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Executing Contracts Electronically in times of Covid-19

What is Contract ?

The term “Contract” is defined under the Indian Contract Act, 1872 as “An Agreement enforceable by law “. Basically, a contract can be said to be any kind of agreement which can be enforced under the law.

Legislation governing execution of valid contracts

Apart from the Indian Contract Act, 1872, there are other legislation which come into play to make a contract enforceable under the law.

Indian Stamp Act, 1899 & Respective State Stamp Acts

Contracts involving moveable and immovable properties are required to be sufficiently stamped which governed by this Act.

Indian Evidence Act, 1872

The evidentiary value of the contract is determined by this Act.

The Registration Act, 1908

Certain contracts involving transfer of *immovable properties* are required to be compulsorily registrable under this Act.

Whereas, contracts involving moveable properties are only optionally registrable.

Traditional Method of Execution of Contract

Till the pre-covid era Parties have been executing the contracts through physical signing of the papers. Till only a few days back, entering into contract electronically was an exception and physical signing of papers was a norm. Now, with the onset of covid pandemic and social distancing becoming a way of life, it is necessary to adopt to alternative means of entering into contracts which can be signed by all the parties remotely and at the same time, the contracts should have legal sanctity of physically signed contract.

Executing Contracts Electronically & its Law

Many a times, Parties to the contract are skeptical about concluding the contract via e-mail. Some believe that a contract if concluded over e-mail and left unstamped would leave major lacuna in its legal validity and the other party may challenge its validity if and when enforced. There are doubts that if the parties agree to the terms over e-mail, the contract may not be considered legal. There is always a belief that such contracts allows the party to take the terms very causally and either party can easily wriggle out of the deal without much hassle.

Information Technology Act, 2000

Section 10A of the Information Technology Act gives recognition to any contract which entered into through electronic means.

Validity of Contracts entered into on E-mail

Therefore a contract entered into between the parties over an e-mail is perfectly legal and either of the parties cannot back out from terms of the contract on the ground that the contract is illegal because it does not meet the requirements of other legislations mentioned above.

This was confirmed by the Hon'ble Supreme Court in the case of **Trimex International FZE Ltd. Dubai vs. Vedanta Aluminium Ltd., India** (2010) 3 SCC 1 . Wherein the Supreme Court held that

“Once the contract is concluded orally or in writing, the mere fact that a formal contract has to be prepared and initialled 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”

As mentioned above, contracts entered through e-mail are perfectly valid similarly contracts entered by using digital signatures have the same legal validity.

Co-existence of E-Contracts and other Legislation

As discussed above there are other legislation which require stamping and registration of documents. The next question would be, how to execute contract electronically and at the same time meet the requirements of Indian Stamp Act, 1872.

Steps for executing contracts electronically involving moveable properties

(Moveable Property includes monies, intellectual property, machinery, work agreement, employment agreement/contract, stocks and everything which can be moved except for immovable property like house, office , structure etc.).

Step -1 : The parties to the contract may finalize the terms via e-mail with or without digital signature.

Step-2 : Either of the Party may take the printout of the final terms and pay stamp duty online by using the facility of E-SBTR(Online Stamping Facility provided by Nationalized Banks), wherein the party is required to pay the stamp duty online and take the print of the receipt generated to the

nearest SBI Bank(or any bank providing this facility) branch. The SBI Bank branch shall stamp the receipt.

Step-3: The Party paying the stamp duty shall scan the stamped receipt of the stamp duty and share it with the other party.

This way one of the parties has the original agreement and the other party has its duplicate. Each of the Parties holding the original and the duplicate agreement have equal rights under Evidence Act to enforce the agreement.

The above discussed method can be used regularly in the present times of Covid and the agreements executed by following the above steps are perfectly valid. However, before executing any such agreement, it is advisable to seek legal opinion of your lawyer/solicitor.

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