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Electronic Contracts: Are they legally valid?

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Electronic Contracts: Are they legally valid?

With the recent surge in e-commerce, the use of electronic means for executing contracts in India is becoming increasingly common. This brings to the fore the question of whether such electronic contracts (or as more popularly known as e-contracts) can constitute valid contracts under Indian laws.

While the (Indian) Contract Act, 1872 (“ICA”) does not specifically discuss the concept of “electronic” contracts it does not prohibit them *per se*. Like any other form of contract, an electronic contract is also primarily governed by the codified provisions of ICA, as applicable to contracts in general.

Therefore, like an ordinary paper contract, an electronic contract also cannot be validly executed unless it satisfies all the essentials of a valid contract, such as (a) “Offer” and “Acceptance”; (b) Lawful consideration; (c) Lawful object; (d) Free consent; (e) Parties to be competent to contract; (f) Intention of parties to create legal relationship; (g) Certainty and possibility of performance; (h) Not be expressly declared to be void; and (j) Compliance with formalities under different laws governing the agreement. All other statutes applicable to an electronic contracts are to be read in conjunction, and not in substitution, with the ICA.

The Information Technology Act, 2000 (“IT Act”) accords statutory recognition to electronic contracts/records. Amongst other things it specifically states that a contract shall not be deemed unenforceable, solely on the ground that electronic form/means were used for communication of proposals, acceptance of proposals, revocation of proposals or acceptances, as the case may.

The IT Act, also recognizes “*digital signatures*” or “*electronic signatures*” and validation of the authentication of electronic records by using such digital/electronic signatures. The Ministry of Communication and Information

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Technology, Government of India in the “Guidelines for Usage of Digital Signatures in e-Governance” observed that the purpose of a digital signature is the same as that of a handwritten signature, thereby equating this authentication tool at par with a handwritten signature.

In terms of the Indian Evidence Act, 1872 (“**Evidence Act**”), the contents of electronic records may be proved in evidence by the parties in accordance with the provisions of the Evidence Act. Further, Indian courts are empowered to presume that an electronic message, forwarded by the originator through e-mail to the addressee to whom the message purports to be addressed corresponds with the message as fed into his computer for transmission; without any presumption as to the person by whom such message was sent.

Conclusion of contracts through electronic means, such as through e-mail communications (or execution of electronic contracts) has been recognized by Indian courts from time to time. For instance, in *Shakti Bhog Foods Limited vs. Kola Shipping Limited*, [AIR 2009 SC 12], the Supreme Court of India held that the existence of an arbitration agreement between the parties can be inferred from a document signed by the parties, or an exchange of letter, telex, telegrams or other means of communication, which provide a record of the agreement.

Similarly, in the case of *Trimex International FZE Limited, Dubai vs. Vendata Aluminum Ltd.*, [(2010) 3 SCC 1], the Supreme Court of India held that the contract between the parties was unconditionally accepted through e-mails and was a valid contract which satisfied the requirements of the ICA. The Court further observed that: “*Once the contract is concluded orally or in writing, the mere fact that a formal contract has to be prepared and initialed by the parties would not affect either the acceptance of the contract so entered into or implementation thereof, even if the formal contract has never been initialed.*”

While the legal framework governing electronic contracts is still evolving and may not yet comprehensively cover all aspects forming part of such contracts or documents, most Indian laws and Indian courts widely recognize the widespread progression to, and reliance on electronic/digital solutions. The common legislative and judicial intent appears to be that any legally valid acts that are ordinarily performed would continue to be valid even if performed electronically or digitally, as long as such electronic/digital performance consists of all the attributes of legally valid contract, as may be prescribed under the applicable laws.

Feedback

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