

Dispute Resolution Hotline

May 21, 2021

DELHI HIGH COURT ISSUES ANTI-ENFORCEMENT INJUNCTION AGAINST ORDER OF WUHAN COURT

- Foreign court cannot restrain a party from pursuing its cause before an Indian court, when Indian court is the only competent court to adjudicate the dispute;
- Certain overlap between two proceedings cannot solely be a ground to grant an anti-suit injunction;
- Where overlap results in the foreign proceedings being rendered "oppressive or vexatious", an anti-suit injunction may be justified;

INTRODUCTION

Recently, the Delhi High Court ("**Delhi HC**") in *Interdigital Technology Corporation v. Xiaomi Corporation & Ors* ("**Interdigital v. Xiaomi**") held, *inter alia*, that it is impermissible for a court in one sovereign jurisdiction to injunct a party before it from pursuing its cause before a court in another jurisdiction, where such latter jurisdiction is the only competent forum.¹ The Delhi HC carved out an exception holding that such an injunction would be permissible in rare instances where continuation of the later proceedings are 'vexatious' or 'oppressive' to the proceedings pending before the injuncting court.

Having laid down this principle, the Delhi HC granted an anti-enforcement injunction in favour of Interdigital against an anti-suit injunction passed by a court in Wuhan.

BACKGROUND

Xiaomi Corporation ("**Xiaomi**") approached the Wuhan Intermediate People's Court ("**Wuhan Court**") on June 9, 2020 and sought fixing of a global FRAND² royalty rate, basis which they could obtain licence from Interdigital to operate and use Interdigital's patented technology³ ("**Wuhan Suit/Wuhan Proceedings**").

Interdigital instituted a civil suit against Xiaomi before the Delhi HC on July 29, 2020⁴ ("**Civil Suit**"), and summons were issued on August 4, 2020. In the Civil Suit, Interdigital alleged infringement of certain Standard Essential Patents (SEPs) held by Interdigital's name and registered in India, and sought an injunction against Xiaomi from using the SEPs without valid licences at rates which are fair, reasonable and non-discriminatory.

In the Wuhan Suit, Xiaomi further filed an application seeking an anti-suit injunction against the Civil Suit ("**Anti-Suit Injunction Application**") on August 4, 2020 i.e., same day when the Summons in the Civil Suit was issued. On September 23, 2020, the Wuhan Court allowed Xiaomi's application and passed an order directing Interdigital and its affiliates to withdraw their application seeking any temporary/permanent injunction before the Delhi HC, and restrain them from filing any such application before the Delhi HC or any court in China. The Wuhan Court also ordered that if Interdigital or its affiliates (collectively referred to as Interdigital) do not comply with its ruling, a fine of RMB 1 million yuan per day would be imposed ("**Anti Suit Injunction Order**").

Subsequently, Interdigital filed an interlocutory application before the Delhi HC pressing for: (i) an injunction against Xiaomi and the other defendants restraining them from enforcing the Anti Suit Injunction Order, pending final disposal of the Civil Suit; (ii) a direction to Xiaomi to immediately withdraw its Anti-Suit Injunction Application in the Wuhan Suit; and (iii) imposition, on the Defendants, of costs equivalent to the costs likely to be imposed on the Plaintiffs by the Wuhan Court.

JUDGMENT AND ANALYSIS

Position of law:

The Delhi HC listed three categories of injunctions in respect of foreign proceedings:

- Anti-suit Injunction: Where a court injuncts the party from proceeding with the main suit, pending before the foreign court.
- Anti-anti-suit Injunction: Where a court injuncts the party from proceeding with the anti-suit injunction application filed before the foreign court to injunct the local proceedings.
- Anti-enforcement Injunction: Where a court injuncts one of the parties before it *from enforcing*, against the other, a decree or order passed by a foreign Court. Anti-enforcement injunctions would fall within two categories: (a) where enforcement is sought to be injuncted against an order in the main suit/complaint/other proceeding in the foreign court; and (b) where enforcement is sought to be injuncted of an anti-suit injunction order passed by the foreign Court. Since Interdigital had filed the application to restrain Xiaomi from enforcing a Wuhan Court order, the present case fell within this (i.e. (b)) category.

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The Delhi HC observed that there is no judicial precedent in India on determination of an anti-enforcement injunction, and proceeded to examine Interdigital's application on the following premise:

1. whether Interdigital is entitled to seek a restraint order against enforcement of the Anti-Suit Injunction Order; and
2. whether Xiaomi could have been enjoined from pursuing the Anti-Suit Injunction Application, had Interdigital approached Delhi HC during the pendency of the Anti-Suit Injunction Application.

The Delhi HC also referred to the findings of the Singapore Court of Appeal in *Sun Travels & Tours Pvt. Ltd. v. Hilton International Manage (Maldives) Pvt. Ltd.* and departed from the reasoning formulated therein.⁵ The Singapore Court of Appeal had called for a '*greater degree of caution*' while adjudicating an anti-enforcement injunction than an anti-suit injunction. The Delhi HC took exception to the same and explained that in case of an anti-suit injunction, a running proceeding is sought to be halted in its tracks; whereas, in an anti-enforcement injunction, the court has already rendered the impugned judgment and is, hence, *functus officio*. Accordingly, the potential for a direct interference with foreign proceedings is greater in the case of anti-suit injunctions as compared to anti-enforcement injunctions. The Delhi HC concluded, however, that an adjudication of either of the two kinds of injunction must be done to perpetuate justice and at the end of the day, the interests of justice must prevail.

The Delhi HC also considered the ratio of Indian judicial precedents in *O.N.G.C. Modi Entertainment Network* and *Dinesh Singh Thakur* on anti-suit injunction.⁶ Relying on *Modi Entertainment Network*, the Delhi HC observed that '*...anti-suit injunctions are ordinarily to be granted where the foreign proceedings are 'oppressive or vexatious', or where declining injunction would result in defeating the ends of justice and perpetuating injustice...*'.

Relying on various Indian and international case laws⁷, the Delhi HC proceeded to list a set of general principles that would be applicable to anti-suit and anti-enforcement injunctions:

1. Anti-suit injunctions should be granted only in rare cases. Courts should be mindful of the fact that even an injunction in *personam* interferes with the functioning of a sovereign forum, not subject to the writ of the court granting the injunction.
2. Anti-suit injunctions could only be granted by a court possessing 'sufficient interest' in the subject matter of the proceedings which it intends to injunct.
3. A definitive test is the possibility of palpable and gross injustice if such injunction is not granted. In doing justice in accordance with law, courts will try and preserve the subject matter of the suit so that the beneficiary of the final verdict can enjoy the fruits thereof.
4. Interference with the right to pursue one's legal remedies, before the competent forum amounts to 'oppression', especially where there is no other forum which the litigant could approach.
5. In patent infringement matters, it is the right of the patent holder to choose the patents which it desired to enforce. The only practical relief available to an SEP holder is by way of anti-infringement action. The right to seek legal redressal, against infringement, is a fundamental right. A proceeding/order which results in divesting the patent holder of this fundamental right is *ex facie* oppressive in nature. Protection of the jurisdiction of the Court is also a guiding factor.
6. Where the proceeding/order of which injunction is sought, was oppressive to the applicant seeking injunction, comity is of relatively little importance. Even if grant of injunction is likely to offend the foreign court, it would not deter such grant of injunction. Considerations of comity were subject to the condition that the foreign law, or the foreign proceeding or order was not offensive to domestic public policy or customary international law.
7. There is no reason to treat applications for anti-enforcement injunction as 'exceptional', to the extent that, even if grounds for grant of injunction were made out, the Court would hesitate.

The Delhi HC also listed some instances in which anti-enforcement injunction would be justified, *viz.*

1. Where the judgment to be enjoined was obtained too quickly or too secretly to enable the applicant (seeking injunction) to take pre-emptive remedial measures, including by way of applying for anti-suit injunction.
2. Where the order to be enjoined was obtained fraudulently.
3. Where the applicant seeking anti-enforcement injunction had no means of knowledge of the judgment/order until it was served on him.

Whether the Wuhan Court was justified in granting anti-suit injunction:

At the outset, the Delhi HC clarified that a court must ordinarily be resistant to injunct the enforcement of an order passed by a foreign court. However, where such order entrenches on the access to legal remedies in another sovereign country, without due justification, the courts where enforcement is sought must protect such incursion on the fundamental right of its citizen to seek legal remedies.⁸

The Delhi HC also observed that the factors considered by the Wuhan Court in granting the Anti-Suit Injunction Order are not recognised as factors for grant of anti-suit injunction in India or in other jurisdictions.⁹ It was also noted that Interdigital was not served with a notice of the Anti-Suit Injunction Application. Therefore, Interdigital's default in responding to the alleged notice could not constitute a justifiable basis for the Wuhan Court to decide Xiaomi's Anti-Suit Injunction Application without hearing Interdigital.¹⁰

Scope of Overlap of subject matter between the two suits:

The Delhi HC examined the scope of overlap of subject matter between the two proceedings, the possibility of conflicting orders and the exclusive jurisdiction of the Delhi HC in respect of the Civil Suit, and observed that:

1. The cause of action in the Civil Suit related to alleged infringement of Interdigital's six Indian patents, whereas the Wuhan Suit pertained to the entire portfolio of Interdigital's SEPs.

2. The subject matter of the Wuhan Suit was the determination of global FRAND royalty rates. Accordingly, the alleged patent infringement by Xiaomi is not pending determination before the Wuhan Court. Resultantly, the Delhi HC inferred that the scope of inquiry in the Wuhan Suit was entirely different from that in the Civil Suit.
3. To establish infringement before the Delhi HC, Interdigital would be required to establish that the suit patents were actually SEPs. Once established, it had to be determined whether Xiaomi was utilising Interdigital's patented technology. After crossing this threshold, the issue of the appropriate royalty rates for licensing the SEPs would arise. Accordingly, the issue of FRAND royalty rates only arose as a part of the entire scope of the dispute and it is only at a later stage that there might arise an overlap between the Civil Suit and the Wuhan Suit.
4. The nature of overlap between the Civil Suit and the Wuhan Suit is not such as would justify the Civil Suit to be brought to halt, pending disposal of the Wuhan Suit.¹¹

The Delhi HC held that it is only where such overlap results in the foreign proceedings being rendered "oppressive or vexatious" that an anti-suit injunction may be justified.¹² Therefore, the Wuhan Court could not have passed the Anti Suit Injunction Order.

Possibility of conflicting orders:

The Delhi HC observed that mere possibility of conflicting orders being passed cannot be a ground for a court, in one sovereign country, to injunct proceedings before the court in another, over which it has no dominion at all. Even if a court arrives at a decision, it would always be open to the latter court to follow, or distinguish, the decision of the former, or take a different view. Moreover, since the issues in the Civil Suit were fundamentally distinct to those in the Wuhan Suit, the possibility of a conflicting order did not assume much significance in the Civil Suit.¹³

Exclusive Jurisdiction of the Delhi HC:

It was held that Interdigital could have challenged the infringement of Indian patents only in India. Wuhan Court overlooked this premise while holding that Interdigital had sought to exclude the jurisdiction of Wuhan Court, thereby, ignoring that the Wuhan Court did not have a valid jurisdiction to adjudicate the issues in the Civil Suit in the first place. The Delhi HC further stated that while the Wuhan Court may not have been justified in passing the Anti-Suit Injunction Order, the Delhi HC would be justified in law in injuncting Xiaomi from enforcing the Anti-Suit Injunction Order.

Deposit of Costs:

The Delhi HC held that if measures are taken against the Interdigital for securing a deposit of the fine of RMB 1 million per day passed by the Wuhan Court, the defendants would secure such amount of fine imposed, by depositing the same with the Registrar General of the court.

COMMENT

The Delhi HC has laid down the manner in which courts must approach applications seeking anti-enforcement injunctions. Most importantly, the issue of 'comity of courts', whilst certainly not ignored, has certainly been put alongside the issue of vexatious and oppressive proceedings.

While the conduct of the parties and the factual matrix in the instant case played a very important role in the Delhi HC coming to its judgment, this judgment assumes greater significance for several other reasons. One must keep in mind that this area of law i.e., issuance of anti-enforcement injunctions is still at its nascent stage in India and is expected to develop with the passage of time and with additional jurisprudence being created as such orders are taken up in appeal all the way up to the Supreme Court of India. The Delhi HC did not delve into the enforceability of the Anti-Suit Injunction Order in India. India and China do not have reciprocal arrangements on enforcement of court orders under the Code of Civil Procedure, 1908, therefore, the enforceability of such orders can be an extremely cumbersome and tedious process.

Generally, complex cross border transactions involve an array of issues which are individually governed by a different set of dynamics, such as, competence of the fora, arbitrability of the disputes, enforceability of awards and/or decrees etc. Such composite transactions usually tend to involve similar issues between the same parties to be adjudicated by different fora or even in different resolution mechanisms. The issue of overlap is a reality and cannot be discounted.

In this respect, the Delhi HC has commendably attempted to set out the scope and impact of overlapping issues in determining jurisdiction of courts. Such decisions which go to the root of an issue and provide a thorough resolution of the same go a long way in contributing to commercial jurisprudence of a legal system.

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You can direct your queries or comments to the authors

¹ I.A. 8772/2020 in CS(COMM) 295/2020.

² Fair, reasonable and non-discriminatory.

³ Case No. (2020) E 01 Zhi Min Chu No. 169.1.

⁴ CS (COMM) 295/2020.

⁵ (2019) SGCA 10.

⁶ *Modi Entertainment Network v. W.S.G. Cricket Pte Ltd.*, (2003) 4 SCC 341; *Dinesh Singh Thakur v. Sonal Thakur*, (2018) 17 SCC 12; *O.N.G.C. v. Western Co. of North America.*, (1987) 1 SCC 496.

⁷ *Devi Resources Ltd v. Arto Exports Ltd.*, 2019 SCC OnLine Cal 7774, *SAS Institute v. World Programming Ltd.*, (2020) EWCA Civ 599; *IPCom GmbH & Co KG v. Lenovo Technology (United Kingdom) Ltd; Lenovo (US) Inc. v. IPCom GmbH & Co KG*, RG 19/21426-No Portalis 35L7-V-B7D-CBAZK; *Huawei v. Conversant*, [2019] EWCA Civ. 38; *Unwired Planet International Ltd v. Huawei Technologies (UK) Co Ltd*, [2020] UKSC 37; *Ecobank Transnational Inc v. Tanoh*, (2016) 1 WLR 2231.

⁸ Paragraph 90 of the Judgment.

⁹ Paragraph 92 of the Judgment.

¹⁰ Paragraph 94 of the Judgment.

¹¹ Paragraph 101 of the Judgment.

¹² Paragraph 102 of the Judgment.

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