

# Confidentiality Takes Primacy

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## Supreme Court of India Bars Non-Signatories from Observing Arbitral Proceedings

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# Introduction

In *Kamal Gupta vs. L.R. Builders Pvt. Ltd.* [2025 INSC 975] (“*Kamal Gupta*”), the Supreme Court of India addressed two apparently simple but far-reaching questions. *Firstly*, whether a non-signatory to an arbitration agreement can be permitted to be present and observe the arbitral proceedings. *Secondly*, whether a referral court that has already appointed the arbitrator(s) under [Section 11\(6\)](#) of the [Arbitration and Conciliation Act, 1996](#) (“**the Act**”) can continue to pass ancillary directions subsequent to the constitution of the arbitral tribunal.

The controversy arose from disputes between members of the Gupta family under an oral family settlement entered into in 2015, which was followed by a Memorandum of Understanding (“**MoU**”) in 2019. While the signatories sought recourse to arbitration, Rahul Gupta, a non-signatory to the MoU, claimed interests in certain properties and, consequently, wished to be present at hearings and have access to arbitral pleadings. Although the Delhi High Court declined to make Rahul Gupta a party, it did allow him to be present in the interests of [transparency](#). Notably, the decision of the High Court to permit Rahul Gupta to be present in the arbitral proceedings came after the constitution of the arbitral tribunal.

The Supreme Court rejected the approach adopted by the Delhi High Court on two grounds. To begin with, [Section 35](#) of [the Act](#) provides that an arbitral award only binds the parties to the arbitration agreement and persons claiming under them. In terms of [Section 2\(1\)\(h\)](#), a “*party*” is defined in [the Act](#) as someone who is a signatory to the arbitration agreement. A non-signatory, except in cases falling within the doctrines of alter ego or a group of companies, is a legal stranger. Permitting such a stranger to attend proceedings would be to, in the Supreme Court’s words, “*chart a course unknown to law*”.

The Supreme Court then placed particular emphasis on [Section 42A](#), added to [the Act](#) by the [2019 amendment](#), which established a statutory obligation of confidentiality on the arbitral tribunal, the parties, and the arbitral institutions. Following the [2019 amendment](#), [confidentiality](#) was regarded not only as a matter of procedural discretion but also as a substantive legislative requirement.

In this case, permitting a non-signatory to be present, even without participatory rights, was deemed a breach of this obligation by the Supreme Court.

On the second issue of whether ancillary directions could have been passed post appointment of arbitrator(s), the Supreme Court held that once the arbitral tribunal is constituted under [Section 11\(6\)](#), the referral court becomes *functus officio*.

To entertain fresh applications in the proceedings otherwise disposed of, or to give clarificatory directions to shape the arbitration, would amount to reasserting a

jurisdiction which has not been conferred by the legislature. Put simply, the Apex Court was of the view that the role of the referral court ends once arbitrator(s) are appointed. After that, the responsibility shifts to the arbitral tribunal.

## Confidentiality as a Structural Principle

India's decision to introduce the [2019 amendment](#), establishing a statutory duty of confidentiality in [Section 42A](#), was a groundbreaking step. Until then, Indian law was silent, and parties depended on contractual agreements or institutional rules to agree on confidentiality. By enshrining confidentiality in law, Indian lawmakers aligned Indian arbitration with international best practices. However, doubts remained about how much stakeholders would respect or enforce this principle when faced with demands for broader access.

The Supreme Court's take on this issue is clear. Confidentiality is a non-negotiable. The Supreme Court viewed the Delhi High Court's order allowing Rahul Gupta to be present not as a minor accommodation but a direct affront to the legislative scheme. The insistence that strangers cannot be allowed into arbitral hearings reaffirms the fundamentals of arbitration such as party autonomy, and confidentiality. In a jurisdiction where filings in a court are presumptively public, this recognition of arbitral confidentiality as sacrosanct is a significant advance.

What is distinctive about the judgment is that it elevated confidentiality-related requirements to the status of a core structural principle of Indian arbitration. Confidentiality as a feature of commercial arbitration has long been recognised across the world's jurisdictions, although the contours vary. English law has evolved an implied duty of confidentiality through case law, and other jurisdictions, such as [France](#), [Singapore](#), and [Australia](#), have enacted statutory duties. Institutional rules, including those of the [ICC](#) (International Chamber of Commerce), [LCIA](#) (London Court of International Arbitration), [SIAC](#) (Singapore International Arbitration Centre), and [HKIAC](#) (Hong Kong International Arbitration Centre), also prescribe duties of confidentiality, albeit with some differing exceptions.

## The Shaping of India's Arbitration Regime

The significance of *Kamal Gupta* extends not only to its immediate holding but also to its broader influence on the course of the arbitration regime in India as a whole. Two dimensions deserve to be stressed.

*First*, the ruling strengthens India's status as a jurisdiction that increasingly values predictability. To foreign investors and multinational businesses, the uncertainty of who can participate in proceedings is a serious issue. By precluding the possibility of non-

signatory “*observers*”, the decision in *Kamal Gupta* gives parties the assurance that collateral judicial orders will not attenuate the confidentiality.

*Second*, the decision illustrates the growth of Indian jurisprudence on arbitration. In recent years, there has been a deliberate effort by the legislature and the judiciary to align Indian law with international standards.

## Critical Reflections

The decision in *Kamal Gupta* is a strong affirmation of the principles of confidentiality and party autonomy, but the purist approach to the issue also creates tension. Often, in disputes involving family members, shareholders, and even non-shareholders, non-signatories have real and determinative interests. To insist that such parties can only defend their rights at the enforcement stage under [Section 36 of the Act](#) provides a remedy that is largely unhelpful. Not only does this delay the resolution of their legitimate concerns, but it also risks parallel litigation and collateral challenges that undermine the efficiency arbitration is intended to uphold.

What is striking is how diametrically opposite the approach adopted in *Kamal Gupta* is compared to the decision in [Ajay Madhusudan Patel v. Jyotrindra S. Patel \[2024 INSC 710\]](#) (“*Ajay Madhusudan*”). The dispute in *Ajay Madhusudan* also arose from a Family Arrangement Agreement (“FAA”) entered into in 2020 between the two branches of the Patel family. Although the FAA was only formally signed by these two groups, its implementation necessarily involved a third group, *i.e.*, the SRG group, which held a significant stake in two family-run companies. The SRG group was not one of the signatories to the FAA, but the documentary records showed its extensive involvement.

Disputes soon arose between the two factions of the Patel family, and arbitration was invoked under the FAA. The issue of whether the SRG group, which was not a signatory to the FAA, could still be made a party to and bound by the arbitration was hotly contested and ultimately came before the Supreme Court.

While deciding whether the SRG group could be bound by the arbitration agreement contained in the FAA, the Supreme Court opined that the enquiry could not be limited to the formality of signing the FAA alone. What was important was the conduct of the parties, the obligations envisaged under the FAA, and the commercial reality of its implementation. The Supreme Court found that SRG had actively taken part in negotiations, had been repeatedly mentioned in draft agreements, and stood to both assume obligations and receive benefits under the arrangement. On the basis of the above, the Supreme Court found that SRG was making “*claim through or under*” the signatories within the meaning of [Sections 2\(1\)\(h\) and 35 of the Act](#). Excluding SRG would destroy the integrity of the composite transaction and, thus, it was held that SRG could be referred to arbitration notwithstanding its non-signatory status.

From a deeper examination of the decisions in *Kamal Gupta* and *Ajay Madhusudan*, the matter that warrants greater judicial focus is the treatment of non-signatories who have a genuine and demonstrable interest in the arbitral outcome. At present, *Ajay Madhusudan* remains the guiding authority since it is a decision rendered by a larger bench.

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