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**Kamal Gupta v. L.R. Builders Pvt. Ltd., 2025 SCC OnLine SC 1691 - Supreme Court clarifies limits on non-signatory participation in arbitral proceedings**

**The Court addressed whether non-signatories to an arbitration agreement can be present in arbitration hearings, and whether Courts retain jurisdiction to issue directions once an arbitrator has been appointed under Section 11(6) of the Arbitration and Conciliation Act, 1996**

The dispute arose out of a family settlement within the Gupta family. An oral settlement reached in 2015 was subsequently reduced into a Memorandum of Understanding/Family Settlement Deed (MoU/FSD) in July 2019. However, one family member, who later sought to intervene, was not a signatory to this MoU/FSD. Following disputes, an application under Section 11(6) of the Arbitration and Conciliation Act, 1996 (“the Act”) was filed seeking the appointment of a sole arbitrator. Parallel proceedings under Section 9 of the Act for interim measures were also initiated. The Court, in March 2024, appointed a sole arbitrator and directed the Section 9 petition to be treated as a Section 17 application before the arbitrator. Requests from the non-signatory to intervene were rejected at that stage on the ground that he was not a party to the MoU/FSD.

Subsequently, in August 2024, the non-signatory, acting through certain companies, filed fresh intervention applications in the already disposed Section 11(6) proceedings, seeking permission to attend the arbitration hearings, access pleadings and orders, and even challenge the appointment of the arbitrator. A Single Judge permitted such presence in arbitral proceedings, holding that the non-signatories could be present either personally or through counsel, and issued directions relating to family properties. This prompted the signatory parties to challenge the order before the Supreme Court.

The appellants argued that once an arbitrator is appointed under Section 11(6), the Court becomes functus officio, meaning its jurisdiction is exhausted. Entertaining fresh applications in disposed proceedings was beyond the scope of the Act. They contended that under Section 35, arbitral awards bind only parties to the arbitration agreement and those claiming under them, and non-signatories could neither be bound by the award nor interfere in the arbitral process. The directions permitting their presence violated confidentiality under Section 42A and undermined arbitral autonomy. It was also urged that allowing the non-signatory to assert rights over family properties through these proceedings amounted to granting relief previously denied. Reliance was placed on decisions such as *Nimet Resources Inc. v. Essar Steels Ltd.*, (2009) 17

SCC 313 to underline the doctrine of minimal judicial intervention.

On the other hand, the respondents maintained that undertakings given earlier by the signatories had been breached, justifying the non-signatory's applications. They invoked the inherent powers of the Court under Section 151 of the Code of Civil Procedure, 1908 to permit the presence of the non-signatory, contending that such directions merely flowed from the undertakings already recorded. They asserted that the recognition of certain property rights and permission to attend arbitral proceedings did not expand the scope of the original order but ensured compliance with assurances given by the signatories.

The Supreme Court rejected this reasoning and addressed both issues squarely. On the first question, it held that arbitral proceedings are confined to parties to the arbitration agreement. Section 2(h) defines "party" strictly, and Section 35 makes arbitral awards binding only on signatories or those claiming through them. Since the intervenors were not signatories to the MoU/FSD, they were strangers to the arbitration. Allowing them to be present would amount to creating a right unknown to law. Importantly, the Court noted that if a non-signatory faced enforcement of an award against them, their remedy lay under Section 36, not through pre-emptive participation. Further, Section 42A

enshrines confidentiality of arbitral proceedings, which would be compromised by permitting strangers to attend. On this basis, the Court concluded that the order permitting the non-signatory to remain present in arbitral hearings was without jurisdiction and contrary to the scheme of the Act.

On the second issue, the Court emphasized that once a sole arbitrator has been appointed under Section 11(6), the Court becomes functus officio and cannot revisit the matter. It held that the Single Judge's reliance on Section 151 of the Code of Civil Procedure was misplaced. Arbitration law is a self-contained code, and Section 5 of the Act restricts judicial intervention strictly to instances provided under Part I of the Act. The Bench referred to *Bhaven Construction v. Sardar Sarovar Narmada Nigam Ltd.*, (2022) 1 SCC 75, reiterating that the non obstante clause in Section 5 was designed to minimize judicial interference, consistent with the UNCITRAL Model Law framework. The Constitution Bench in *Re: Interplay* had also clarified that where the Act provides a complete mechanism, recourse to general procedural provisions like Section 151 CPC is excluded. Therefore, once the arbitrator was appointed and the Section 11 proceedings disposed of, the Court lacked authority to entertain fresh intervention applications.

In its conclusion, the Supreme Court set aside the orders permitting non-signatory participation and ancillary directions issued by the Single Judge. It held that such applications were misconceived, amounted to reopening settled proceedings, and constituted an abuse of process. The appeals were allowed, and costs of INR 3,00,000 were imposed on the respondents to be paid to the Supreme Court Advocates-on-Record Association.

This decision reinforces the principle that arbitration is a consensual process limited to parties to the agreement. By upholding the statutory framework of Sections 2(h), 35, 42A, and 5, the Court underscored that non-signatories cannot intrude into arbitral proceedings unless they fall within recognized exceptions such as claiming through or under a signatory. It also reaffirms the doctrine of *functus officio* and minimal judicial intervention, ensuring that arbitral autonomy and confidentiality are preserved.

Once an arbitrator is appointed under Section 11(6) of the Arbitration and Conciliation Act, 1996, the court becomes *functus officio* and cannot revisit the matter or issue ancillary directions. Non-signatories, unless expressly falling under recognized exceptions, have no right to participate in arbitral proceedings, as Section 35 makes arbitral awards binding only

on parties to the arbitration agreement and those claiming under them. Allowing outsiders to observe proceedings would also breach the confidentiality mandate under Section 42A.

### **Glencore International AG v. Shree Ganesh Metals, 2025 INSC 1036 - Supreme Court upholds enforceability of arbitration agreements inferred from conduct**

**The Court held that even in the absence of a signed contract, parties may be bound by an arbitration clause if their conduct and exchange of communications demonstrate consensus ad idem**

The dispute arose from commercial dealings between an international commodity trader and an Indian zinc alloy manufacturer. Between 2011 and 2012, the parties executed several contracts containing arbitration clauses under the LCIA Rules with London as the seat. In 2016, they negotiated a new agreement for the supply of 6,000 metric tons of zinc. Negotiations occurred over email, where the purchaser accepted the terms subject to a modification in the provisional price calculation, which the seller agreed to. The seller then issued and signed a written contract, sending it to the purchaser for countersignature. Although the purchaser never signed, both parties acted upon it: the seller delivered 2,000 metric tons, raised invoices referencing the contract, and

the purchaser arranged standby letters of credit citing the contract. The purchaser's correspondence also consistently acknowledged the contract and confirmed its obligations.

Despite this performance, disputes arose when the purchaser defaulted on furnishing letters of credit for subsequent quotas. The seller invoked its rights under the contract, while the purchaser filed a civil suit before the Delhi High Court seeking declarations that the invocation of the standby letters of credit was invalid, coupled with injunctions against payment. The seller sought a reference to arbitration under Section 45 of the Arbitration and Conciliation Act, 1996, relying on the arbitration clause in the 2016 contract. The purchaser resisted, arguing that since it had never signed the 2016 contract, no arbitration agreement bound the parties.

A Single Judge of the Delhi High Court agreed with the purchaser, holding that without signatures there was no concluded contract. The Judge reasoned that the email correspondence was insufficient to infer consensus on arbitration and further observed that differences between the arbitration clause in the 2012 contract and the 2016 draft showed lack of complete agreement. On appeal, a Division Bench affirmed this view in 2019, curiously examining only whether the 2012 arbitration clause could extend to the dispute, while overlooking the effect of the 2016

draft and the parties' conduct under it. Aggrieved, the seller appealed to the Supreme Court.

Before the Supreme Court, the appellant contended that the High Court erred in overlooking evidence that the contract was in fact acted upon. The supply of goods, issuance of invoices, procurement of letters of credit, and continued correspondence all tied to the 2016 contract. Such conduct, it was argued, clearly established acceptance of terms including the arbitration agreement. Reliance was placed on settled principles that an arbitration agreement may be inferred from written communications or conduct, and that signature is not a rigid requirement. The respondents reiterated that without signatures, no concluded contract came into being and that reliance on earlier contracts was misplaced.

The Hon'ble Bench carefully examined the record and disagreed with the High Court's findings. It noted that the purchaser had explicitly accepted the seller's proposal with only a minor modification, which the seller duly incorporated into the written contract. The purchaser then proceeded to honour the contract by arranging letters of credit and lifting part of the contracted quantity. This, the Court held, was unequivocal evidence of consensus ad idem. The absence of a signature could not negate the existence of an arbitration agreement when the parties had

otherwise accepted and acted upon the contract. Section 7 of the Act, the Court reiterated, recognizes arbitration agreements concluded through exchange of letters, electronic communications, or even statements of claim and defence, provided they are in writing.

In support, the Court referred to its earlier rulings in *Govind Rubber Ltd. v. Louis Dreyfus Commodities Asia Pvt. Ltd.*, (2015) 13 SCC 477, where it held that commercial documents must be construed to give effect to arbitration clauses where possible, and that lack of signature is not fatal when parties' conduct evidences agreement. It also relied on *Caravel Shipping Services Pvt. Ltd. v. Premier Sea Foods Exim Pvt. Ltd.*, (2019) 11 SCC 461, which reaffirmed that writing, not signature, is the essential requirement. The principle was further underlined in *Shin-Etsu Chemical Co. Ltd. v. Aksh Optifibre Ltd.*, (2005) 7 SCC 234, where the Court emphasised that under Section 45 the referral court need only take a prima facie view of the arbitration agreement's validity, leaving final determination to the arbitral tribunal.

The Court rejected the reliance placed by the respondents on *M.R. Engineers & Contractors Pvt. Ltd. v. Som Datt Builders Ltd.*, (2009) 7 SCC 696, and *NBCC (India) Ltd. v. Zillion Infraprojects Pvt. Ltd.*, (2024) 7 SCC 174, both of which dealt with incorporation of arbitration

clauses by reference and the requirement of conscious acceptance. Here, the Court noted, the arbitration clause was directly contained in the 2016 contract that the parties had acted upon; it was not a case of incorporation by reference. Thus, those authorities were inapplicable.

Ultimately, the Supreme Court held that both the Single Judge and the Division Bench had erred in disregarding material evidence that demonstrated acceptance of the 2016 contract and its arbitration clause. It ruled that the arbitration agreement in clause 32.2 of the 2016 contract was binding, and invocation of Section 45 was justified. The judgments of the High Court were set aside, and the disputes were directed to be referred to arbitration.

In conclusion, the Court reaffirmed that arbitration agreements are to be interpreted in a manner that gives effect to the intention of parties. In modern commerce, especially with contracts formed through email and electronic means, the absence of a signature cannot by itself defeat an otherwise valid arbitration agreement. What matters is whether the conduct of the parties shows mutual assent to be bound.

An arbitration agreement under Section 7 of the Arbitration and Conciliation Act, 1996 does not require signatures if the parties' conduct and written communications clearly establish

consensus ad idem. Courts have consistently held that exchange of emails, letters, or performance under an unsigned contract can evidence acceptance of an arbitration clause. The critical requirement is that the agreement must be in writing and demonstrate a binding and unequivocal intent to arbitrate, even if one party has not formally signed the contract.

**Surender Bajaj v. Dinesh Chand Gupta & Ors., ARB.P. 1076/2025 (Delhi High Court, decided on 19 August 2025) - High Court declines appointment of arbitrator owing to res judicata from earlier Section 8 proceedings**

**The Court held that once an application under Section 8 of the Arbitration and Conciliation Act, 1996 has been rejected and affirmed in appeal, a subsequent Section 11 petition seeking appointment of an arbitrator on the same cause cannot be entertained**

The dispute stemmed from a collaboration agreement executed in December 2018 between the Petitioner, a builder, and one of the Respondents, the property owner, under which the Petitioner was to undertake construction and, in return, would acquire possession and ownership of the second floor of the redeveloped property. The Petitioner claimed to have completed construction in terms of the agreement but alleged that the Respondents were

unjustifiably denying him rights in the second floor. Invoking Clause 17 of the agreement, which contained an arbitration clause, he approached the High Court under Section 11 of the Arbitration and Conciliation Act, 1996, seeking appointment of an independent arbitrator.

The Respondents opposed, highlighting that they had earlier instituted a civil suit before the Civil Judge at Tis Hazari Courts seeking a decree of permanent injunction against the Petitioner. In those proceedings, the Petitioner had already filed an application under Section 8 of the Act requesting reference to arbitration. That application was rejected by order dated 6 May 2023. The Trial Court had noted that the Petitioner failed to file the original or a certified copy of the collaboration agreement, which is a mandatory requirement under Section 8(2). Moreover, the Trial Court observed that the agreement was executed only between the plaintiff and defendant no.1, and not all defendants were signatories. Since the cause of action in the suit was joint action against multiple defendants, some of whom were non-signatories, the request for arbitration could not be sustained. The Court further remarked that allowing the application would impermissibly split causes of action, contrary to the scheme of the Act .

The Petitioner appealed to the District Judge, but the Appellate Court on 18 April 2024 upheld the

rejection. It noted that the prayer for arbitration was pressed only on behalf of one defendant and, if allowed, would result in bifurcation of disputes between signatories and non-signatories. Since other defendants were neither signatories to the agreement nor applicants for reference to arbitration, and had already filed written statements, the Appellate Court held that the scheme of the Act did not permit partial reference. This finding was categorical, affirming that the dispute could not be fragmented between arbitral and judicial forums.

Despite this history, the Petitioner initiated fresh proceedings under Section 11 before the Delhi High Court. He argued that the issues in the civil suit differed from those raised in the Section 11 petition: the former sought injunctive relief while the latter pertained to specific enforcement of contractual rights over the second floor. He further contended that the rejection under Section 8 was on technical grounds and did not preclude the Court from exercising powers under Section 11 to appoint an arbitrator.

The Respondents, however, maintained that the earlier orders of the Trial Court and Appellate Court operated as res judicata. They emphasized that the arbitration clause had already been tested under Section 8, and the findings, particularly that referring part of the matter would result in splitting causes, bound subsequent proceedings.

Hence, the Section 11 petition was not maintainable.

The High Court agreed with the Respondents. It acknowledged that Clause 17 of the collaboration agreement did contain an arbitration clause, and that under principles laid down in decisions such as *Swastik Pipe Ltd. v. Shri Ram Autotech Pvt. Ltd.* (ARB.P. 241/2021), even unsigned agreements can in appropriate cases support a referral to arbitration. However, the Court stressed that in the present case, the determinative factor was not the existence of the clause but the binding effect of prior judicial findings. Both the Trial Court and the Appellate Court had held that referral would impermissibly split disputes between signatory and non-signatory parties. Until those orders were set aside or overturned, the High Court was bound by them.

The Court highlighted that permitting a Section 11 petition in such circumstances would amount to relitigation of the same issue under a different provision of the Act, undermining judicial finality. The doctrine of res judicata prevents re-examination of issues already adjudicated, and the legislative scheme does not contemplate multiple bites at the cherry by moving sequential applications under different provisions of the Act. The Bench noted that the petitioner had full opportunity to press his arbitration clause in the earlier proceedings, and having failed, could not

repackage the same relief through a Section 11 petition.

Consequently, the High Court dismissed the petition, holding that “so long as the order dated 18 April 2024 is not set aside or interfered with, a similar prayer to refer the parties to arbitration cannot be entertained, as the same would amount to res judicata.” The Court nevertheless clarified that the Petitioner was free to pursue any other remedies available in law but could not seek appointment of an arbitrator afresh in this dispute

This ruling underscores two critical principles. First, that the scheme of the Arbitration and Conciliation Act does not permit fragmentation of disputes involving both signatories and non-signatories where causes of action are joint; partial referral is impermissible. Second, that the doctrine of res judicata applies with full force to arbitration-related proceedings: once a Court has conclusively refused reference under Section 8 and the decision has been affirmed on appeal, parties cannot relitigate the same issue through a subsequent Section 11 petition.

The doctrine of res judicata applies with equal force to arbitration-related proceedings. Once a court has finally rejected an application under Section 8 of the Arbitration and Conciliation Act, 1996, a subsequent petition under Section 11 seeking appointment of an arbitrator on the

same cause is barred. Indian courts have consistently held that permitting parallel or successive attempts to refer the same dispute to arbitration would undermine judicial finality and fragment disputes contrary to the scheme of the Act.

**State of U.P. v. M/s Satish Chandra Shiv Hare-Brothers, 2025:AHC:146428 - Allahabad High Court upholds executing court’s power to award post-award interest under Section 31(7)(b) of Arbitration Act**

**The Court clarified that once an arbitral award becomes enforceable, statutory post-award interest applies even if the arbitral tribunal has not explicitly granted it**

The dispute arose from a government construction contract awarded to an approved contractor for the development of a gymnastic hall at Iklavya Sports Stadium, Agra. Owing to disputes during execution, the matter was referred to arbitration. The arbitral tribunal, by its award, granted the contractor a sum of INR 40,61,264 together with costs and interest at 18% per annum from 31 March 2000 to 26 August 2007. However, it expressly declined the contractor’s claim for post-award interest beyond this period.

The State challenged the award under Section 34 of the Arbitration and Conciliation Act, 1996, but the objections were rejected. Subsequent appeals

under Section 37 and a Special Leave Petition before the Supreme Court also failed. Meanwhile, the contractor initiated execution proceedings under Section 36 for enforcement of the award. In July 2023, the Commercial Court, Agra, directed the State to pay post-award interest at 18% per annum from 17 December 2010 to 17 December 2022 and ordered attachment of bank accounts belonging to the Executive Engineer and Superintendent Engineer to secure compliance. These orders were challenged by the State through a writ petition under Article 227 before the Allahabad High Court.

The State argued that the arbitral tribunal, having consciously awarded interest only for a fixed period, implicitly rejected any claim for post-award interest. It contended that the executing court lacked jurisdiction to revisit the award or impose additional liabilities not granted by the arbitrator. Emphasising the 2015 Amendments to the Arbitration Act, the State submitted that procedural provisions ordinarily operate retrospectively, but substantive directions on interest must follow the express terms of the award. It asserted that the Commercial Court erred by attaching bank accounts without first determining the precise amount payable, effectively modifying the award.

The Respondent contractor supported the impugned orders, stressing that statutory

provisions mandated post-award interest under Section 31(7)(b). It was submitted that the executing court merely gave effect to this statutory entitlement, which forms part of the award by operation of law, and did not alter or rewrite the arbitral award.

The High Court, after reviewing the record, noted that the arbitral tribunal's refusal to award interest beyond 2007 did not automatically extinguish the statutory mandate under Section 31(7)(b). This provision creates a default rule: unless the tribunal specifies otherwise, the award shall carry interest at 18% per annum from the date of the award until payment. The Court recalled the Supreme Court's decision in *BCCI v. Kochi Cricket Pvt. Ltd.* (MANU/SC/0256/2018), which explained that while the 2015 Amendments were generally prospective, procedural aspects including post-award interest apply to pending proceedings. More recently, the Delhi High Court in *Union of India v. Sudhir Tyagi* (2025:DHC:2621) clarified that the grant of post-award interest under Section 31(7)(b) is mandatory, with the arbitrator's discretion limited to determining the applicable rate; if no rate is specified, the statutory rate of 18% applies .

On this basis, the Court held that the executing court acted within its jurisdiction in directing payment of post-award interest. The tribunal's silence on interest after 2007 did not oust the

statutory operation of Section 31(7)(b). To the contrary, the executing court was obliged to enforce the award “with full effect,” which included statutory interest from the date of award until realization. The High Court also rejected the State’s contention that attachment of bank accounts was premature or excessive, observing that such coercive measures were justified to secure satisfaction of the award given the protracted delay and failure to comply voluntarily.

The underscores the complementary roles of arbitral tribunals and executing courts. While tribunals decide disputes and can fix interest terms, the legislature ensures through Section 31(7)(b) that awards remain effective by imposing a default post-award interest obligation. This deters award-debtors from delaying compliance and incentivizes timely payment. The High Court emphasized that allowing award-debtors to evade or postpone payment by relying on gaps in the award would frustrate the legislative objective of expeditious enforcement of arbitral outcomes.

Concluding, the Court dismissed the State’s petition, upholding the Commercial Court’s orders of 18 and 27 July 2023. It reaffirmed that executing courts have full authority under Section 36 to enforce arbitral awards, including post-award interest mandated by statute, and found no

illegality or perversity in the attachment of government bank accounts to secure payment.

This decision is significant for its clear affirmation that post-award interest is not merely discretionary but a statutory entitlement flowing from Section 31(7)(b). It strengthens the enforcement framework by limiting the ability of award-debtors to resist payment on technical grounds and by clarifying that execution courts must give effect to the statutory scheme, regardless of whether arbitrators explicitly grant such interest. For contractors and award-holders, it provides assurance that enforcement proceedings will yield not only the principal award but also compensation for delay, thereby advancing the objective of finality and efficacy in arbitration enforcement.

Section 31(7)(b) of the Arbitration and Conciliation Act, 1996 mandates that arbitral awards carry post-award interest from the date of the award until payment, unless the tribunal directs otherwise. While the arbitrator has discretion to fix the rate of such interest, if no rate is specified, the statutory default of 18% per annum applies. Execution courts under Section 36 are empowered to enforce this entitlement, ensuring that award-debtors cannot delay payment without financial consequence.

