to challenge it and you want to stay the award, you have to deposit 100% of the awarded amount in the court. And you get to withdraw that 100% of the awarded amount by just providing a Bank Guarantee. Now you see what that does, right? It takes away the unpredictability of whether you will be at the end of this challenge, able to recover this money or not, because you're in the money at the start. And I think that has fundamentally altered the perception, and I would say both sides, both from a funder perspective as well as from a client's perspective. As Rajat said that the moment you have an award, the client is looking at it differently. They say, "Oh, now I have an award, it's just a matter of time." And even from a Funder's perspective, it is a function of once, I get to the award, then I know at the initial stage of somebody's challenging the award, I will be able to take 100% of the awarded amount, and I will be in the money for it, even though I would have the residual effort of having to run through that challenge, which is multiple layers. So that's one part of it.

The second part of it is that even after the award, the fact of the matter is that we have several... several unknowns because you could challenge the award on a number of grounds. And as opposed to many other markets, including for instance, Singapore or London, the Indian jurisprudence around when a Section 34 can be actually successful by a person who's challenging to set aside the award, is not as predictable. There are benches that have set aside several Section 34... set aside several awards that are Section 34 and that is raised a lot of issues on being able to attribute a challenge... attribute a probability to what it may mean once you've got an award as well.

And then there's the third part of this limb, which is the allegations of fraud. We've seen in India, we've seen recent jurisprudence coming out in the last five years, where an award has gone all the way to the Supreme Court has been confirmed, all the set aside efforts had been set aside... had been rejected. And then at the Section 36, there was which is the enforcement side of the award, a sudden introduction of a fraud allegation, and then that going multiple layers again. So, you would have... you could potentially after you get the arbitral award, which itself could be a five-year process, you may run through another 4 or 5-year process. So in

Delhi, for instance, we are doing final hearings of Section 34 petitions right now, where the Section 34 petition was filed in 2018, right? So you have seven years over there and then another... you know, there will be a Section 37 which is an appeal to the division bench and then an SLP, so that's another maybe another 3 or 4 years that you could add up on it. And then you come back and then there's a fraud allegation. So I think that unpredictability is something that needs to be addressed.

I'll just make one final comment, that this unpredictability is coming because... not just because the statute allows for a challenge to be made, but more because there is, right now, a trust deficit on arbitration, whether it's coming out of the June 24th circular that the government issued where the government said we are opting out of arbitration, or it's a larger concern that, you know, arbitral awards may not be free from influence or external aspects, that trust deficit is causing courts to say I may have to look into this award. You know, the hands-off policy, the pro-arbitration policy is not being applied because of a genuine concern or an apprehension by the judicial system that the arbitral awards may or may not be aboveboard, and that is something that is requiring them to consider it a little more. So when we're thinking of the post-award related aspects, you will have to think about the journey to get to the award as well as part of that overall perception on how you may end up making it into an monetizable asset.

DEEPTO ROY: So, I think, and we'll come back and double click on some of these aspects. But I think the point that you make about trust deficit and the arbitral processes in general... You have Justice Nariman making a statement that instead of our Section 34 have a full-fledged appeal in courts with arbitration, and that does seem to take away from the fact that everything before that or has been intended, as you know, sort of... as making arbitration the most legitimate form and courts to interfere less. But we'll come back on that. But maybe, Quentin, bring you in at this point, is that something that you see in other jurisdictions or do you see the arbitral process, maybe in Singapore, as being obviously a far more, you know, structured process? And segueing from it, maybe just talk to us about, when you look at an award, what are the kind of things you look at? What are the good and the bad? What would you walk away from?

QUENTIN PAK: Yeah, so Amita brought up a very interesting point which is unpredictability. Now, I think that is probably the most common reason that big companies cite when they use legal finance, is for someone to share that risk with them. Now, the... And that's where it's the risk for us as a business in funding litigation proceedings disputes, that's where it comes from. Because when we look at the merits of a case, as we all know as common

TERES

law lawyers, the case law only stands until there's a judge that says, "Well, actually this shouldn't be the law anymore." And that's the risk that we bear as a funder when we finance a case. So, I mean in India, I think that is something that we are still monitoring. I mean, I can't say we're completely comfortable I mean, after decisions like ***DMRC*** for example, I think that took everybody by surprise. Now, then the other point on when... so answering the question of what considerations are more relevant to Indian assets when we look at them, the challenges to award is a big one. Now, I'm of course the least of an expert among this panel to comment on Indian market practice. But if we look at why Parties challenge awards, obviously there is the element of okay, let's try to prolong this for as the time that we have to pay for as long as possible. But what causes that? Now if we look at from the perspective of an award Debtor, why would I want to challenge an award? First it's okay of course I don't want to pay, I don't agree with the outcome. But little things like award interest, post-award interest. If... and this is something that Arbitrators relatively speaking, pay a lot less attention to. They just say okay, the award interest is 8%, which is something that people, I don't know, tend to use for I don't know for whatever reason, but they do not take into account who the award Debtor is, at what interest they fund the business at, what is the prevailing market interest rate? So all these things matter because if I were an award Debtor, the interest against me is 8%, but in the capital markets, I fund at 20% and it's the next... the rate cycle, the next move is going to be increasing interest rate. What would I do? As any reasonable businessman, I would try to not pay because it's a cheap form of funding for me. So, a lot of these things play into why Parties challenge awards, but that's a bit off topic. So, I think for India, that's the biggest challenge for us, is isn't so much the merits, isn't so much enforcement *per se*, but it's the economics. So... And people always comment on pricing, how come you take however many percent? I mean it's we're publicly... we have publicly disclosed our IRR across the entire global portfolio, tends to be between 25 and 30 percent. But that's 25 to 30 percent IRR, and those of you familiar with investment metrics, I mean, that's time dependent. So of course, if the duration goes on for years, five years, 10 years to achieve that kind of IRR, you would need very different pricing. So, I think the main challenge for us in the Indian market is really... it comes down to the duration of the proceedings.

DEEPTO ROY: And Amita, maybe your views on has sort of... There has been legislation which has been intended to address, in particular in arbitration, the timing issue. What has been the practical experience? Has it actually shortened timelines or do you think that it's still sort of work in progress?

TERES

AMITA KATRAGADDA: See, this is a fairly new... I mean, we've seeing the arbitrations now play out under the new regime. One thing for sure that it has given some foothold to a Claimant to drive the Tribunal to work in an expeditious manner. I think historically, you did not have that leverage. And because of the legislative change, there is some basis for a Claimant to say that if you do not run this in an expeditious manner, I will not consent to the extension of your mandate. And that itself drives some amount of, you know, change in behaviour, and we're definitely seeing that Tribunals are conscious that they need to meet certain timelines, etc. So I do think that it's definitely helping, but that's only helping you till the point of getting the award and the post-award complications is a separate aspect. But as I mentioned post-award at the first hearing, I mean, we've been in matters where in the last... I would say in the last six months, I have gone up and received a 100% deposit on the award, you know, in matter after matter in the last six months. So, I think a lot of the unpredictability goes away because you're in the money. And those are things that have fundamentally shifted the dynamics and we're going to see how that will play out in a funder's mind and how that will play out in the overall cash flow aspects of it.

It also takes away some of that incentive that Quentin was talking about, that why does a Debtor not pay? He doesn't pay because he has an 8% post-award interest to be paid under the award, but in the capital market he has to borrow at 20%. So it's in his interest to delay the payout. But if at the Section 34 stage, you have to deposit 100%, it incentivizes you to also make an effort of should I pay 100% deposit and pay lawyers to carry this from Section 34 to Section 37. You know, the commercial alignment changes and that is the that's the basis on which we're hoping that the overall approach of taking every case all the way till Section 34, Section 37 and SLP will follow okay because of that restriction.

DEEPTO ROY: Thank you. I'm going to stay with you, but I'm going to change the theme slightly. Let's talk about funding and what has been your experience? Is it a conversation that happens with your clients? Is it something that you see in practical situations has there been an increase in that conversation? So, that's part one of the question. Second part is when you have these conversations, what are... what would be the things that you look out for when someone says that, look, I want to get this case funded, what would be your first sense of what is a fundable case?

AMITA KATRAGADDA: So great question, Deepto, and I think first I'd say there's a kudos to the General Counsel community. I think they have really taken on this role quite differently. They've taken on the idea of being sophisticated partners. You know, historically our clients were the CFO and his office and everybody you know, the CEO, CFO, the Managing Director would run high stakes litigation. There's a lot more influence being laid out by the General Counsels. And to the extent that they're able to support cash flow management, including through third-party funding and other kinds of, you know, funding arrangements, which will ease up the impact that a litigation could have on the cash flow of the company, I think they're completely open to it. So, I would say that that's a conversation that they're willing to have, they've educated themselves, they've raised the level of being able to engage in that conversation quite, quite strongly.

When do the conversations actually happen? Well, to be frank, they actually happen in those situations where the case itself is a 50-50. Then they want to underwrite their risk by bringing in sophisticated funders, and you know, that's the time that they're looking to actually ally some of this. So I think that 50-50... And in that there is a fundamental tension between the funder who wants a great strong merits case and the Party only wants to get somebody involved when the case is not that clear, you know. The other place that we see this happen a lot in terms of conversations is where you have a very strong case, but you don't have the cash flow to support actually realizing that. So, it's in those situations when you have a stressed cash flow, but you have a strong case on merits, that again you may be willing to... Again, here, there is a commercial aspect to it; there is no... None of this comes out of, you know, conceptual involvement people want to know what is the commercial upside. You know, it's like, where's the money? Show me the money that's the angle that would that somebody would come with. And so when you have a strong case and cash flow which is tight, it will go back to what is the cost of capital for you in the market. Because if you are able to raise capital at 10% and a funder is asking for a 30% return, it makes no sense to go to a Funder, because you say, I'll raise it at 10% and I will... you know, I'll get the benefit of the long- term upside on the award. But if you are raising capital at 20-25 percent and you get a funder who still wants about 20 to 30 percent or maybe more, you know, you're willing to explore that conversation with a little more...

So, I think (a) are conversations happening? I think yes, the conversations are definitely happening. I think as a matter of how frequently everybody is having the conversation, but nobody is really jumping into it yet, because people would prefer to be number 2 or number 3 in line, they're waiting for number 1. See, we've talked about ***HCC***, which is the one case, three times in the panel already, right? So it is like we have this one... And that too they followed a different structure where they just sold the sold the awards as if it was an asset. So it wasn't real third-party funding as we're talking about now, which is a slightly different model. So, I think once there two or three success stories out, it will become a regular conversation. That's my expectation.

QUENTIN PAK: So maybe just to add to that, to share with you our experience outside India, often the people who show the most interest in funding and it's surprising, it's actually banks. So we speak to banks and they are not short of money, obviously. And the reason why they show a lot of interest is there's only so much budget that they could apply to litigation, to asset recovery. And what happens to the rest of the claims that they have? I mean, they would just be written off. So, it's they're leaving money on the table. So, when we have those conversations with them we say, look, all these other claims that you have, why don't we give you a risk free option? We fund them and if we're successful you get something back. So, to the point here being it's very much down to the considerations of the organization, the individual department or even the actual person you're talking to, because a lot of the times some... the situations that we find people are receptive to funding, often is because they themselves have a budget constraint within a big company, or it could be as simple as, oh, I want to look good, I want to do something innovative within the bank, and I'm in the legal department and that's the only way I can show that I'm kind of progressive in thinking. So, we don't just assume that people would not be interested or would not need to use funding, because yeah, our experience is that yeah, there are surprising opportunities.

DEEPTO ROY: Thanks.

AMITA KATRAGADDA: I'll just make one additional comment, that in India where we are finding the most amount of appetite to even agree to a 30-40 percent funding economics, is individual litigants. Because you know, individual cash flow does not actually support good and for instance, when you have a big succession dispute ongoing, it's usually that the person who's the Claimant is not the person in control of the cash law or of the company. And so, they have a great case they will win, but it's like 15 years later and they just don't have the funding for it. So, I often do comment that third-party funding has a big role to play in the rule of law itself. You know, you're allowing... It's actually a method of access to justice, because somebody who has a great legal right should not be able to enforce such a legal right just because they don't have the paying capacity to stay in long-term litigation. And being able to get a partner like a third-party funder who would come in and participate in that sort of, you know, weird funding dynamic really does take the pressure off them, helps them. You know, they get they also get the benefit of the sophistication that the funder brings on how you run the case and strategy and all of those aspects, which frankly, overwhelm high net worth individuals who are keen to run down this process.

DEEPTO ROY: So maybe Rajat, I bring you in at this point. I think the two sort of themes that have come from what Amita and Quentin have said. One is the question of liquidity and having funds available to have the liquidity to pursue a matter. The second is the question of management and asset management as you know, sort of... when you look at a claim as an asset, you have to manage that. So you have to coordinate with your legal Counsel, you have to coordinate, and in many cases, in multiple jurisdictions. So do you think that management bandwidth is a reason why someone would look for third-party funding?

RAJAT AGRAWAL: I'll actually add a third spin to it, which is, look, some of these public agencies, state agencies which have a lot of receivables out to many of the contractors, etc., where, you know, we briefly touched upon the delay that takes place five years to a claim stage maybe and then another 4 or 5 years. But you keep on appealing because you don't want to pay or you don't want to be seen to be... you don't want to be seen to be favouring the contractor from vigilance perspective, although it may actually not be in favour of your own government department because your government department cost of borrowing may be, you know, 6-7 percent and you're paying interest at 12%, which the final award will carry, typically. But the intent being to defer delay, even if you file a claim and if you substitute yourself for managing that claim better, they will be more delays created for payment by the state agency on the grounds that this substitution is illegal or void and malafide, and you will have more delays in that. So, from that management perspective also, it'll be a problem. Plus, there are going to be many nitty-gritties where you will actually have to rely on the Claimant, the contractor for some technicalities which you won't know. So, you want him to have a skin in the game, you don't want to take over the entire claim yourself and you want them to continue to be liable for that as well. From both these aspects, I think. These practical aspects take on much more importance besides the concept of liquidity and otherwise.

DEEPTO ROY: So I'm conscious of the time and I do want to keep some time for audience questions. But maybe I'll just run through the panel once about a couple of things. One is, is India waiting for a first mover? Is there some kind of a first mover disadvantage that we are looking at, that everybody is waiting for someone else to do it? And then, you know, sort of maybe get all three of your views on it. And then, I'll end with the last question or a request for comment. If there's one thing that you think should change in the ecosystem as it exists today, what would that be, from the obvious perspective of creating this industry or, or encouraging this industry? Rajat, would you...?

RAJAT AGRAWAL: Sure. So, I think one interesting again, which Amita touched upon was the provision of placing the money in the court when you're taking a further appeal. I even wonder whether there could be a further disincentive, rather than just placing money, but actual penalty which is applied on the Appellant, the Beneficiary for appealing frivolously, whether that would be a sufficient disincentive, you know, to change the way this whole thing progresses? So that's one thought which I have.

DEEPTO ROY: Quentin?

AMITA KATRAGADDA: I have a long list of things I need to change.

QUENTIN PAK: To answer the first question that Deepto, you asked, I think that India as a market, definitely is ripe for a legal finance provider, but not so much for those who are offshore. So, we talked about when you challenge an award, you can pay money to court and you can get the money out using a Bank Guarantee. That's not something that international funders, non-Indian funders, can necessarily take advantage of. So, we looked at that to get a Bank Guarantee without much of a presence in India, but pretty much the cost is prohibitive for us. So, rather the mechanism is there. The opportunity, I think, is more relevant for, let's say, a domestic fund or domestic financier because these are things that they can take advantage of. So, that's one aspect to it. The other one is obviously being offshore; we're not in front of people, we're not... we're less familiar with financing issues that Indian corporates face. So, I think having someone with much more market familiarity and be able to take advantage of the various mechanisms, that actually come from the challenges that funders face maturation. I think that is what I see as a real opportunity and that can unlock the market.

DEEPTO ROY: Thanks Quentin. Amita?

AMITA KATRAGADDA: So two quick points. I think on the first mover aspect, I think it will be about the proliferation of the funder's side of things. I think there are several litigations, which litigants would be keen to proceed on this, but you'll need to really build out the strength of the funder side of how this will probably run. And one thing I would change is, it's almost like, you know, it's the right word to use in the 2020s, which is 'data'. I think just increasing the amount of data around success and times etc., will allow everyone, including clients to price their risk better. You know, it's not just Quentin or you coming and saying, "No, no, this is how I have to price it because there's this probability", because the client is not able to perceive or, you know, have an understanding of all of that. You have it because you have proprietary knowledge of it, so you can actually understand that this is how you will have to price it. But I think you'll have to you'll have to democratize that information to be available to the broader market so that the pricing market actually clears. You know, there's information symmetry and that's when... So, one thing I would change is, I think, a lot more data and somebody working through that data to provide some specific inputs to litigants on what they should anticipate could be the outcome of their case.

TERES

DEEPTO ROY: Thanks, Amita. And you know, sort of the theme of data, I think that's, you know, we can talk a lot about that. That's one of the fundamental pillars, I think. And in a sense, it also addresses questions like the trust deficit, right?

AMITA KATRAGADDA: Yeah.

DEEPTO ROY: I mean, you have sort of verifiable data on who is the Arbitrator, what is the time you're taking, what is the claim? At least, you know, sort of get to that and I think India requires that to happen. But we have about 10 minutes left in the session, so I'm going to open this up to the audience for any questions that you have to the panellists. Yes? Please identify yourself, your organization, and if you have a specific panellist, you are asking a question to, that panellist as well.

RICHARD HEALEY: Thank you, my name is Richard Healey, I'm a senior partner with Gateley PLC in London and I specialise in cross-border asset recovery. Yes, thank you. It was very interesting to hear the panel's various different perspectives on things. Just to echo something that Quentin said. So my background is I've specialized in asset recovery, but particularly with the contingent funding element over the last 20 or so, 20-odd years, and I've just completed a major Indian case in the High courts in London, a 12-week trial born out of the failure of ***Winsome and Forever Precious.*** We are currently waiting on judgment from her Ladyship, so I need to be careful what I say, but one of the experiences we had in relation to that case and just to give some context, it was a 1.3 billion non-performing loan position where there was a consortium of Indian banks who were left behind with a debt position from a failed corporate vehicle. One of the difficulties we had with that, and we financed that case with a US funder. There was, what I would call an anti-embarrassment concern on behalf of the state-owned banks here in India, where they didn't want to finance the recovery action themselves, in the way Quentin was talking about, because they were concerned about pressure on their legal budget, but nonetheless they were concerned about the prospect of entering into a funding arrangement where they were seen as almost giving away too much of the upside. And this was particularly a factor given that these are state-owned banks and they are public officials. And they were therefore concerned almost about this embarrassment factor, about being the ones to give away 30-40 percent of the upside in circumstances where this may get them into trouble, subsequently. And I don't know whether people on the panel have a perspective on that, but certainly culturally that's something, I've experienced in this market.

DEEPTO ROY: Quentin, do you want to take that?

QUENTIN PAK: Yeah, no, that's very interesting. Thank you for sharing with us. I think I have two reactions to that. One is, another reason why people use funding, a lot of the companies is also because their mandate restricted, and I see that in investment funds. So first, they don't necessarily have capital set aside for litigation, or they don't have the mandate to use investor capital for litigation, but also they, like you said, the embarrassment factor, they don't want to make a big deal out of the fact that the investment has gone into trouble and now there is a dispute. So, by using a funder who's going to fund the dispute, that takes some limelight off the dispute itself. So that's also one reason. The other one is the issue of pricing. I mean, I can understand, I completely sympathize with more the kind of PR perspective of having to pay away a lot of money. But one thing to bear in mind, and this is something that there is some level of misconception, is that, funding is expensive. Well, it is expensive in the absolute sense in that we take, I don't know, 20-30 percent. But if you look at the risk that we are being compensated for, and risk-reward obviously are interlinked... I mean, you invest in shares, there's equity risk premium. This is a binary... an asset with a binary outcome. Now, those who are Counsel and you're just providing opinion on the strength of the case, what is... and people often ask oh, what is the percentage of success do you attribute to a certain claim? And to me that's meaningless because there's nothing as 50% success. You either win or you lose. And I think everyone would agree that a very strong opinion people would say, oh, there's a 70% chance of success, there's 80% chance of success. And that's probably as far as a Counsel is prepared to go. Now, if you think of 80% success, what that means is... and I increase it a bit more, let's say 83%. 83% is 5 out of 6. So if I tell you that you have a chance of losing all your money, it's 1 in 6 chance of that happening, how much would you like to be compensated for? I mean, what is one-sixth? One-sixth is rolling a dice. So, if you roll a dice and one particular number comes up, you lose all your money, is that a risky proposition? It is. So, people often lose sight of the fact that it is risk adjusted and the risk includes merits, includes enforcement, includes duration. I mean, for us, especially because we're not a financial institution, so we also have fairly high cost of capital. It is possible to lose money even if you win a case, just because of the funding costs. So the point here being nominally, it could seem expensive, but when you think about what that pricing represents, it is not. But of course, I mean if you look at it from a PR perspective, it's impossible to explain that to everybody, to the public.

DEEPTO ROY: So maybe Rajat, also get your perspective because one of the points I think is an important one, that given your, you know, sort of experience with financial institutions, how would they perceive essentially saying that we are giving away a large part of our claim to another third-party, how does that impact their decision making?

QUENTIN PAK: Again, I think it depends on individual circumstances and so, what I mentioned about banks being interested in funding, that's exactly what drives them. They have to choose between getting 70% back or leaving money on the table, not pursuing a claim because there's no budget. So it doesn't work for everyone, I have to say, but it's... but there are many reasons why you've... it would be yeah, it's something.

DEEPTO ROY: Rajat maybe your views on the financial institutions mindset.

RAJAT AGRAWAL: So I think there are two, three different mindsets that operate. So one mindset would be exactly who would be, you know, a cognizant of the risk of that that 16-17 percent that you talked about. There would be another mindset... And coupled with that, there would also be a thought that what is the time value of money, what is the amount of management time that is going in monitoring that kind of an exposure and do we, you know, take a call on that? The other aspect would be the example which I gave where, oh no, it's converted into an award, and if I sell it at a discount, then you know, there could be a vigilance angle to it. I could be questioned as to why I sold a discount when I could have got full money for it. It's just easier to let it take its own time and come.

DEEPTO ROY: Thank you, Rajat. Maybe squeeze in one question? I know we are running out of time. Anyone else in the audience has a question? I want to, you know, sort of...

ANUSHKA MANSHARAMANI: Thank you to our speakers for that grounding and illuminating conversation. Third-party funding is clearly no longer a distant foreign concept for India; it is a market very much in the making, and today's discussion has given us a clearer sense of the road ahead. So, thank you so much. I would now request the panel to kindly step down for a group picture, and the next session will begin at 10:30. Thank you.