

Principles Governing ‘Anti-Enforcement Injunctions’ in India: Part 2

June 12, 2021

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The first part in the series is available [here](#)]

High Court’s Analysis

The High Court recorded that injunctions of legal proceedings in foreign claims may take one of three primary forms, i.e. ASIs, AASIs and AEIs. It distinguished AASIs and AEIs. According to the Court, AASIs were a form of injunctions, where a “*court injuncts the party from proceeding with the anti-suit injunction application filed before the foreign court to injunct the ‘local’ proceedings*”. Contrarily, AEIs were injunctions, where a court “*injuncts one of the parties before it **from enforcing** against the other, a decree or order passed by a foreign court*” [emphasis in original]. Moreover, AEIs would fall under two categories: first, where the order whose enforcement is sought to be injuncted, is an order in the main suit, complaint or other proceeding in the foreign court; and second, where injunction is sought of an ASI order passed by the foreign court.

Moving forward, the High Court recorded that the present proceedings in the *Xiaomi* case fell under the second category of AEI cases. Unfortunately, there was no precedent in India dealing with the category of injunctions which are in form of AEIs. However, the Court noted that the tests which were prescribed for grant of an ASI were not entirely irrelevant in a case where an AEI was sought. Moreover, it departed from the approach taken by the SCA in *Sun Travels*, where it was cautioned that a greater degree of restraint should be used while considering AEI applications as opposed to ASI applications. The Court departed from the SCA’s approach remarking that an ASI’s interference with foreign proceedings is actually greater than an AEI since, in case of an ASI, a running proceeding is sought to be halted in its tracks. Contrarily, in case of an AEI, the foreign court having rendered the ASI order, whose enforcement is sought to be injuncted, is already *functus officio* until an enforcement or execution of its order is moved by the parties. Further, it buttressed its approach by adopting the EWCA approach in *SAS Institute*, which did not subscribe to the view that AEIs were to be granted only in exceptional cases. Consequently, the Delhi High Court held that where a court in rendering of “justice” requires an anti-enforcement injunction to be issued, then it should not hold back its hands on some perceived notion of lack of “exceptionality” in the case.

The High Court later mentioned its division-bench precedent in *Magotteaux Industries Pvt Ltd v. AIA Engineering Ltd*, which had discussed significant observations concerning the territorial nature of patent rights granted by a sovereign state. In *Magotteaux*, it was held that a cause of action arising from infringement caused in one country where patents are registered will be different from a separate cause of action that may arise in another country for patent infringement. Merely because a patent infringement has been filed before a court belonging to a country where patents are actually registered, it does not mean that a party is debarred from filing any action restraining the misuse of patent or monopoly rights in another foreign court’s jurisdiction.

Common Principles Governing ASIs and AEIs

Recalling the earlier precedents by Indian courts and foreign courts, the Delhi High Court in *Xiaomi* laid down the following common principles relating to ASIs and AEIs in paragraph 88(i.)-(vii.):

(1) Given the impact of interference that ASIs/AEIs could have on proceedings of a ‘foreign court’ (which is a sovereign forum not subject to an Indian Court’s writ jurisdiction), the power to grant ASIs/AEIs should be exercised cautiously and in rare cases.

(2) A court granting an ASI/AEI should be the 'natural forum' with regard to the *lis* forming the subject matter proceedings that are sought to be enjoined by it.

(3) A definitive test for courts would be to determine whether a possibility of "palpable and gross injustice" may exist, should the ASI/AEI sought by a party not be granted. In such cases, it is pertinent for a court to try and preserve subject matter of the *lis*, in order for the beneficiary of the final verdict to enjoy the fruits thereof.

(4) The grant of an ASI/AEI by a court to interfere with a litigant's right to pursue their legal remedy before another forum, where such forum has the exclusive competence to adjudicate any claims involving such remedies, shall be 'oppressive' or 'vexatious' to such litigants.

(5) In relation to patent infringement matters, a patent holder has a fundamental right to choose the patents they desire to enforce through means of legal redressal. Consequently, any ASI/AEI proceeding or order which divests a patent holder from their right to seek legal redressal in form of anti-infringement actions, before a forum with exclusive jurisdiction to deal with such matters, shall be *ex facie* oppressive in nature. In making determination of whether this right has been divested from a patent holder, courts before whom ASIs/AEIs are being sought may consider the 'protection' of the jurisdiction where anti-infringement proceedings are instituted, as a guiding factor.

(6) Little importance can be given to considerations of 'comity of courts' as a factor against grant of ASI/AEI, when the proceeding or order against which an ASI/AEI is sought is 'oppressive' to the applicant party. Where the foreign laws, proceedings or orders are offensive to 'domestic public policy' or 'customary international law', considerations of comity would hold no weightage.

(7) AEI applications are not to be treated with higher standards than those governing an ordinary ASI application. While considering grant of an ASI/AEI, a Court only needs to make an examination of whether the grounds for seeking such ASI/AEI are satisfied in a particular case before it.

Three Additional Principles exclusive to AEI

However, the High Court also laid down three principles exclusively for grant of AEIs by a court at paragraph 88(viii) of its judgment, which would be satisfied in the following circumstances:

(1) When an ASI order or judgment sought by a party from a foreign court (against an Indian Court's proceedings) was obtained 'too quickly' or 'too secretly', enabling such party to pre-emptively gain remedial measures against the opposite party and to seek execution of the ASI granted by the foreign court before the Indian courts.

(2) Where a party resorted to 'fraudulent' actions or means while obtaining an ASI from a foreign court.

(3) Where the party which is seeking an AEI in the present proceedings, against an ASI order/judgment by a foreign court had no means of knowing about the foreign court's grant of ASI until it was served on them.

Importantly, these principles have been devised by the High Court presumably owing to its analysis of XC's conduct. First, it was noted that XC had not supplied ITC a copy of the China Court's issue of notice due to which it obtained the order in an *ex-parte* order thus resorting to an "unfair practice". This would be contrary to the most basic norms of justice. Second, XC had also failed to supply both the High Court and ITC with a copy of the ASI application filed by it before the China Court. Third, XC's questionable conduct was further supported by the fact that until the passing of the interim order by the High Court in October 2020, XC had never disclosed the fact of filing the ASI application, thus indicating an intention to both keep the High Court and ITC in the dark. Consequently, the High Court recorded that such a conduct of XC amounted to fraud on the court, as well as material concealment from the plaintiffs, which would by themselves justify an injunction order against XC to restrain them from enforcing the China Court's orders against ITC. Notably, the above-mentioned three principles also find support from the principles laid down in

paragraphs 118-119 of the English Commercial Court's judgment in *Ecobank*, as well as paragraph 101 of the SCA judgment in *Sun Travels*.

Outcome

Applying the principles it laid out earlier, the High Court examined whether the China Court was correct in restraining ITC, in light of the facts in the present case. First, it observed that the factors on which the China Court's ASI order hinged were *unrecognized* under both Indian law and law of foreign jurisdictions. Second, referring to the conduct of XC mentioned in the previous segment, it held that ITC's absence from the China Court's proceedings was not a justifiable reason for the China Court to make the ASI order without hearing ITC.

Third, the nature of overlap between the China Court and the present proceedings before the High Court was not enough to warrant the present proceedings to be brought to a halt until disposal of the suit before the China Court. Examining the overlap, the High Court observed that it did not meet the threshold of being "oppressive or vexatious". Consequently, it was also held that mere possibility of conflicting orders being passed cannot be a ground for a court in one country to injunct proceedings before another foreign court, over which the former does not have any dominion at all. Lastly, the High Court held that as ITC could have challenged the infringement of its Indian patents only in Indian courts, the China Court was unjustified in adjudicating the civil suit before it in the first place.

Moving forward, on the basis of above analysis, the High Court held that it was well-justified in injuncting XC from enforcing the China Court's ASI against ITC. Consequently, it granted an AEI in favour of ITC, injuncting XC from enforcing the ASI, making its October 2020 order absolute pending disposal of the case on merits. Moreover, in an innovative order which was based on principles of restitution, the High Court also directed XC to indemnify ITC, should the China Court subsequently direct ITC to pay the daily fine for violation of its order. Since ITC had not made any prayer to direct XC from withdrawing its complaint filed in the China Court, no directions requiring such directions were passed.

Concluding Remarks

In the *Xiaomi* decision, the Delhi High Court undertook and completed the mammoth task of distinguishing the different types of special injunctions such as ASI, AASI and AEI, as well as laid down important principles governing the grant of an AEI. Notably, while India was at a very nascent stage of jurisprudential development about ASIs and related special injunctions, the High Court's discussion on comparative jurisprudence from the UK, France, Singapore and USA has progressed Indian jurisprudence significantly forward towards the direction taken globally by most courts. The approach taken by the Court is largely compatible with approach of foreign courts in UK, France and USA in granting special injunctions like ASIs, AASIs and AEIs.

This decision is going to be of great significance not only to the Indian and Chinese courts, but also parties across the globe and foreign courts. Moving forward, parties seeking an ASI in a foreign court against a pending proceeding or declared order or judgment of an Indian court should take the *Xiaomi* judgment as a cautionary note. It would also be interesting to see how the China Court responds to the Delhi High Court's AEI, should XC choose to approach the China Court for further remedies.

Additionally, in my view, the High Court's reasoning on ASIs being more intrusive than AEIs and its consequent departure from the cautionary note laid down by the SCA is the correct approach. Owing to the highly intrusive impact such injunctions can have on a foreign court's proceedings or orders, ASIs, AASIs and AEIs should all be equally treated with high standards of judicial restraint. Simultaneously, the three additional principles laid down by the High Court to justify grant of an AEI are necessary to ensure that the party which has received the ASI from a foreign court does not benefit from its own wrongs and severely prejudices the opposite party, as had occurred in the present dispute due to the egregious conduct of XC.

[concluded]

– Anujay Shrivastava