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CONTEMPORARY ISSUES IN E-CONTRACT

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ABSTRACT

Indian contract act, 1872 forms a base of all contracts in India. In India E-Contracts formed are regulated by both IT Act and Indian Contract Act, 1872. This article concentrates on the issues out of an E-Contract and the major problem arising out of E-Contract which is seemed to be increasing since there is no regulation to form an E-Contract. Today in the developed modern era of the world there is no need to any physical presence or boundaries for a contract. An electronic contract is something which crosses the jurisdictional boundaries since it can be created from any place in the globe, and this raises the question of jurisdiction when any dispute arises between the parties out of the electronic contract. This paper focuses based on e-contract the legal validity and the jurisdictional issues in electronic contract, the essentials of e-contract then with the challenges with e-contract and lastly with the laws pertaining to e-contract and remedies available to the aggrieved party.

KEYWORDS – E-Contract, Indian Contract Act, E-Commerce, Contract, Information Technology.

I. INTRODUCTION

E-Contract is generally considered to be a part of e- business. This electronic contract has a great influence in the current modern era. Electronic contract has existed in India from 1990's however the concept has been established and got upsurged in the recent years. Easy access to internet, technical facility, smart phones, has resulted to enter the electronic contracts. E-Contract is remarkably like the traditional contract the only difference is that the contract here takes place in the digital mode or e-mode. The main objective of this research article is E-Contracts and the contemporary issues along with the legal issues. At present in India the Indian contract act, 1872 and Information Technology act, 2000 along with the Evidence Act, 1872 regulates the E-Contract in India. The term contract means "Agreement enforceable by law" under Indian Contract Act, 1872. But this meaning is not completely applicable when it comes to electronic contract since none of the legislature has given a proper definition for electronic

contract. In the case of *Tamilnadu organic private Ltd V. State Bank of India*²⁸ court contended that the Indian courts enforces the E-Contracts and defines electronic contract as a valid contract.

II. E-CONTRACT

E-Contract are remarkably like usual contracts which takes place physically, but these takes place through online mode. E-contract are efficient in nature and saves the time as well. E-Contract process is quite simple by attaching digital signature of both the parties of the contract on the E- copy of the contract agreement. Though Indian Contract Act, 1872 Indian Evidence Act, Information technology act governs E-Contract there are various loopholes in the topic of E-Contract. Government should take necessary steps to make aware about the E-Contracts to the public. E-Contract can be called as online contract, digital contract, or cyber contract. Generally, e-contracts are

²⁸ *Tamil Nadu Organic Pvt. Ltd. through its director S. Anandaraj v/s State Bank of India AIR 2014 (Writ Petition No. 34736 of 2013) decided on 20 February 2014*

formed under the doctrine of “uberima Fides” means “utmost good faith.” Section 4 of information technology act, 2000 says that if any law which is applicable in India requires a document to be in handwritten, or in printed form then it must be considered that such document or information is valid if it is on electronic form, and it can be used for future references. In the case of **Trimex International FZE Ltd. Dubai V. Vendanta Aluminium Ltd²⁹** court held that in the case that the offer and acceptance carried through the e-mail are valid. According to information technology act, 2000 the term document includes any electronic record.

III. PARTS OF ELECTRONIC CONTRACT

There are two main parts to an electronic contract,

- The originator
- The addressee

According to information technology act, 2008 Originator is a person who sends, generates, stores, or transmits any electronic message to be sent or stored to other person without any intermediary. According to information technology act, 2008 addressee is a person who is intended by the originator to receive the electronic record but does not include any intermediary.

IV. RECOGNITION OF E-CONTRACTS

Generally, in tradition method of contract signatures of both the parties are required but when it comes to electronic contract the electronic signatures come into play. According to information technology act under section 2(p) electronic signatures are defined as the authentication of any electronic record by a subscriber by means of electronic technique specified in the second schedule and it includes digital signature.

According to section 85 c of Indian Evidence Act when the digital signature is attached then it will be presumed that the information provided in the certificate will be true and correct.

In the case of **Ambalal Sarabhai enterprise Ltd V KS Infraspace LLP Ltd³⁰**, the Hon'ble supreme court of India examined the validity of the agreements entered by the parties through both email and WhatsApp. Court held that the WhatsApp messages are virtual verbal communications and are matters of evidence regarding their meaning and its content to be proved during trial and the cross examination. The word final draft in the e mail cannot be determined by itself for the offer or the acceptance.

The electronic contracts are valid, and they are enforceable according to the provisions given under the Indian contract act, the information technology act and the Indian evidence act like the usual traditional methods of contract.

V. KINDS OF ELECTRONIC CONTRACT

Electronic contract can be classified as

- 1) Contracts formed over E-mail.
- 2) Shrink wrap contract.
- 3) Click wrap contract.
- 4) Web wrap contract.

A. Contracts Formed over E-mail:

Contracts which are formed through E-mail is quite common in practice and such contracts can be formed through sending offers and accepting through mail. The hon'ble supreme court in the case of **Trimex international Fze Ltd, Dubai V. Vedanta Aluminium Ltd**, India has held about the validity of the electronic contracts. In the case of **Mehta V. J Pereira Fernandes**, the court decided that the chancery division of the England and the Wales high court, in this case the appellant has sent an e-mail offering a personal guarantee of the debt due from his company but did not sign the e-mail. The only place where his name was

²⁹ *Trimex International FZE Ltd, Dubai V. Vendanta Aluminium Ltd 2010(2) AWC 1170(SC), JT 2010*

³⁰ *Sarabhai enterprise Ltd V. K.S. Infraspace LLP Ltd reported in (2020) 5 SCC.*

written in the email address from which the email has been sent. The Hon'ble court in this court held that through the email was not signed, it would be enforceable.

B. Shrink wrap contract:

Shrink wrap contract refers to the license agreement which is wrapped with the software. Here "ship wrap" means thin plastic wrapping around a product or box.

C. Click wrap contract:

These agreements are generally derived from "ship wrap agreement." This type of contract is usually executed by clicking "I agree" or writing the consent in the dialogue box given.

D. Web wrap contract:

In this type of contract, the website usually provides a hyperlink at the bottom of the page which connects the users to the page with the terms and conditions on clicking it. So once the website is accessed it is presumed that they agree with the terms and the conditions.

VI. ESSENTIALS OF E-CONTRACT

The essentials of E-Contract are also very to that of the traditional methods of contract. It goes like

- 1) Firstly, there should be an offer.
- 2) Secondly, there offer should be acknowledged.
- 3) Thirdly there should be a legal consideration between the parties.
- 4) Fourthly there should be intention to the parties to create a lawful relation.
- 5) Then the contract should be formed with free consent of the parties
- 6) Lastly, the object of the contract should be lawful.

VII. NATURE OF ELECTRONIC CONTRACT

- 1) No physical borders
- 2) No handwritten signature is needed.
- 3) Risk factor is high since there is no optimal security.
- 4) Parties do not meet physically.
- 5) Risk factor is high.
- 6) If in case, there is a breach of contract then there would rise a major jurisdictional issue.

7) There is no single authority to head the whole process.

VIII. ISSUES FACED BY E-CONTRACT

Though electronic contract has various advantages it has few issues which wraps as a disadvantage to the electronic contract.

A. JURISDICTIONAL ISSUE

Since electronic contracts are paperless there is high difficulty in determining the jurisdiction i.e., the extent of the court's authority.

In the case of *P.R Transport Agency Vs. Union of India & Others*³¹ the Allahabad court dealt with the question of jurisdiction and held that the acceptance of the contract was sent through mail and received in Uttar Pradesh. Thus, the place of jurisdiction on the present case lies in Uttar Pradesh.

The Hon'ble Supreme Court of India in the case of *Bhagwandas Goverdhandas Kedia V. Girdhari lal parshottamdas & Co*³² held that "at the place of proposer where the acceptance is received shall have the jurisdiction for enforcement of contracts entered into by means of computer internet.

Since the electronic contract has no boundaries, it has become difficult to deal with the issues of jurisdiction and particularly it is overly complicated when it is between two countries.

B. PARTIES TO CONTRACT:

When it comes to the transactions in an electronic contract it takes place between two anonymous persons or parties. Usually in the traditional method of contract minors are not competent to enter contract. But when it comes to electronic contract even a minor can enter contract. For example, when it comes to click wrap contract even a small child can enter contract by mistake of accepting the terms and conditions.

³¹ *P.R Transport Agency Vs. Union of India & Others AIR 2006 AII 23*

³² *Bhagwandas Goverdhandas Kedia V. Girdhari lal parshottamdas & Co 1966 AIR 543, 1966 SCR (1) 656*

IX. E-CONTRACTS UNDER INDIAN LAW

A. Indian contract act, 1872

The Indian contract act includes all the rules applicable to contracts in writing and any regulatory inquiry concerning electronic contracts will be settled under the Indian Contract act.

B. Indian evidence act, 1872

Indian courts nowadays accept electronic mode of contracts as evidence. The computer-generated evidence was introduced under section 65A and Section 65B in Indian evidence act through the case of ***Société des products Nestle S.A. V. Essar industries & Ors***³³. And, in the case of State V Mohd. Afzal & Ors held that electronic records are acceptable in court.

C. Information technology act, 2000

Section 10A of IT Act deals with the validity of the contracts formed through electronic mode and it is also given that it cannot be unenforceable on the ground stating that the contract is formed on the electronic means.

X. REMEDY CLAUSE

When the parties enter contract, they are bound to abide to perform the contract and if the parties indulge in the non-performance of the act, then it amounts to breach of the contract.

There are few methods through which the affected party can get remedies. There are few clauses which can be added in the agreement of contract called as remedy clause. Remedy clauses usually states that what are rights of the affected party against the party that breached the contract.

Next is the arbitration clause which states that the disputes arising under the contract should be settled through arbitration. The arbitration clauses include the name of the organization which conducts the arbitration and the city where the arbitration will be held.

The next kind of clause is the merger clauses the purpose of the merger clause is that the

evidence outside the written document will not be admissible in the court in the terms of written document.

XI. CONCLUSION

The dominion of the electronic contracts in India is governed by the combination of the contract act and the information technology act. Though there are legislations which govern the electronic contract there are several situations which remains unresolved. Though the contracts formed over the e-mail have gained adequate legal authority, Indian laws has not specifically provided rules for shrink-wrap, click-wrap, and browse-wrap agreements. The mode of the electronic contract is a revolutionary changing global technique but the laws governing such electronic contracts are very vague in nature and they should be in a dynamic in order to accept the present scenarios including the electronic contract.

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³³ *Société des products Nestle S.A. V. Essar industries & Ors* 2006 (33) PTC 469 Del