

News

Is third party funding of disputes about business or justice? Legal experts weigh in at SIAC Debate

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SIAC debate, Mumbai

Bar & Bench

Published on : 02 Oct 2023, 3:33 pm · 5 min read

An event organised recently by the Singapore International Arbitration Centre (SIAC) in Mumbai saw legal experts weigh in on the merits and implications of third party funding of disputes.

The motion for the Oxford style debate was “***the House believes that third party funded disputes are about business not about justice.***” The debate, however, boiled down to a conflict of opinions over how the motion itself should be interpreted.

A common aspect that the speakers on both sides agreed on was that third party funded disputes can lead to justice.

Third-party funding in disputes levels the playing field

Speaking for the motion, Barrister at Twenty Essex **Rishab Gupta** quoted John Rawls' definition of justice to make his point. Rawls, Gupta recalled, described justice as ensuring that people have similar opportunities and resources.

"That is what third party funding does, not in all, but in most cases. It levels the playing field. It unlocks disputes that could have not been brought."



Rishab Gupta, SIAC debate

On the other hand, he also noted that third party funders could also deter frivolous claimants.

To cite an example, he referred to the US case of *Pearson v. Chung*, where an administrative law judge unsuccessfully sued a dry cleaner for misplacing a pair of pants in a \$57 million dollar suit.

The case, which was ultimately thrown out of court, was funded by his family and friends. Gupta pointed out that if Pearson had gone to a third party funder instead, he would have been told exactly what the judge said, that *"this is a bad case, don't bring it."*

To sum up his position, Gupta argued,

"Third party funding is a business. But in the pursuit of that business, it may serve justice as well."

Third party funding is not 'only' a business but also about justice

Partner at Cyril Amarchand Mangaldas **Shaneen Parikh** started her arguments *against* the motion by attempting to contextualise the motion.

She promptly set out to question whether Gupta's interpretation of the topic was accurate, or if his remarks aligned with the side of the debate he was on.

"The motion does not say that this house believes that third party funded disputes are 'only' about business, not justice. Therefore, I do not need to prove when arguing against the motion that business has absolutely no role to play," she said.



Shaneen Parikh, SIAC debate

She proceeded to highlight how third party funding could help *Davids* battle *Goliaths* in legal battles, and in turn, lead to justice.

“Third party funding is not ‘only’ a business but also about justice. On that basis, the motion for must fail,” she said.

Third party funding of disputes needs regulation *because it is a business*

Advocate **Somasekhar Sundaresan**, who spoke in *favour* of the motion, focused on the need to regulate third party funding, *because* it was a business.

“Funding comes with strings attached, with a view to obtaining returns. It's a business activity that needs regulation,” he said.

He also challenged Parikh’s interpretation of the motion, commenting,

“The proposition is ‘third party funding is a business, it's not about justice.’ One could formulate a ‘not only’ or ‘but also’ theory or a ‘David versus Goliath’ theory, where the poor, indigent, litigants get funding from the markets. As someone who knows a little bit about market regulation, my endeavour would be to show you that funding follows prospective success.”



Somasekhar Sundaresan, SIAC debate

He echoed Gupta's position that third party funding of disputes had elements of business as well as justice.

"We are a spiritual country in India. We have temple towns. Justice is like a temple. But the path to the temple is paved with shops, vendors, businesses. Third party funding is a shop in the path to the God of Justice. So let's make no bones about the fact that third party funding is a business," he said.

Third party funding is first and foremost about justice

Senior Advocate **Ritin Rai** in his arguments *against* the motion said that his opponents had redefined the motion, as expected from debaters when faced with an *indefensible* motion.

"I have never heard of an interpretation where a 'not' becomes an 'and,'" he added.

He said that his opponents were shifting the focus away from the practice of "*third party funding*" and placing undue emphasis on the "*funders*" alone.

"They want you to forget about the parties that seek justice, the counsel and experts and participate in that justice delivery process, arbitral institutions and, most of all, the adjudicator who delivers justice. They would simply have you focus on the third party funders as the only protagonists in the plot," he argued.



Ritin Rai, SIAC debate

He also asserted that a dispute that is otherwise about justice does not *transform* into something that is about business, just because a party seeks to fund his case through a third party.

Further, he spoke of how business itself is not always viewed as only being driven by profit.

“The point is this: third party funding is first and foremost about enabling justice for one party that otherwise cannot avail it. If third party (funding) doesn't achieve that, it fails - first, as an idea and then, inevitably, as a business,” he explained.

In the rebuttal round, Gupta argued that if the opposing side's view were accepted, he would have to argue that *“third party funded disputes are solely business”* and *“will never serve justice at all.”*

“How can that ever be? All of us are in the business of the practice of law. Would any of you ever admit that in serving your clients, in practicing that business, you are not also, in some shape or form, serving justice as well?” he asked.

“Put a few lawyers in a room and you have debates about how to interpret what we are debating,” commented Sundaresan in a lighter vein as he began his rebuttal.

He maintained that third party funded disputes involve elements of business rather than just being about *romantic notions of justice*.

The judges for the event were Managing Partner at DSK Legal **Anand Desai**, Khaitan & Co Partner **Ravindra Junjunwala** and AZB & Partners' Managing Partner **Zia Mody**. They eventually declared the opposition side comprising Rai and Parikh as the winners of the debate, although they agreed that it was a close call.

Senior Advocate and Member of the SIAC Court of Arbitration **Darius J Khambata** delivered the closing remarks for the event.

The debate was moderated by IndusLaw Partner **Sushmita Gandhi** and Head of the Singapore office of Nishith Desai Associates **Ashish Kabra**.