

# Principles Governing ‘Anti-Enforcement Injunctions’ in India: Part 1

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In a significant judgment in *Interdigital Technology Corporation v. Xiaomi Corporation* (3 May 2021) (“*Xiaomi*”), the Delhi High Court speaking through C. Hari Shankar, J. recently clarified the principles governing an anti-enforcement injunction (“AEI”) by an Indian judicial authority. It also distinguished an AEI from an anti-anti-suit injunction (“AASI”) (also referred to as an “anti-anti-suit injunction injunction”).

Importantly, *Xiaomi* is the first known instance of an Indian court granting an AEI. This is a much awaited judgment for the legal community across the world, especially since the judgment had been reserved by the High Court five-months prior on December 2020. In this post, I shall analyse the ruling in *Xiaomi*, discuss the principles it laid down regarding AEIs and highlight its impact on the Indian landscape. Before venturing into the case, it is pertinent to discuss what exactly AASI(s) and AEI(s) are.

## *Understanding AASI and AEI*

Previously, I had jointly evaluated the nature, scope and principles governing an ‘anti-arbitration injunction’ (“AAI”) in India. Elsewhere, principles governing ‘anti-suit injunction’ (“ASI”) in India have been exhaustively discussed (see [here](#) and [here](#)). ASIs are understood as a form of an interim-injunction where judicial authorities grant a party an injunction against the opposite parties, refraining the latter from pursuing parallel civil proceedings by commencing or continuing a suit in a foreign forum. It is in the context of the ASIs that the jurisprudence on AASIs and AEIs has emerged globally.

Niehaus has defined an AASI as an injunction which prevents a party from pursuing an ASI in a proceeding at a foreign forum. Importantly, a division-bench of the Calcutta High Court in *Devi Resources Ltd. v. Ambo Exports Ltd.* (2019) had observed that in spite of there being no law in India which provides for an AAI, ASI or AASI, the general equitable jurisdiction of a court encompasses the grant of such injunctions, since a court is a ‘sovereign forum’ as opposed to a private forum or a tribunal with comparatively limited jurisdiction. Interestingly, employing the High Court’s principle in *Devi Resources*, the conceptualization of an “anti-anti arbitration injunction” is equally possible where a court stays the operation of an existing AAI and directs a party who secured the AAI order to refer to the arbitral proceedings or stops a party from seeking an AAI in pending proceedings before another forum. Notably, the High Court in *Devi Resources* also cautioned that such injunctions are to be “**issued only in the most extreme of cases where the refusal of the injunction may result in palpable and gross injustice in the meanest sense**” [emphasis mine].

AASIs and AEIs are not to be confused as being one and the same. Importantly, an AEI affects operation of an ASI order already granted by a foreign court, preventing the party in whose favour such ASIs were granted both from complying with the orders of the foreign court and also injunctioning them from enforcing such orders against the opposite party in the foreign jurisdiction. Contrarily, an AASI is sought when an ASI application by one of the parties is still *pending* before a foreign court.

## *Background in Xiaomi Case*

Interdigital Technology Corporation (“ITC”) is a USA based corporation, while Xiaomi Corporation (“XC”) is a China based MNC. Before the Delhi High Court, ITC had filed a patent infringement suit against XC. During the proceedings, ITC eventually sought an AASI against XC, praying for, *inter alia*, a direction to XC to refrain from enforcing an ASI

order declared by Wuhan Intermediate People's Court, China ("China Court") in September 2020. ITC also sought a direction to XC requiring it to withdraw the ASI application, as well as to withdraw the suit filed before the China Court involving ITC's Indian patents.

It is important to briefly discuss what happened at the China Court. The fulcrum of the dispute concerned ITC's claims about XC's infringement of its India-registered standard essential patents ("SEPs"), which related to the technology used by ITC in 3G and 4G complaint cellular handsets. ITC stated that in order to use its SEPs technology, XC had to obtain a valid license from it, for which XC was bound to pay it royalties determined on **FRAND** terms. Since XC did not obtain a license from ITC, its use of the foregoing SEPs technology was a clear infringement.

Notably, XC had instituted the suit before the China Court to determine the FRAND rate applicable to the dispute between XC and ITC. Simultaneously, ITC had instituted the present proceedings before the Delhi High Court. Subsequently, XC also sought an ASI against ITC from the China Court, which was granted in an *ex-parte* order, directing ITC to immediately withdraw or suspend any temporary or permanent injunction applications being pursued before the Delhi High Court or granted by the High Court or jurisdictions elsewhere, as well as to refrain from adjudicate the royalty rate before any courts in China or jurisdictions elsewhere. The China Court also ruled that in the event ITC disobeyed the ASI order, it would have to pay a fine of RMB 1,000,000 Yuan daily, which shall be calculated cumulatively from the date of the violation.

Subsequently, ITC filed an interlocutory application in the nature of an AEI before the Delhi High Court. Moving forward, the High Court in an October 2020 order had granted the **interim relief** sought by ITC, restraining XC from enforcing the directions contained in the China Court's orders until the disposal of the High Court's judgment. The main issue pending before the High Court was whether it can grant an AEI against the China Court's ASI order and, conversely, whether XC should be permitted to enforce the China Court's ASI order against ITC.

### ***Precedents Considered by the Delhi High Court***

Both ITC and XC had relied on several precedents on principle of "comity of courts", as well as principles on ASIs, AASIs and AEIs, from both Indian and foreign courts, which were considered by the High Court. For the purposes of the present discussion, it is not necessary to discuss the principle of comity of courts.

#### Indian Precedents

The High Court had discussed various decisions rendered by the Indian Supreme Court which, unlike the present proceeding, involved aspects of arbitration. These precedents are *Satya v. Teja Singh*, *O.N.G.C. v. Western Co. of North America* (both cases decided under the erstwhile **Arbitration Act, 1940**), *Modi Entertainment Network v. W.S.G. Cricket Pte. Ltd.* (decided under the unamended Arbitration and Conciliation Act, 1996), and *Dinesh Singh Thakur v. Sonal Thakur* (rendered after the **2015 amendments** to the 1996 Act).

First, referring to *ONGC* decision, the High Court observed that an ASI could be granted in situations where allowing the proceedings in a foreign court to continue would be "oppressive or vexatious" to the party seeking the ASI. Second, importantly, according to the precedent in *Modi Entertainment*, it was held that "*The principles governing grant of injunction – an equitable relief – by a court will also govern grant of anti-suit injunction which is but a species of injunction*". Moreover, the Supreme Court in *Modi Entertainment* also cautioned that "[...] *having regard to the rule of comity, this power will be exercised sparingly because such an injunction though directed against a person, in effect causes interference in the exercise of jurisdiction by another court*". The Delhi High Court also discussed the seven principles on anti-suit injunctions rendered in paragraph 24 of the *Modi Entertainment* decision.

Third, referring to *Dinesh Singh Thakur*, it was recorded that ASIs were not to be readily granted unlike regular injunctions, as ASIs interfered with the exercise of jurisdiction by a foreign court. Fourth, referring to *Satya* decision, it was recorded that: "*no country is bound by comity to give effect in its courts to depose laws of another country which are repugnant to its own laws and public policy*" [emphasis mine].

Lastly, it is pertinent to mention that the High Court also discussed and distinguished the Supreme Court precedent in *Enercon (India) Ltd. v. Enercon GmbH*, deeming XC's reliance on it as misplaced, since the proceedings before the China Court and the High Court did not concern the same *lis*. Additionally, the High Court also considered the Calcutta High Court decision in *Devi Resources* discussed previously.

### Foreign Precedents

First, the Delhi High Court considered the England and Wales High Court ("EWHC") ruling in *IPCom GmbH & Co KG v. Lenovo Technology (United Kingdom) Ltd* (2019), where an AASI sought by IPCom against a pending ASI application by Lenovo before an ongoing proceeding in the California District Court was granted by the EWHC. The EWHC held that the principles of law governing grant of an ASI and AASI were broadly the same. Moreover, it stated that lesser the interference with foreign proceedings by the AASI granted by an English Court, the more likely would a court exercise its discretion to grant such an injunction.

Second, the Paris Court of Appeal ("PCA") decision in *Lenovo (United States) v. IPCom*, which also involved an AASI application against the pending ASI application by Lenovo before the California District Court, was considered. Holding that the action for patent infringement in that case was under the exclusive jurisdiction of the Paris Court of First instance, as well as rejecting Lenovo's contention that the ASI by the California Court were only temporary prohibiting measures against IPCom until the disposal of the case in USA, the PCA granted an AASI directing Lenovo to withdraw its ASI application filed before the California Court. Notably, the PCA also observed that the lawsuit initiated by Lenovo in California Court was distinct from the Paris case, as it did not pertain to infringement of the patented dispute, and therefore the outcome in the Paris case would not prejudice the continuation of the lawsuit in California Court. Moreover, it held that the ASI application by Lenovo "*characterises the manifestly unlawful disturbance... in view of the disturbance it generates by infringing a fundamental right*" [emphasis in original]. This holding would, as we shall see later, guide a principle laid down by the Delhi High Court governing ASIs and AEIs in relation to patent infringement matters.

Third, the High Court considered the England and Wales Court of Appeal ("EWCA") decision in *SAS Institute Inc. v. World Programming Ltd* (2020), which has been analysed [elsewhere](#). Importantly, the EWCA in *SAS Institute* had held that "[...] **there is no distinct jurisdictional requirement that an anti-enforcement injunction will only be granted in an exceptional case. Such injunctions will only rarely be granted, but that is because it is only in a rare case that the conditions for the grant of an anti-suit injunction will be met and not because there is an additional requirement of exceptionality**" [emphasis in original].

Fourth, the Singapore Court of Appeal ("SCA") in *Sun Travels & Tours Pvt Ltd v. Hilton International Manage (Maldives) Pvt Ltd*. (2019) had granted an AEI against Sun Travels, refraining it from relying on a Maldivian judgment rendered in its favour. The SCA had emphasised on difference between AEI and ASI, recording that: "[...] *because an AEI proscribes the enforcement of foreign judgment on pain of contempt proceedings in the jurisdiction where the injunction is granted, granting an anti-enforcement injunction is comparable to nullifying the foreign judgment or stripping the judgment of any legal effect when only the foreign court can set aside or vary its own judgments*" [emphasis in original]. The SCA also held that a "greater degree of caution" should be exercised by courts while considering an AEI application, in comparison to an application for an ASI. Notably, the SCA had significantly relied on the English Commercial Court's decision in *Ecobank Transnational Inc v Tanoh* (2015) (discussed [elsewhere](#)), which discussed AEIs in detail.

Lastly, the US Court of Appeals ("USCA") decision in *Microsoft Corp. v. Motorola Inc.* (2012) involved multiple patent infringement claims by Motorola against Microsoft. In the *Microsoft* case, Microsoft had filed a contract infringement case against Motorola at the Washington District Court, while Motorola subsequently had filed a patent infringement case against Microsoft in the Wisconsin District Court (which was later transferred to and clubbed by the Washington Court). Subsequently, Motorola filed patent infringement claims before the Mannheim Regional Court, Germany. Owing to this, Microsoft successfully sought an AEI from the Washington Court against Motorola, injunctioning the latter from enforcing any injunctive relief it might obtain from the Mannheim Court. On appeal before

the USCA, the AEI order was upheld. Importantly, the USCA had rejected Motorola's contention that the AEI must be overturned or else it would disable Motorola from enforcing its German patents in the only forum in which they can be enforced. It recorded that Motorola's contention exaggerated the scope of the AEI, which "*leaves Motorola free to continue litigating its German patent claims against Microsoft as to damages or other non-injunctive remedies to which it may be entitled*".

[continued [here](#)]

– Anujay Shrivastava