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E-contracts - contracts executed under a digital signature



Understanding the legal recognition of digital signatures and the validity and enforceability of electronic contracts.

All parties are required to sign a contract for it to be valid. Due to ongoing travel restrictions applicable globally and the lockdowns imposed on account of COVID 19, physical execution has become next to impossible. One possible solution to overcome this challenge is by adopting digital signing of the contracts. Contracts such as employment contracts, non-disclosure agreements, licensing agreements and certain other contracts can be digitally signed and executed. A digital signature is all that the parties to a contract need even though all the parties to a contract are miles away from each other.

Digital signature and the contracts executed under a digital signature (“e-contract”) are recognized under the Information Technology Act, 2000 (“IT Act”). Under the IT Act, e-sign means authenticating any electronic record by means of digital signature. However, in case of an e-contract, a digital signature comes into play.

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What is a digital signature?

Under the IT Act, digital signature means authentication of any electronic record by a subscriber by means of an electronic method or procedure in accordance with the provisions of section 3 of the IT Act.

The IT Act ratifies digital signature and enables a person to use it just like an ink signature, which eventually suffices the same purpose. The basic purpose of digital signature is not different from our conventional signature. The purpose therefore is to authenticate the document, so as to identify the signatories and to make it binding on persons putting digital signatures and to achieve enforceability against the defaulting party.

Are digitally signed contracts valid?

Indian laws recognize a contract created by digital signature. While the Indian Contract Act, 1872, does not exclude contracts executed using electronic means from its ambit, the IT Act, specifically provides legal validity to such contracts. Amongst various other things under the provisions, it appears that a contract shall not be deemed unenforceable, solely on the ground that electronic form/means were used for its execution.

In the case of Tamil Nadu Organic Pvt. Ltd. vs. State Bank of India^[1], the Madras High Court *inter alia* held that the contractual liabilities could arise by way of electronic means and that such contracts could be enforced through law. Moreover, the Court had also stated, that authentication of electronic records are usually made by the affixing of digital signature, as provided under section 3 of the IT Act and that, section 10-A of the IT Act enables the use of electronic records and electronic means for the conclusion of agreements, contracts and other purposes.

Digital signature and the evidentiary value of electronic records

The courts in India recognize electronic documents and furnishing of the same as evidence as per the relevant provisions of the Indian Evidence Act, 1872. But, admissibility of the same is subject to various requirements as prescribed under the Indian Evidence Act, 1872 and the case laws. Enforceability of such an e -contract is also an important aspect to be considered while entering into any such contract, hence appropriate consultation with a legal expert is necessary.

Documents where digital signatures cannot be used

Certain instruments such as a promissory note or bill of exchange, power of attorney, trust deed, Will or any other testamentary disposition, contract for sale or conveyance of immovable property or any interest in such property and other documents as may be notified by the Central Government in the official gazette cannot be digitally signed. The term conveyance in context of the above section seems to

have a wide meaning, which is basically the act of transferring an ownership right, title and interest in a property from one party to another and shall include a gift deed as well. Such transactions would not be governed by the provisions of the IT Act 2000, as the same have certain explicit requirements.

New Development on Registration Facility

From a Notice put up on the IGR website , it appears that the Government of Maharashtra, for certain Sub-Registrars offices in Mumbai region only, has provided a facility, known as 'Online submission of Digital document'. The parties by way of which can attach the PDF version of the document to be executed and registered along with the annexures (optional) and submit the same online to the Sub-registrar for scrutiny. Once the said document is scrutinized / qualified, then the parties can appear and proceed with physical execution and registration of the document, on the given date. However, as on date, there is no clarity on actual implementation and workability of the said facility. Nonetheless, going forward this facility would be extremely beneficial for the parties.

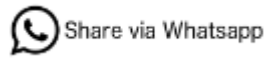
The current situation has brought to the limelight that there are certain contracts which can be entered into where physical execution of documents/contract is not necessary.

Conclusion

It is quite likely that for routines to return back to normalcy may take a while. In such a crisis, the country cannot afford suspension of business. This crisis may pave the way for further amendments and evolution in the IT Act 2000 and in the process of online registration of documents, bringing more transactions in their ambit and further simplifying the registration procedure. The current situation has brought to the limelight that there are certain contracts which can be entered into where physical execution of documents/contract is not necessary. In consultation with one's lawyer one can enter into such contracts by adopting an easier way of executing documents i.e. using a digital signature.

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[1] *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*



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