

What to expect from the new wave of Litigation Finance in India?

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The ongoing pandemic already has crippled businesses across the sectors. This has led to a rise in insolvencies, fraud, breaches of contracts, and recovery Suits litigations for most businesses. On one hand, Indian corporates have witnessed a record downfall in sales and revenue, on the other hand, they are clueless about the mechanism to handle their rising litigations.

Pursuing legal claims requires money and Third-Party Funding can be the most suitable answer for this scenario where the businesses don't want to put more pressure on the cash flow and still want to pursue arbitrations and litigation to recover sums owed from debtors who may often resist payment citing economic instability.

Taking the benefit of the growing interest of Businesses in litigation finance due to pandemic many international litigation funders have decided to enter the Indian Market. Most of the observers of the industry were not surprised by this development as they knew that no player would like to miss an economy like India which has a legal market size that runs into billion US dollars.

Recently, we heard a lot about how the entry of foreign funders is building a fresh wave of litigation finance in India, and therefore it becomes important to understand what changes this wave may bring to the status quo.

Until now all major discussions on litigation finance were limited to the legality of the concept. In the last two years, top legal experts in India have unanimously agreed that there are no laws in India that bar litigation finance. This has given confidence to the foreign litigation funders to enter the Indian Market. The formal entry of the foreign litigation funders in India means the next stage discussions on opportunities connected to Litigation finance will be going multiply. The legal industry will now take this opportunity very seriously considering the commercials involved in Litigation finance.

The entry of experienced foreign funders can be a game-changer for top Law firms in India. The entire transaction of litigation finance involves three major players a litigant, a lawyer/ law firm, and a funder. Partner law firms of the foreign funders based in other jurisdictions are disallowed setup practices in India by the Hon'ble SC this means the foreign entrants will have to seek the help of local law firms and lawyers to close every transaction.

Many Indian firms like CAM, Advani and Co, and **Nishith Desai Associates** were already active in the domain of litigation finance due to their international clientele and have time to time involved funders like Augusta, venin capital in discussions related to litigation finance in Indian Jurisdiction.

More Indian Law firms will try to partner with these litigation funders to monetize litigation finance opportunities. It is important to note that in this phase it is only the top law firm that practices internationally will have an advantage as these funders will initially prefer foreign seated disputes of Indian Parties.

The current wave although is a ray of hope for Indian businesses to turn their legal department from a cost centre into a revenue centre but there is not much to celebrate for most of the businesses as the focus of these funders will be offshore arbitration and litigation of Indian Parties. The Wait to fund Indian seated arbitration and litigation will be a little longer and it will happen only with the birth of local litigation funders. India will also witness the growth of many local ventures and TPF consultants who would race to reap the fruits of litigation finance.

Another significant development in this phase is the foundation Indian Association for Litigation Finance (IALF) to ensure growth in the Indian market and increase confidence among Indian consumers Indian Association for Litigation Finance (IALF) is formed to self-regulate and promote knowledge about litigation finance in India. This Association is inspired by a similar International body Known as the International Legal Finance Association and Association of Litigation Funders. IALF till now has been joined by top litigation funders such as Omni Bridgeway, Phoenix Advisors, and Profile Investment.

Litigation Finance in the era of the pandemic has also become one of the preferred modes of Investment in countries like the UK, US, and Australia. Investors are withdrawing money from stocks and the capital market due to fluctuations in the market. They are looking for new asset classes to invest in where their money is safer. Litigation finance has turned out to be a better option for these investors as the returns from Litigation finance are independent of market performance. Indian investors may also like to explore litigation finance as a new asset class.

This new wave is certainly going to be pathbreaking for the development and growth of litigation finance in India. The new development will create new opportunities for investors, law firms, litigants, and consultants but will invite new challenges for funders and litigants like financial treatment of litigation finance proceeds, finding investable cases, reasonable objections from the Government Bar council, and the judiciary.