

Delhi High Court Upholds Arbitral Confidentiality Under Section 42A of the Arbitration Act

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Introduction

In *JPC Infrastructure and Constructions Private Limited v. Alstom Transport India Limited*¹, the Delhi High Court considered whether an arbitral tribunal had committed patent illegality by refusing to rely upon a document originating from a separate arbitration.

The High Court upheld the tribunal's decision and held that Section 42A of the Arbitration and Conciliation Act, 1996 (the "**Arbitration Act**") must be interpreted in a manner that gives practical effect to the statutory obligation of confidentiality. Although Section 42A does not expressly prescribe a universal rule of inadmissibility, an arbitral tribunal is entitled to examine the provenance of a document, the circumstances in which it was obtained, and the consequences of permitting its use. The High Court opined that a reasoned decision excluding material sourced in breach of arbitral confidentiality could not be reopened through a challenge under Section 34 of the Arbitration Act.

Facts

The dispute arose from the Eastern Dedicated Freight Corridor Project being undertaken by the Dedicated Freight Corridor Corporation of India Limited ("**DFCCIL**") for the development of freight railway infrastructure between Bhaupur and Khurja. DFCCIL awarded Alstom Transport India Limited ("**Alstom**") the principal contract for design, construction, supply, installation, testing, and commissioning of electrification, signalling, telecommunication, and allied works.

One segment of the principal contract was identified as Slice-103. Alstom invited quotations from prospective subcontractors for portions of the works within that segment. JPC Infrastructure and Constructions Private Limited ("**JPC**") submitted a commercial proposal, following which the parties executed a back-to-back Sub-Contract Agreement dated 15 December 2015 ("**Sub-Contract**").

Under the Sub-Contract, JPC was entrusted with civil, electrical, and associated works relating to fifty-five structures situated at Daudkhan, Hathras, and Khurja. Its scope included preparation of designs and drawings, geotechnical investigations, topographical surveys, construction of buildings and structures, electrical works, and maintenance obligations. The lump-sum contract price was INR 34,09,58,091, and the stipulated completion period was 675 days from 3 August 2015.

JPC maintained that its performance depended upon Alstom first providing unhindered and encumbrance-free access to the project sites, finalised project particulars, and identified locations for the structures. According to

JPC, delays in fulfilling these requirements prevented it from carrying out preliminary investigations, surveys, and design activities. Alstom disputed this position and attributed the delays and deficiencies in performance to JPC.

As the project progressed, disputes arose concerning site access, surveys, preparation and approval of drawings, responsibility for delay, payments, descoping of works, and the eventual termination of the Sub-Contract. JPC alleged that the descoping and termination were wrongful consequences of Alstom's failure to perform its reciprocal obligations. Alstom contended that the measures were necessitated by JPC's continuing defaults.

The Arbitral Proceedings and the Disputed Letter

The disputes were referred to a three-member arbitral tribunal under the ICC Rules of Arbitration, 2021. JPC raised several claims, including claims for expenditure allegedly incurred towards geotechnical investigations and topographical surveys, overhead costs, loss of profit, consultancy charges, and other contractual entitlements. Alstom contested the claims and raised counterclaims of its own.

In support of its case, JPC sought to rely upon a letter dated 7 June 2017 addressed by Alstom to DFCCIL (the "**Disputed Letter**"). JPC argued that the letter contained Alstom's own acknowledgements that geotechnical investigations, topographical surveys, and related preliminary activities could not commence without encumbrance-free access to the sites and the necessary project particulars. JPC therefore relied upon the document to contend that the delays attributed to it were, in fact, caused by circumstances for which Alstom was responsible.

Alstom objected to the use of the Disputed Letter on the ground that it formed part of separate arbitral proceedings between Alstom and DFCCIL arising from the principal contract. Alstom submitted that the document was protected by arbitral confidentiality and had not been lawfully introduced into the arbitration between JPC and Alstom.

The tribunal examined the competing explanations regarding how JPC had obtained the document. JPC asserted that Alstom's employees had provided it during a meeting. The tribunal found that this assertion was unsupported by particulars or evidence. It considered Alstom's explanation that JPC had likely obtained access through the office of counsel who had represented DFCCIL in the separate proceedings to be more probable. The tribunal consequently held that reliance upon the letter would breach the confidentiality governing the separate arbitration.

By its award dated 15 November 2023, the tribunal allowed certain claims in part and rejected all of Alstom's counterclaims. It rejected, among others, Claim Nos. 2, 3, 13, and 16, concerning geotechnical investigations, topographical surveys, overhead costs, and loss of profit respectively. A separate dissenting opinion was rendered in relation to Claim Nos. 13 and 16.

Challenge Before the Delhi High Court

JPC challenged the award under Section 34 of the Arbitration Act. During the hearing, it confined the challenge to the rejection of Claim Nos. 2, 3, 13, and 16. The challenge rested principally upon the tribunal's refusal to rely upon the Disputed Letter.

JPC contended that Section 42A merely imposes an obligation of confidentiality and does not declare that a document obtained in breach of that obligation is inadmissible. It argued that the tribunal had read into the provision a consequence that Parliament had not enacted. JPC also submitted that the document had already entered the public domain because it had formed part of proceedings before the High Court.

JPC further relied upon Article 22(3) of the ICC Rules, which empowers a tribunal to make appropriate orders concerning confidentiality. It argued that the ICC framework did not impose an absolute embargo upon the use of material from arbitral proceedings and that the tribunal could have considered the letter while adopting suitable protective safeguards.

Alstom submitted that the tribunal had not ignored the document but had considered its provenance, confidentiality, and permissible use before rendering a reasoned determination. It argued that Section 42A imposed a mandatory statutory obligation that could not be diluted by institutional rules. Alstom also contended that the award contained independent reasons for rejecting the four claims and that JPC had not separately challenged those findings.

Issue Before the High Court

The principal issue before the Delhi High Court was whether the tribunal had committed any jurisdictional error, patent illegality, or perversity by declining to rely upon the Disputed Letter on the ground that it originated from separate confidential arbitral proceedings.

High Court's Findings and Reasoning

On the Limited Scope of Review Under Section 34

The Court began by reiterating the limited nature of judicial review under Section 34. Relying upon the Supreme Court's decision in **OPG Power Generation (P) Ltd. v. Enxio Power Cooling Solutions (India) (P) Ltd.**², it observed that a court does not sit in appeal over an arbitral award. A possible view taken by the tribunal on facts and evidence must be respected, and interference is permissible only where the award falls within the narrowly defined grounds of public policy, patent illegality, or perversity.

The tribunal had not overlooked the Disputed Letter. It had expressly considered the parties' rival submissions, examined how the document came into JPC's possession, analysed Section 42A, and then declined to rely upon it. The Section 34 proceedings could not therefore be used to substitute the

Court's assessment for a reasoned evidentiary determination made by the tribunal.

Section 42A Must Receive Practical Effect

The Court noted that Section 42A begins with a non-obstante clause and requires the arbitrator, arbitral institution, and parties to maintain the confidentiality of arbitral proceedings, except where disclosure of the award is necessary for implementation and enforcement. The provision reflects the legislative recognition of confidentiality as a defining feature of arbitration.

The Court rejected JPC's argument that the absence of the word "inadmissibility" deprived the confidentiality obligation of any evidentiary consequence. A statutory provision must be interpreted in a manner that advances its object. Permitting a party freely to procure material from one arbitration and deploy it in another would substantially erode the protection intended by Parliament and reduce Section 42A to a formality without practical effect.

The Court nevertheless stopped short of holding that Section 42A creates a rigid and universal rule of inadmissibility in every case. It held that even if the provision does not itself impose such an absolute rule, a tribunal remains entitled to regulate its evidentiary record, investigate the provenance of material, and determine whether reliance upon it would be inconsistent with arbitral confidentiality. The tribunal's decision was therefore an exercise of evidentiary discretion rather than a jurisdictional error.

Relevance and Permissible Use Are Distinct

The Court held that the possible relevance of the Disputed Letter did not confer an unrestricted right to rely upon it. Relevance and permissible use are separate questions. A party cannot insist upon the admission of a document merely because it supports its case, irrespective of how the document was obtained or the legal obligations governing its disclosure.

The tribunal was therefore justified in first deciding whether reliance upon the letter was legally permissible. Having found that the document originated from confidential proceedings and had been obtained in circumstances inconsistent with those obligations, the tribunal was entitled to exclude it without proceeding to assess its substantive evidentiary value.

Institutional Rules Cannot Override the Statute

The Court rejected JPC's reliance upon Article 22(3) of the ICC Rules. Since the seat of arbitration was in India, the arbitral proceedings remained subject to the mandatory provisions of the Arbitration Act. Institutional rules derive their efficacy from party autonomy but operate within the framework of the governing law.

A statutory mandate enacted by Parliament could not be diluted, displaced, or overridden by the rules of an arbitral institution. The tribunal was therefore

justified in treating Section 42A as controlling, irrespective of whether the ICC Rules themselves conferred discretion regarding confidentiality measures.

Public-Domain and New-Factual-Case Arguments Rejected

The Court also rejected the argument that the Disputed Letter had automatically lost confidentiality merely because it had formed part of judicial proceedings. Whether a document has entered the public domain depends upon the circumstances in which access was obtained and the legal regime governing that access. No material had been placed before the tribunal conclusively showing that confidentiality had ceased.

The Court further observed that several factual assertions concerning the alleged entry of the document into the public domain had not been advanced before the tribunal. A Section 34 petition cannot become a forum for reconstructing the arbitral case on a new factual foundation. A party that failed to raise a contention before the tribunal cannot ordinarily seek annulment of the award on that basis.

The Underlying Claims Were Not Independently Challenged

The Court noted that JPC had not independently challenged the tribunal's findings on Claim Nos. 2, 3, 13, and 16. Its challenge depended entirely upon the proposition that the exclusion of the Disputed Letter vitiated the rejection of those claims. Once the Court found no infirmity in the tribunal's treatment of the document, the foundation of the challenge necessarily failed.

The Court found no conflict with the public policy of India, no contravention of the fundamental policy of Indian law, and no patent illegality on the face of the award. JPC's case ultimately sought reconsideration of a reasoned evidentiary determination, an exercise lying beyond the permissible limits of Section 34.

Conclusion

The Delhi High Court dismissed JPC's petition and left the arbitral award undisturbed. It held that the tribunal had acted within its jurisdiction in declining to rely upon the Disputed Letter after examining its source, the circumstances in which it was obtained, and the statutory confidentiality obligation under Section 42A of the Arbitration Act.

The Court also held that the ICC Rules could not override the mandatory operation of Indian arbitration law, that mere filing of a document in judicial proceedings did not automatically establish loss of confidentiality, and that a Section 34 court could not entertain a materially new factual case. The petition and the pending applications were disposed of without an order as to costs.

Comment

The judgment gives Section 42A a meaningful procedural operation without converting it into an inflexible statutory exclusionary rule. Its central proposition is that arbitral confidentiality would be ineffective if material

obtained from one arbitration could be freely used in another merely because the statute does not expressly use the language of inadmissibility.

The decision also confirms the tribunal's authority to control the evidentiary process. Tribunals may examine not only whether a document is relevant, but also whether its provenance and proposed use are compatible with legal and procedural obligations. Parties and counsel must therefore exercise particular care when dealing with material received through other arbitral or judicial engagements.

At the same time, the Court's reasoning remains fact-sensitive. It did not hold that every document connected with an arbitration is forever incapable of use elsewhere. Rather, it upheld a reasoned decision based on the tribunal's factual findings regarding the source of the document, the absence of proof that confidentiality had ceased, and the circumstances in which JPC obtained access. The judgment therefore reinforces both arbitral confidentiality and the restrained role of courts reviewing evidentiary determinations under Section 34.

Endnotes

1. *JPC Infrastructure and Constructions Private Limited v. Alstom Transport India Limited*, O.M.P. (COMM.) 124 of 2024 (Delhi High Court), decided on 6 July 2026.
2. *OPG Power Generation (P) Ltd. v. Enxio Power Cooling Solutions (India) (P) Ltd.*, (2025) 2 SCC 417.
3. *Global Aviation Services Private Limited v. Airport Authority of India*, 2018 SCC OnLine Bom 233.
4. *Interplay Between Arbitration Agreements under Arbitration Act, 1996 and Stamp Act, 1899, In re*, (2024) 6 SCC 1.

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