

Legal Issues Seminar

Issue: *Can a Confidentiality Club formed for a suit include parties to the suit?*

1

Relevant Legal Provisions

❖ Chapter VII, Rule 17, Delhi High Court (Original Side) Rules, 2018

Rule 17 - Confidentiality Club

“When parties to a commercial suit wish to rely on documents/ information that are **commercially or otherwise confidential in nature**, the Court may constitute a Confidentiality Club so as to allow **limited access** to such documents/ information. In doing so, the Court may setup a structure/protocol, for the establishment and functioning of such Club, as it may deem appropriate. An illustrative structure/protocol of the Confidentiality Club is provided in ANNEXURE F. The Court may appropriately mould the structure/ protocol of the Club, based upon the facts and circumstances of each case.” (emphasis supplied)

Relevant Legal Provisions

❖ Annexure F, Delhi High Court (Original Side) Rules, 2018

Protocol of Confidentiality Club

Upon hearing of an application, the Court may allow constitution of a Confidentiality Club in the following manner:-

- a) All documents/ information considered as confidential (“Confidential Documents/ Information”) by the Court shall be permitted to be filed in a sealed cover to be kept in the safe custody of Registrar General.
- b) Each party **shall nominate not more than three Advocates, who are not and have not been in-house lawyers of either party, and not more than two external experts**, who shall constitute the Confidentiality Club. Members of the Confidentiality Club alone shall be entitled to inspect the Confidential Documents/ Information.
- c) Members of the Confidentiality Club shall be allowed to inspect the Confidential Documents/ Information before the Registrar General, without making copies thereof. After the inspection, the Confidential Documents/ Information shall be resealed and kept in the custody of the Registrar General. (*emphasis supplied*)

Relevant Legal Provisions

❖ Annexure F, Delhi High Court (Original Side) Rules, 2018

Protocol of Confidentiality Club

- d) Members of the Confidentiality Club shall not make copies of, or disclose, or publish the contents of, the Confidential Documents/ Information to anyone else in any manner or by any means, or in any other legal proceedings and shall be bound by the orders of the Court in this behalf.
- e) During recordal of evidence with respect to the Confidential Documents/ Information, only members of the Confidentiality Club shall be allowed to remain present.
- f) During proceedings of the Court, when the Confidential Documents/ Information are being looked at or their contents discussed, only members of the Confidentiality Club shall be permitted to be present.
- g) The Court may in its discretion and in an appropriate case, **permit copies of the Confidential Documents to be given to the opposite party after redacting confidential information therefrom**, if such redaction be possible and **not otherwise**. (*emphasis supplied*)

Relevant Legal Provisions

❖ Annexure F, Delhi High Court (Original Side) Rules, 2018

Protocol of Confidentiality Club

h) Any evidence by way of affidavit or witness statement containing confidential information derived from the Confidential Documents/ Information shall be kept in a sealed cover with the Registrar General and would be accessible only to the members of the Confidentiality Club. However, a party filing such evidence by way of affidavit shall, if so directed by the Court, **give to the opposite party, a copy of such affidavit after redacting therefrom the confidential information, if such redaction is possible and not otherwise.**

i) The Confidential Documents/ Information shall not be available for inspection after disposal of the matter, except to the Party producing the same.

j) In cases where the Confidentiality Club is constituted or documents are directed to be kept confidential, the Court may consider extending the time for filing of pleadings. However, the same shall be within the overall limits prescribed by the applicable provisions. (*emphasis supplied*)

Relevant Judicial Decisions

❖ *MVF 3 APS and Ors. v. M. Sivasamy and Ors., 2012:DHC:5356, Delhi High Court, August 31, 2012*

“1....(v) that in the proceedings in U.K., defendant Nos. 5 and 6 were made to disclose the data of developing and testing of the products through documents, which was however, subject to a confidentiality agreement, so that only the plaintiffs' Danish lawyer, one expert and one plaintiffs' English lawyer were allowed to see such documents. **However, the plaintiffs are not permitted to access such documents which are relevant for the purposes of the suit before the learned Single Judge.** The reliance is on the orders of the English Court directing disclosure of various classes of documents.”

“6. The Division Bench has directed to discovery of the documents, vide order dated 7th August, 2009, in the manner provided in sub-para of paragraph 18 of the order...In the English Courts, the Counsel for the parties agreed that production of the relevant material and documents was subject to a confidentiality agreement, a 'confidential club' of certain persons if the same may be so called, because only the lawyers of the plaintiff and expert of the plaintiff were (who were subject to confidentiality agreement), allowed to look at such documents.” (*emphasis supplied*)

Relevant Judicial Decisions

❖ *MVF 3 APS and Ors. v. M. Sivasamy and Ors., 2012:DHC:5356, Delhi High Court, August 31, 2012*

“7. The Division Bench set aside the order of the learned Single Judge to the extent as stated in para 18 of the order...the learned Single Judge may first devise a procedure to ensure...the same can be kept confidential so as to not prejudice the defendants in any manner, besides also further providing how such confidential information of the defendants will be looked into, and by which person, and in what manner and other relevant matters...”

“8...till July, 2009 the Indian Lawyers for the plaintiffs and the defendants were not parties to the Confidentiality Club set up by the UK Court. However...the UK Court noted that it would be necessary in the interest of justice to provide access to the UK Confidential Documents to this Court. In paragraph 11 of its order, it directed...**to also allow three named legal representatives in India for both the plaintiffs and defendants respectively (plus the Senior Advocates instructed by them) to sign undertakings to join the Confidentiality Club in order to inspect and use the UK Confidential Documents...**” (*emphasis supplied*)

Relevant Judicial Decisions

❖ *MVF 3 APS and Ors. v. M. Sivasamy and Ors.*, 2012:DHC:5356, Delhi High Court, August 31, 2012

“9. In view of the order passed by the UK Court dated 2nd July, 2009, the following Indian Counsels for the plaintiffs as well as the defendants have voluntarily signed the confidentiality undertakings.”

“29. Under these circumstances, **the present application is allowed**. In order to devise a procedure to ensure the confidentiality of the information, documents, database, etc. the following directions are passed...(c) the undertakings voluntarily submitted by the Members of the confidentiality club identified in Annexure IV to the application...(e) the Registrar General shall...allow access to the confidential documents only to the Members on the following terms That the undertakings voluntarily signed and provided by the Members shall also be applicable to the Indian Confidential Documents which shall also comply the conditions governing the usage and reference to the UK Confidential Documents, which will be recognized and apply equally to the Indian Confidentiality Documents...That the Registrar General of this Court be empowered to deseal the documents for inspection by Members in his presence...” (*emphasis supplied*)

Relevant Judicial Decisions

- ❖ *Telefonaktiebolaget LM Ericsson (Publ) vs. Lava International Ltd., 2016 (65) PTC 556 (Del), Delhi High Court, March 1, 2016*

“6...the **plaintiff is seeking the constitution of a confidentiality club** by way of the present application.”

“7. In reply the prayer is opposed by defendant...plaintiff has refused to disclose any agreements to the defendant during FRAND negotiations despite repeated requests and has maintained the present suit on the basis that for the defendant to agree to a FRAND rate these confidential agreements are not necessary and all information relevant to entering into a FRAND license was provided to the defendant. The plaintiff cannot be permitted to improve its case at this stage by seeking to produce the documents. b) The stage for the plaintiff to produce documents has passed...Any permission to produce the documents would only result in a delay in the trial of the case as the defendant would necessarily have to be given an opportunity to meet the documents now sought to be produced. d) The licensing rates are not confidential information. In fact ETSI encourages parties to declare the rates publicly. However, the plaintiff refuses to do so as part of its unfair licensing practice.” (*emphasis supplied*)

Relevant Judicial Decisions

- ❖ *Telefonaktiebolaget LM Ericsson (Publ) vs. Lava International Ltd., 2016 (65) PTC 556 (Del), Delhi High Court, March 1, 2016*

“12. The said documents genuinely could not have been filed unless the order is passed about the confidentiality as claimed...”

“13...the prayer made in the application is liable to be **allowed**...”

“14...each party is directed to provide...a list of not more than **three lawyers (who are not and have not been in-house lawyers of one of the parties) and not more than two external expert witnesses, who alone** will be entitled to see the aforesaid confidential documents/patent license agreements. They (members of club) would be bound by confidentiality orders...The inspection can only be done through the confidentiality club members...during recordal of evidence with respect to aforesaid confidential documents/patent license agreements etc., only the members of the confidentiality club shall be present. The proceedings of this Court, when the said documents are being looked at, would be in camera to the effect that only the members of the confidentiality club be permitted to be present.” (*emphasis supplied*)

Relevant Judicial Decisions

❖ *Pfizer Inc & Ors. v. Unimark Remedies Limited, 2016 SCC OnLine Bom 8599, Bombay High Court, May 4, 2016*

“8...the Delaware Court protected proprietary and confidential trade secrets, technology, business, commercial, financial and personal information disclosed or to be disclosed by the Petitioners, Unimark and all third parties.”

“10...paragraph 9 of the Petition, which reads thus: “9. The Petitioners therefore pray that this Hon'ble Court may be pleased to set up a confidential club which would operate by way of: (i) An agreement signed between the parties...the information, documents, evidence, samples, etc. that may be collected...**be only seen by a limited number of people on each side (usually almost entirely consisting of professionals, technical and sometimes foreign legal advisors as the case may be).**”

All of these people are bound by confidentiality undertakings in relation to the information/documents stipulated hereinabove...The hearings...are conducted in camera only with the members of the Confidentiality Club being present.

(emphasis supplied)

Relevant Judicial Decisions

- ❖ *Pfizer Inc & Ors. v. Unimark Remedies Limited, 2016 SCC OnLine Bom 8599, Bombay High Court, May 4, 2016*

“11. This is followed by the Petitioners' suggestion in paragraph 10 as to the membership of this proposed ‘Confidentiality Club’. I also note and accept the statement made in paragraph 12 that once this system is set in place, the required disclosures by the Petitioners will follow.”

“12. I turn now to the **question of whether this is a process recognized or mandated by our law...**”

12 “14...these judgments make it clear that there is sufficient statutory authority in our Code of Civil Procedure, 1908 (“the Code”), including inter alia the provisions of Section 78; Order 11; and Order 26, Rules 16 to 22 to support such an application. This **law has been exhaustively considered** in the decisions of the Delhi High Court as also the Andhra Pradesh High Court...**Mr. Justice Manmohan Singh of the Delhi High Court ordered a confidentiality procedure very similar** to the one sought by the Petitioners before me today.” (*emphasis supplied*)

Relevant Judicial Decisions

- ❖ ***Pfizer Inc & Ors. v. Unimark Remedies Limited, 2016 SCC OnLine Bom 8599, Bombay High Court, May 4, 2016***

“15. It is **not, I think, necessary to re-examine any of this law** in any greater detail. I will take it that the statutory interpretation is now well-established and well recognized by other High Courts. I see no reason to take a different view...”

“23. The Petition is partly allowed...thus...(d) a ‘Confidentiality Club’ is established...All proceedings before Dr. Eshwaran will be in camera with only the members of the ‘Confidentiality Club’ being present...allow access to these documents only to the members of the Confidentiality Club...consist of the following persons on behalf of both the parties: **(i) The Petitioners' foreign and local representatives named at in the Letters Rogatory; (ii) Mylan/Defendants' foreign representatives named in the Letters Rogatory; (iii) The Lawyers/Advocates, if any, who would represent the Petitioners before the Commissioner and/or before the Hon'ble Court; and (iv) The Lawyers/Advocates, if any, who would represent Mylan/Defendants before the Commissioner and/or before this Hon'ble Court; and (v) The Lawyers/Advocates/Authorized Persons who would represent the Respondent.**” (*emphasis supplied*)

Relevant Judicial Decisions

- ❖ *Transformative Learning Solutions Pvt. Ltd. and Ors. Vs. Pawajot Kaur Baweja and Ors., AIR 2019 Delhi 197, Delhi High Court, July 17, 2019*

“5 . . .on 11th March, 2019...The counsel for the plaintiffs contended that the said information was confidential and could not be disclosed...then invited to Rule 17 Chapter VII of the Delhi High Court (Original Side) Rules, 2018 providing for constitution of a Confidentiality Club and a Confidentiality Club **with the defendants no. 1&2 and their counsels as members** thereof was constituted...”

“6. The plaintiffs...filed this **Review Petition** seeking review of the order...constituting the Confidentiality Club.”

14

“8...the plaintiffs has argued that, if the defendants are also made privy to the list of customers of the plaintiffs, it will cause further damage to the plaintiffs, inasmuch as the defendants would then become aware of even those customers of the plaintiffs of whom they do not know till now.” (*emphasis supplied*)

Relevant Judicial Decisions

- ❖ *Transformative Learning Solutions Pvt. Ltd. and Ors. Vs. Pawajot Kaur Baweja and Ors., AIR 2019 Delhi 197, Delhi High Court, July 17, 2019*

“13...the plaintiffs has else today also referred to **Annexure-F to the Delhi High Court (Original Side) Rules, 2018...**on the basis of **Clause (b) thereof contended that the defendants cannot be members of the Confidentiality Club.** It is argued that **only the advocates and external experts can be members of the Confidentiality Club.**”

15 “16. However what was done in Telefonaktiebolaget LM Ericsson (PUBL) supra would not apply to the present factual scenario inasmuch as in the present suit **the defendants are sought to be restrained from using information claimed by the plaintiffs to be proprietary and confidential, without specifying the information and for the defendants to be so restrained, it is essential for them to know specifically.**”

Relevant Judicial Decisions

- ❖ *Transformative Learning Solutions Pvt. Ltd. and Ors. Vs. Pawajot Kaur Baweja and Ors., AIR 2019 Delhi 197, Delhi High Court, July 17, 2019*

“17...The counsel for defendant...Rule 17 of Chapter-VII of the Delhi High Court (Original Side) Rules aforesaid, to contend that the same provides for constitution of the Confidentiality Club, '**as may be deemed appropriate in the facts of the case' and Annexure-F is only 'illustrative', as also stated in Rule 17.** He thus contends that considering the nature of the dispute in the present suit, the contention, that the defendants cannot be members of the Confidentiality Club, ought not be accepted.”

16 23...In such a suit, **to ask the defendants to contest the suit without knowing the customers list in which copyright is claimed and without knowing what they are sought to be restrained from doing, would not only be unfair to the defendants but also would be contrary to procedure prescribed by law...**The non disclosure to the defendant sought by the plaintiffs, in my opinion **deprives the defendant of opportunity of being heard and the right to defend the suit.**
(emphasis supplied)

Relevant Judicial Decisions

- ❖ ***Transformative Learning Solutions Pvt. Ltd. and Ors. Vs. Pawajot Kaur Baweja and Ors., AIR 2019 Delhi 197, Delhi High Court, July 17, 2019***

“24. As far as Telefonaktiebolaget LM Ericsson (PUBL) supra is concerned...**Annexure-F supra is only illustrative and else there is no absolute bar to a party/litigant being a member of a Confidentiality Club.** This is also clear from bare language of Rule 17 of Chapter VII supra...”

“27. Consequently, the review petition is disposed of by, though recalling the order dated 11th March, 2019 insofar as constituting the Confidentiality Club, but recording that the legal consequences of the refusal of the plaintiffs shall follow at whatever stage applicable.” *(emphasis supplied)*

Relevant Judicial Decisions

- ❖ *Genentech and Ors. Vs. Drugs Controller General of India and Ors. 2020:DHC:1465, Delhi High Court, March 2, 2020*

“2...the prayer of the applicant...the inspection to be carried out...by an independent expert on behalf of plaintiffs.”

“4...The issue, which has been raised by the applicant...by contending that Dr. Samir Sagitrao is an internal/in-house representative of the plaintiff No. 2 Company. It is the case of the applicant and so contended by Mr. Chander Lall, learned Senior Counsel that it is established precedent that **confidentiality clubs are constituted with a view to ensure that the sanctity and confidentiality of business and commercially sensitive information/material filed by a party** is maintained.

According to him, the presence of Dr. Samir Sagitrao would defeat the very said purpose in the present case.”

“7. It is his submission by referring to Annexure F that it is **only an external expert, who shall constitute the Confidentiality Club and the expert Dr. Samir Sagitrao, being an internal, not external expert**, cannot be part of the Confidentiality Club.” (*emphasis supplied*)

Relevant Judicial Decisions

- ❖ ***Genentech and Ors. Vs. Drugs Controller General of India and Ors. 2020:DHC:1465, Delhi High Court, March 2, 2020***

“11. Having heard the learned counsel for the parties, the only issue, which arises for consideration is whether the Confidentiality Club to be formed shall only include an external expert and not an internal expert, as suggested by the applicant...this Court has not limited the expert to be an external expert. If the Court meant that way, it would have said so. Further, the other part of the order, where **a liberty has been granted by this Court for amending the pleadings is only possible, if the plaintiffs are represented by an internal expert, who can help in the amendment of the pleadings in the manner required...Otherwise, inspection shall lose its relevance, if the outcome of the same is not utilized purposefully by the party, which sought the inspection...**”

“13...The application filed by the applicant is dismissed.” (*emphasis supplied*)

Summary

Judgement	Year	Nature of the Case	Parties Allowed?	Reasoning	Who Was Allowed Access?
MVF 3 APS vs. M. Sivasamy	2012	Trade secrets (mosquito net technology)	No	Protection of confidential business data from misuse	Only external legal representatives & experts
Ericsson vs. Lava	2016	Patent dispute (telecom SEPs)	No	Licensing agreements were confidential and needed protection	Only external lawyers & experts
Pfizer vs. Unimark	2016	Patent infringement (biosimilar APIs)	Yes	Regulatory & licensing data needed to be protected	External lawyers & experts & representatives of the parties
Transformative Learning vs. Baweja	2019	Business information (customer lists, trade secrets)	Yes	Excluding parties from Confidentiality Club would be unfair	Parties themselves & external lawyers allowed
Genentech vs. DCGI	2020	Biosimilar regulatory data	Yes	Internal experts needed for amending pleadings & case preparation	Internal & external experts allowed

Conclusion

- The selected judgments highlight the lack of judicial consensus regarding the composition of Confidentiality Clubs, reflecting ambiguities in their membership criteria. While early rulings, such as those in MVF 3 APS and Ericsson, strictly limited access to external legal representatives and independent experts, subsequent decisions in Transformative Learning Solutions and Genentech introduced a more flexible approach, allowing internal experts and parties themselves under specific conditions.
- However, this shift has not been accompanied by a well-defined legal framework, leading to uncertainty in the criteria for inclusion within these Clubs.
- The legal framework governing Confidentiality Clubs remains fluid and Court-evolved.

21

THANK YOU!
Questions?

Devesh Kapoor
Associate

22

© ALG India Law Offices LLP, 2025.

Disclaimer: Views, opinions, and interpretations are solely those of the presenters, not of the firm (ALG India Law Offices LLP) nor reflective thereof.

This presentation hosted at: https://www.algindia.com/wp-content/uploads/2025/03/LIS_Devesh-Kapoor_March-3.pdf