An arbitral tribunal cannot excuse disclosure of a contract central to an alleged breach of exclusivity or non-compete obligations solely on the basis of an asserted contractual confidentiality obligation, particularly where a court has already directed disclosure

The **Bombay High Court** in the case of **Oil Field Instrumentation India vs Xcalibur Multiphysics Group S.L. [Commercial Arbitration Petition (L) No. 16156 of 2026] dated June 08, 2026**, has held that an arbitral tribunal cannot excuse disclosure of a contract central to an alleged breach of exclusivity or non-compete obligations solely on the basis of an asserted contractual confidentiality obligation, particularly where a court has already directed disclosure and where standard protective mechanisms such as redaction, confidentiality rings, and restricted access remain available. A private confidentiality clause in a commercial contract cannot override a legal obligation to disclose before a court or tribunal in order to adjudicate the dispute properly.

The Court further laid down that, in construing a negotiated exclusivity clause in a joint venture agreement, the word "offered" must be given its contractual meaning and cannot be judicially rewritten to mean "accepted and paid for" or "purchased". Where the record shows that the relevant technology was offered to the joint venture and its deployment continued to be pursued, the tribunal cannot infer rejection merely from postponement of purchase. In such a joint venture context, the clause is to be viewed not as a simple restraint on trade but as a positive covenant to conduct the business through the exclusive joint venture vehicle in the defined territory.

The High Court observed that the arbitral tribunal had adopted an untenable approach in excusing production of the Bhutan contract merely because the investor invoked a confidentiality clause said to exist in that very contract. It also observed that commercial confidentiality clauses ordinarily yield to legal, regulatory, or court-directed disclosure obligations, subject to mechanisms such as consultation, redaction, confidentiality rings, and controlled access.

The Court found that the arbitral tribunal had not even called for the confidentiality clause itself, nor the full correspondence with Bhutan, and had relied only on two disjointed letters without the intermediate communication or any proper examination of whether limited or protected disclosure could be made. In the Court's view, permitting a party to avoid scrutiny of an alleged non-compete breach by invoking an unseen confidentiality clause in the allegedly offending contract would render such obligations effectively immune from adjudication.

On interpretation of "offered", the Court disagreed with the arbitral tribunal's view that the word should be understood as meaning technology actually made available, accepted, and paid for. The Court held that such a reading rewrote the contract. At the prima facie stage, where commercially sophisticated parties had chosen the word "offered", it was not permissible to substitute it with "purchased" or "deployed". The material on record did not support any rejection of the technology by the joint venture; rather, it showed continuing pursuit of deployment in India.

The Court further observed that Clause 18.3 was not merely a restraint on trade, but a commitment to conduct trade in an exclusive collaborative relationship through the joint venture. Accordingly, the tribunal's conflation of "offered" with "accepted and paid for" was found implausible and contrary to the contractual text.

The Court also clarified that it did not disturb the tribunal's refusal to stay performance of the Bhutan contract itself, noting that injuncting the contract could cause grave and irreparable harm. However, the Court emphasized that even if the Bhutan contract was not to be halted, the subject matter of the arbitration agreement, namely the exclusivity of the joint venture as the chosen vehicle for doing business in the Territory, still required preservation. For that purpose, disclosure of the Bhutan contract and related material was necessary at least to assess the scale of injury and possible protective measures, including damages-related preservation of the petitioner's claim.