



September 2025

## Supreme Court bars non-signatories from arbitration hearings, reinforces the confidentiality mandate

In a recent ruling, the Supreme Court of India (“**Supreme Court**”), in the case of *Kamal Gupta and Anr. vs. M/s LR Builders Pvt Ltd and Anr.*<sup>1</sup>, held that non-signatories to an arbitration agreement cannot be allowed to participate in arbitral proceedings. The Supreme Court reasoned that such participation would violate the confidentiality mandate under Section 42A<sup>2</sup> of the Arbitration and Conciliation Act, 1996 (“**Arbitration Act**”). The Supreme Court further emphasised that once an arbitrator is appointed under Section 11(6) of the Arbitration Act, the referring court becomes *functus officio*. The court cannot issue any further ancillary directions, since the Arbitration Act is a self-contained code and under Section 5<sup>3</sup> of the Arbitration Act, it expressly restricts judicial interference.

### Brief facts

The dispute stemmed from an oral family settlement dated June 20, 2015 between Pawan Gupta and Kamal Gupta, which subsequently formalised through a Memorandum of Understanding/Family Settlement Deed (“**MoU**”/“**FSD**”) on July 9, 2019. Rahul Gupta, son of Kamal Gupta, was not a signatory to this MoU/FSD.

Disputes arose, leading Pawan Gupta to file a petition under Section 11(6) and Section 9 of the Arbitration Act seeking the appointment of a sole arbitrator and certain interim measures on basis of the MoU/FSD. During these proceedings, Rahul Gupta filed an intervention application in both the petitions under Section 11(6) and Section 9 of the Arbitration Act filed by Pawan Gupta, opposing the maintainability of the petitions.

On March 22, 2024, the High Court of Delhi appointed a sole arbitrator, disposing the Section 11(6) petition and directed that the Section 9 petition be treated as one under Section 17 of the Arbitration Act for being decided by the sole arbitrator. The High Court dismissed the intervention applications filed by Rahul Gupta as he was not a signatory to the MoU/FSD. Despite this, Rahul Gupta and others again sought permission to observe the arbitral proceedings by filing another application. By an order dated August 7, 2024, the single judge passed an interim direction allowing Rahul Gupta and other non-signatories to be present during the arbitration proceedings, which was made absolute by an order dated November 12, 2024. Aggrieved by these directions, Pawan Gupta and Kamal Gupta approached the Supreme Court challenging the orders permitting presence of Rahul Gupta and others in the arbitral proceedings.

<sup>1</sup> 2025 INSC 975 (decided on August 13, 2025)

<sup>2</sup> Section 42A of the Arbitration Act – Arbitral Institution and parties to the arbitration agreement shall maintain confidentiality of the arbitral proceedings.

<sup>3</sup> Section 5 of the Arbitration Act – No Judicial Authority shall intervene except where provided in Part 1 of the Arbitration Act.

## Issues

1. Whether it is permissible for a non-signatory to an agreement leading to arbitration proceedings to remain present in such arbitration proceedings?
2. After appointment of an arbitrator under Section 11(6) of the Arbitration Act, whether the court can retain the authority to issue any further ancillary directions concerning the arbitration proceedings that have commenced pursuant to appointment of the arbitrator?

## Findings and analysis

### On non-signatories observing arbitral proceedings

The Supreme Court noted that while appointing the sole arbitrator on March 22, 2024, the High Court had already dismissed the intervention application. It observed that the intervenors' apprehensions regarding their properties were unfounded since they would not be bound by any arbitral award. It was further held that their participation was not necessary for adjudicating the disputes between Pawan Gupta and Kamal Gupta.

The Supreme Court clarified that non-signatories cannot be permitted to attend arbitral proceedings, since they do not fall under the definition of 'party' under Section 2(h) of the Arbitration Act and are not bound by the resultant arbitral award as the same is binding only on the parties and persons claiming under them as per Section 35 of the Arbitration Act. Their only remedy would arise under Section 36 of the Arbitration Act if an award were sought to be enforced against them. Allowing non-parties to observe the proceedings would contravene Section 42A of the Arbitration Act which mandates the arbitrator and the parties to the arbitration to maintain confidentiality of the arbitration proceedings. Accordingly, the Supreme Court held that the permission granted to Rahul Gupta and other non-signatories to attend arbitral hearings was without jurisdiction and beyond the framework of the Arbitration Act.

### On the powers of the referral court after appointment under Section 11(6) of the Arbitration Act

The Supreme Court observed that Section 11(6) petition had been disposed of by order dated March 22, 2024, upon the appointment of the sole arbitrator, leaving no pending proceedings thereafter. However, Rahul Gupta filed fresh intervention applications in August 2024 in the said petition. The Supreme Court held that once the appointment was made, the referral court became *functus officio* and lacked jurisdiction to entertain further intervention.

The Supreme Court further ruled that such concerns, even if genuine, could not justify permitting a non-party to remain present in arbitral proceedings, as the Arbitration Act does not contemplate such participation. Referring to *In Re: Interplay between Arbitration Agreements under the Arbitration and Conciliation Act, 1996 and the Indian Stamp Act, 1892*<sup>4</sup>, the Supreme Court reiterated that judicial intervention in arbitration is minimal and confined strictly to what is provided in Part I of the Arbitration Act. Since the Arbitration Act is a self-contained code, procedures not expressly included cannot be introduced. The Supreme Court stressed that even the spirit of Section 5 of the Arbitration Act prohibits courts from entertaining requests outside the scope of Part I of the Arbitration Act, and the directions under challenge were in direct conflict with Section 42A of the Arbitration Act.

The Supreme Court concluded that once an arbitrator is appointed, no further action under Section 11(6) of the Arbitration Act is warranted, and intervention by non-signatories lies outside the statutory scheme. Even recourse to Section 151 of the Code of Civil Procedure, 1908 was unavailable.

Consequently, the appeals were allowed, and costs of INR 3,00,000 (Indian Rupees three lakh) were imposed on the respondents, payable to the Supreme Court Advocates-on-Record Association.

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<sup>4</sup> 2023 INSC 1066

## Conclusion

The Supreme Court, in this judgment, has fortified 3 (three) central principles of India's arbitration jurisprudence. First, it reaffirmed the confidentiality obligation enshrined in Section 42A of the Arbitration Act, by holding that non-signatories cannot be permitted to observe arbitral proceedings. Second, it underscored the doctrine of minimal judicial intervention, clarifying that courts cannot enlarge their role beyond what is expressly envisaged in Part I of the Arbitration Act. Third, it reiterated the *functus officio* effect of Section 11(6) of the Arbitration Act, such that once the referral court appoints an arbitrator, its jurisdiction is exhausted, and no further supervisory or ancillary orders can be issued in the same proceedings.

The ruling has particular significance for disputes where non-signatories, such as family members or shareholders seek participation in arbitral proceedings. The Supreme Court drew a clear boundary. While such parties may pursue their substantive claims in other forums, they cannot secure a place within the arbitral process.

By rejecting miscellaneous intervention applications, the Supreme Court has preserved the autonomy of the arbitral process, insulated it from extraneous participation, and reinforced the legislative objective of keeping arbitration in India both confidential and self-contained.

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**This Prism is prepared by:**



**Dheeraj Nair**  
Partner



**Vinod Kumar**  
Partner



**Vishrutyi Sahni**  
Principal Associate



**Saibarath S**  
Senior Associate



**Thiyagarajan B**  
Associate



**Sahir Seth**  
Associate



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