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# Non-Disclosure of Agreement in Third Party Funding

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**ABSTRACT**

*An agreement to protect the disputed party's data from being leaked to third parties was developed because the third party used to support the party in dispute in cases where that party's chances of winning were likely to be very high. As a result, the party used to disclose to the third party every detail of the dispute. Confidentiality and protection: the NDA serves to safeguard ideas from being stolen or shared with third parties, as well as to maintain the confidentiality of information. TPF is not commonly permitted in India due to the observation that there is no prohibition on third parties funding arbitral proceedings and receiving payment following the arbitral award's conclusion. Throughout many Indian states, including Maharashtra and Gujarat statewide Pradesh State of Andhra Pradesh The Code of Civil Procedure 1908's Order 25 Rule One was revised, allowing courts to recover fees for litigation by asking financial parties to join parties and depositing expenses in court. As a result, Odisha and Tamil Nadu accepted third party funding. These aid in both parties' adherence to the guidelines and standards set forth by arbitration bodies, which may have unique demands in relation to secrecy and third-party funding. You have to demonstrate to the code that you have suffered or will suffer a reparable loss or injury in this situation. The party who receives the secrets must agree that the harm caused by their unauthorised use is irreversible.*

***Keywords**: Non-Disclosure Agreement, Third Party Funding, Funded Parties, Party Funding Arbitration & Litigation.*

## I. INTRODUCTION

Non disclosure agreement is a legal contract between a party to the dispute and any other third party who will fund the party to the suit during the proceeding of the matter before the Arbitration or any other Alternative dispute mechanism. The legal contract protects the sensitive information related to the funding that has been shared by the third funding party to the official party to the suit. In TPF process the third party pays for the legal expenses, Litigation fee of the party to the dispute and third party will cover their expenses when the

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party will receive any monetary amount in the form of damages or compensation.

When a party had a high chance of winning, the third party would help them. As a result, the disputing party would divulge all the details of the case to the third party. For this reason, a non-disclosure agreement was made to help the party in dispute keep their information private. Inadvertent bridges are also protected by this agreement, however violating the NDA agreement could have serious legal repercussions, such as litigation, fines, and even criminal prosecution. Maintain the confidentiality of other people's business or legal plans while making sure that the funder only receives pertinent information.

## II. The role and significance of non-disclosure agreements in third-party funding for legal disputes[3]

The third party used to assist the party in dispute in cases where that party's chances of winning were likely to be very high, and for that reason, that party used to reveal every aspect of the dispute to the third party, which is why a non-disclosure agreement was developed to assist the disputed party in protecting their data from being leaked to any person. When the party in dispute wins the lawsuit, the third party benefits because he or she receives a full reimbursement as well as a portion of the benefit that was accrued after the party in dispute won the case.

Non-disclosure agreement: when one party enters into an agreement with another party vowing not to expose any information linked to a legal issue in which that person is a third party. Non-disclosure agreements are broadly classified into three types: unilateral, bilateral, and multilateral. Non-disclosure agreements in third-party funding typically include the names of both parties, the type of information, a penalty clause (in the event of a breach), in which the amount of the penalty is specified before the third party provides any financial aid to the party in dispute for any subsequent disputes that may arise as a result of the settlement, and a dispute resolution.

It should be done with 500 rs. stamp paper and a notary of 50-100 rs. In addition, each party should provide witnesses to avoid any additional disputes that may occur as a result of the agreement. The significance of analyzing NDAs with TPF To provide enough financial support to the party who is unable to pay the court's fees. For bringing justice to individuals who couldn't afford it due to a lack of financial resources. NDAs are commonly used in TPF, particularly in arbitration cases; however, NDAs in the arbitration process are not legally

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[3] https://legal.thomsonreuters.com/en/insights/articles/4-things-to-know-about-non-disclosure-agreements.

recognized, but they do serve to retain information provided during the funded process. It is legally enforceable under contract law.

## III. Purposes and functions of NDA

There exist two purposes of NDA which are confidentiality and protection confidentiality of information and protection of ideas from being stolen or share with any other person.

In case of breach of NDA agreement could result into legal ramification which includes law suits financial penalties and even criminal charges in fact accidental bridges are also covered under this agreement and the functions of NDA are:-

**A.** It distinguishes the line between confidential information and the information that can be shared and the parties need to act accordingly in case of breach of these agreement parties will be punished accordingly.

**B.** By signing non disclosure agreement creates legal obligation between the parties and the parties are abide by that and in case of breach of contract parties used to suffer from penalties.

**C.** Non disclosure agreement also protects patent rights of those which are pending in nature and related.

## IV. Applicability of TPF in India

TPF is not generally legal in India because it was observed that no restriction on third party financing the arbitral litigation and getting repaid after the outcome of the arbitral award. TPF can be an Individual, any entity, The Bank, Insurance company etc. In India many Judgement by the honorable Supreme court and some High Courts has highlighted about the benefits of Third party funding and its need in the Indian legal field. But there are certain restrictions are imposed on it that is no Advocate can be the third funding party to his client in any suit because it will be a violation of standards of Professional misconduct and etiquette as prescribed by the Bar council of India.[4]

TPF is an agreement so it will be covered under the Indian contract act of 1872. Under section 23 of the above mentioned act that if the funding is found to be against the public order then the court can declare that funding as illegal and the court can further implement a limit or bar to TPF if the funding is not for a bona fide intention and if the funding is with the intention

[4] Sourabh bindal, Siya singh, Exploring the need to regulate third party funding in India, FOX mandal solicitor andadvocates, , https://www.foxmandal.in/exploring-the-need-to-regulate-third-party-funding-in-india/.

 

of gambling or the agreement is unfair or invalid.

## V. THE RISE OF TPF IN LITIGATION AND ARBITRATION

In a case of ***Tomorrow sales agency private limited versus SBS holdings***, 2019[5]judgement of Delhi High Court came of a single judgement bench where it was specified that If in case arbitration agreement is silent on the adverse cost, then also it has to be beard by third party, but 2023 judgement came reversing the judgement of a single bench by a two judge bench that if in case arbitration agreement is silent on any part, it should not be beard by third party like If the arbitration agreement is silent on adverse costs, third parties should not bear them. Similarly, only the provisions given in the arbitration agreement should be observed, and nothing should be assumed until mentioned. Also, in ***Bar Council of India vs. AK Balaji*** (2018) 5 SCC 379 [6]India, the HonourableSupreme Court of India stated that third-party fund raising is lawful in India as long asthe funder is not a lawyer. According to the statement, there appears to be no restriction for non-lower third parties supporting the case and obtaining repaired following the outcome of the litigation. In several Indian states, such as Gujarat and Maharashtra Madhya Pradesh Uttar Pradesh Andhra Pradesh Odisha and Tamil Nadu accepted third party funding under the revision to Order 25 Rule One of the Code of Civil Procedure 1908, which permits courts to obtain costs for litigation by asking financial parties to become parties and depositing costs in court. Advok also launched a start-up in India for third-party fundraising to assist plaintiffs in obtaining finances through crowd funding, and it is worth noting that this start-up has already funded 8 legal cases.

## VI. ADVANTAGES OF NON DISCLOSURE AGREEMENT IN THIRD PARTY FUNDING[7]

**A.** Non disclosure agreement protects the legal rights of the party that other party will not leak or disclose their personal details and information to any other third party.

**B.** The mutual Non disclosure agreement makes a limit or an obligation on to the other party to protect the private and confidential information of the other party.

**C.** A mutual non disclosure agreement also allows both the parties to pursue ahead, without the fear of loosing their crucial or important data because NDA agreement provides protection to the parties.

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[5] Tomorrow sales agency private limited versus SBS holdings, 2019.
[6] Bar Council of India vs. AK Balaji (2018) 5 SCC 379.
[7] Edward A. Haman, The pros and cons of a mutual nondisclosure agreement, Legalzoom.com, https://www.legalzoom.com/articles/the-pros-and-cons-of-a-mutual-nondisclosure-agreement.

**D.** This non disclosure agreement provides protection before the starting of the proceeding in arbitration and also during the course of proceeding in arbitration.

**E.** Signing a non disclosure agreement by two parties is one of the cheapest method to protect their information

**F.** Non disclosure agreement in third party funding gives legal protection to the parties if any of the party breaches the terms and conditions of the agreement and leaks confidential information of the party then the other party has the absolute right to sue the party who has breached the agreement.

**G.** In the matter of funding to a party non disclosure agreement are a best and easiest way to build business relations and trust that the other party will not leak their information.

**H.** Non-disclosure agreement also protects the information related to the funding, funding terms, return on investment of the third funding party in arbitration

## VII. How non disclosure agreement can mitigate risks of funder and funded parties in India

Third Party Funding Agreements (TPF) Non-Disclosure Agreements (NDA) can play an important role in mitigating risks for both financiers and financiers in India by ensuring confidentiality, protecting sensitive information and providing legal safeguards. NDA can reduce these risks by[8]

**A. Confidentiality and Protection of Sensitive Information For the Funder:**

**a. Protection of Investment Strategies:** NDA ensure that the Funder own investment strategies, risk assessment methods and other sensitive business practices remain confidential. This will help you maintain your competitive edge.

**b. Protection of financial information:** Confidentiality clauses prevent the disclosure of details about the sponsor's financial situation and financial arrangements that competitors or opponents could otherwise use to their detriment.

**B. Control Over Disclosure and Information Flow:**[9]

[8] Rogers, Catherine A., "Transparency in International Commercial Arbitration," Kansas Law Review.
[9] Menon, Sundaresh, "The Impact of Third-Party Funding on the Independence and Impartiality of Arbitrators," Asian International Arbitration Journal.

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a. **Controlled Disclosure:** NDA allow funder to control the extent and timing of disclosures about their participation. This ensures that information is only shared when necessary, reducing the risk of premature or unwanted disclosure.

b. **Reduce Legal Risks:** By establishing clear terms of confidentiality, NDA can help funder avoid legal disputes arising from alleged breaches of confidentiality and thereby reduce legal risks.

c. **For Funded Parties:** Control the flow of information: Funded parties can control the flow of information to ensure that only necessary information is shared with the funder, while maintaining the confidentiality of the business or legal strategy of others.

d. **Protection of Business Interests:** NDA can protect other business interests and potentially ongoing negotiations that could be adversely affected by disclosure of TPF arrangements.

**C. Better Bargaining Power and Strategic Advantage For the Funder**

a. **Negotiation Effect:** Confidentiality can give funder leverage in negotiations by preventing the other side from understanding the funder financial obligations and strategic support in arbitration.

b. **ROI Protection:** NDA help ensure that the funder potential return on investment is protected by ensuring that the funded party can negotiate settlements without the other party knowing the full extent of their financial support.

**D. For Funded Parties:**

a. **Strategic Advantage:** Keeping TPF arrangements confidential prevents an adversary from changing tactics based on knowledge of the funded party's financial background, thereby maintaining a strategic advantage.

b. **Preserve Case Integrity:** NDA help preserve the integrity of a financial party's case by ensuring that sensitive information is not accidentally disclosed or used against them.

**E. Compliance with Laws and Regulations Sponsors and Donors**

Compliance with Indian Laws: NDA can help ensure compliance with Indian laws and regulations regarding confidentiality and handling of sensitive information, thereby reducing legal risks.

Compliance with Arbitration Rules: These help both parties comply with the rules and guidelines established by arbitration bodies, which may have special requirements regarding confidentiality and third-party funding.

**F. Manage Conflicts of Interest For the Funder**

a. **Avoid Conflicts:** By clearly defining confidentiality terms and the scope of information sharing, non-binding agreements can help funder avoid potential conflicts of interest with other investors or stakeholders.

**G. Funded Parties**

a. **Security Relationships:** NDAs can protect a funded party's relationships with other stakeholders, including business partners, customers and other funder, by ensuring that sensitive financial arrangements are not disclosed.

## VIII. REMEDIES AND RELIEF AVAILABLE IN CASE OF NON-DISCLOSURE AGREEMENT WITH THIRD PARTY FUNDING[10]

a. Section 73 of the Indian Contract Act specifies compensation for loss or damage caused by breach of contract, compensation for failure to discharge obligations similar to those created by contract, and section 74 specifies compensation for breach of contract where penalties are stipulated.

b. The indemnity and damages provision ensures that the offended party receives compensation.

c. Section 403 of the Indian penal code prohibits dishonest misappropriation of property, whereas sections 405 and 408 constitute criminal breach of trust.

d. Section 43A of the Information Technology Act of 2000 states compensation for failing to secure data, and section 72A describes it for breach of secrecy and privacy.

e. Section 55 of the Copyright Act specifies civil remedies for copyright infringement, while Section 63 mandates copyright infringement offences.

## IX. INJUNCTIVE RELIEF IN CASE OF VIOLATION OF NDA

In this scenario, you must prove the code that you have experienced or will suffer a repairable loss or injury. If the secrets are utilized illegally, the receiving party must concur that the harm is irreparable. This clause gives the receiving party with some tactical benefits, and it is a good

[10] https://lntedutech.com/blogs/understanding-non-disclosure-agreements-ndas-part-3/.

idea to provide injective relief in the event of an NDA violation. It is an additional right granted by the court as part of the remedy.

## X. Obligation of Confidentiality in Third Party Funding

In TPF one party that is referred as third party provides funds to the other party who is the party to the suit and thus in this process the whole information related to the funds and other monetary value must be kept private or confidential. When a funder makes involvement in the arbitrary proceeding then the funded party who will receive the funds will have to disclose all the details of the proceeding or the matter to the funding party. [2]

## XI. Challenges Faced During NDA with Third Party Funding[11]

The first challenge with Nondisclosure Agreements (NDAs) is ensuring that the agreement is complete and enforceable. Ambiguous definitions can cause misunderstandings and arguments, making it difficult for both sides to comprehend their roles. This is when the significance of defining confidential information becomes apparent. However, this can be challenging. It is not always clear what constitutes secret information, and it can even vary depending on the setting and sector. Take trade secrets, financial information, and proprietary information, for example; all might be considered confidential information in different circumstances. Don't forget that NDAs must follow state and federal trade secret and contract laws. It is vital to have resources available to help you navigate these technical aspects.

Establishing an appropriate time and geographic scope NDAs have a Goldilocks complex: too short, and the confidential information is not adequately protected. If the parties wait too long, they will forsake the terms. Setting the appropriate time range is a challenging but necessary balance to strike. The geographical scope is also an important consideration. It specifies where the confidentiality agreement applies and where confidential information must be protected. If the area is too small, it may not cover all of the possible sites where the information could be utilized or shared. Drafting the appropriate timeframe and geographical scope for a confidentiality agreement is critical to ensuring that it properly protects secret information and meets the needs of all parties involved.

Educating clients on NDAs. Let’s be honest. NDAs can be confusing, and your clients may

[11] Chitransh Vijjayvergia, “Balancing Disclosure and Confidentiality Obligations in Third-Party Funding”, Arbitration and Corporate Law Review, https://www.arbitrationcorporatelawreview.com/post/balancingdisclosureandconfidentiality-obligations-in-thirdparty-funding.

not completely understand the consequences of signing one. By educating your clients, you can help them make educated decisions, avoid misunderstandings and disagreements, and, most importantly, safeguard their sensitive information. Enforcement of the NDA Although NDAs are legally binding contracts, enforcing them can be time-consuming and expensive. This is due to the fact that they frequently involve secret information that is difficult to establish or quantify, and breaches can be challenging to detect. Of course, this means that solicitors must ensure that agreements are prepared and performed in such a way that they can be enforced.

## XII. Ethical implications of non-disclosure agreement in third party funding:[12]

The ethical implication of non disclosure agreement in third party funding is quiet Complex or sophisticated, it involves many concerns and principles.

### A. Lack of Transparency

Non disclosure agreement can uncertain the existence of third party funding can lead To lack of transparency between the parties moreover, the lack of information or Communication between the parties can lead to a hindrance and will impact their Ability to make informed decisions about the selection of arbitrators, strategy and Settlement.

### B. Fairness and Equality

The fairness and equality must be there among the party, here the Non disclosure Agreement can increase or create power imbalances between the parties, especially When the one party has a significant source of funding or banking but the other does not. Further, the party who has received the funding can may gain an unfair strategic Advantage and this will potentially influence the award and outcome of the arbitration.

### C. Conflict of interest

Non disclosure agreement can protect the disclosure of potential conflicts of interest Between arbitrator and funding party.

### D. Undisclosed relationship

Undisclosed financial relationships can lead to arbitrators making impulsive decisions In cases where they have an implied financial interest.

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[12] Abayomi Okubote, Transperacy and third party funding, International bar association, https://www.ibanet.org/article/BBC1C665-EE2E-409D-897D-BB31AF3A6938.

### E. Confidentiality

The confidentiality is the most basic and primary ethics of a non disclosure agreement In the third party funding in arbitration. NDA protects the sensitive information of the Parties. The only challenge is to balance the legitimate confidentiality needs of the parties with the ethical crucial for transparency in the arbitration process.

### F. Accountability and integrity

NDA can reduce the accountability of funder and funded parties by covering financial Arrangements, which can lead to ethical violations that go unnoticed.

If stakeholders suspect that important information is withheld, non-disclosure can lead To misunderstandings and questions about the credibility of the arbitration process.

## XIII. PROPOSED ELEMENTS FOR UPCOMING RULES ON DISCLOSURE AND CONFIDENTIALITY

### A. Disclosure Requirements and Transparency

**a.** These disclosures should be made to the arbitral tribunal and, where appropriate, to the opposing party under strict confidentiality conditions.

**b.** While maintaining confidentiality, there should be a framework for necessary disclosures to ensure transparency, such as the identity of the funder and any potential conflicts of interest.

### B. Enforcement mechanism

**a.** Clear enforcement mechanisms and remedies for breaches of confidentiality by funder should be established.

**b.** This could include penalties, damages, and other legal or equitable remedies to address breaches.

## XIV. CONCLUSION

The third party used to assist the party in dispute in cases where that party's chances of winning were very high, and as a result, that party used to reveal every aspect of the dispute to the third party, which is why a non-disclosure agreement was created to assist the disputed party in protecting their data from being leaked to any person. Breach of the NDA agreement may result in legal ramifications, including lawsuits, financial penalties, and even criminal prosecution; however, inadvertent bridges are also covered by this agreement. Ensure that only relevant information is provided with the funder, while protecting the confidentiality of others' commercial or legal strategies.

The scope of the confidentiality agreement and the situations in which sensitive data needs to be kept safe are both specified. Too tiny of a space can mean that not all potential locations for sharing or using the information are covered. When one side has a substantial source of finance or banking and the other does not, an agreement may exacerbate or create power imbalances between the parties. It is also possible that the side receiving the financing will obtain an unfair strategic advantage, which could affect the arbitration's verdict and conclusion.

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