

VALIDITY AND JURISDICTION OF E-CONTRACTS

ABSTRACT

This research paper mainly analysed on the position of E-contracts in the current scenario of corona epidemic and also checks the validity of contracts those created by instantaneous mode of communication and by post box rule. The bottom line for any business or commerce is the contracts entered into between the parties. The Information Technology Act, 2000 gave validity to electronic contracts. Section 10-A of the Information Technology Act, 2000, which provides the validity of electronic contracts in India. While the Indian Contract Act 1872 does not exclude electronic contracts, ITA 2000 specifically provides for them, as ICA, 1872 is a complete act in India which deals with the provisions applicable over all the aspects of contract.

The rapid progress and spread of the COVID-19 has created a condition where parties are unable to fulfil their contractual obligations, to overcome this e- contracts played a pivotal role in all over the world. This research paper also deals with the merits and demerits of E- contracts. The study found the controversial side of e-contracts i.e. the jurisdiction of the parties in case of any dispute or suit for the breach of contracts and concluded with the solution for the same.

In this research, the researchers also have taken the reference of many case laws related to the jurisdiction of e- contracts and on its validity compared contracts those created by post box rule; and what was held by the High Courts and The Supreme Court of India in those cases.

Keywords: *E- contracts, Validity, Jurisdiction, merits and demerits, Information technology Act, 2000, Indian Contract Act, 1872, Corona epidemic, Lockdown, High Courts, Supreme Court of India.*

INTRODUCTION

Electronic Contract refers to a contract that takes place through e-commerce, often without the parties meeting each other¹. It refers to commercial transactions conducted and concluded electronically. E- Contracts are enforceable as long as they do not violate the general principles of Indian Contract Act, 1872. The Indian Contract Act, 1872 also gave recognition to oral contracts, but they must be made by the free consent of parties, competent to contract, for a lawful consideration and with a lawful object, and are not expressly declared to be void. Thus, nothing in this Act prohibits the validity of electronic contracts, if those agreements fulfill all the essentials of a valid contract. Free consent is a one of the most essential characteristic of a valid contract, which is always required for a valid contract.

Indian courts have dealt with instances where the terms of contract were negotiated between parties wherein one party to the contract was in an unfair dominant position and have held unfair contracts as void. In India there are no specified laws to govern E-Contracts. Regulation and recognition to E-Contracts is provided in some of the sections of the Information Technology Act, 2000 and the Indian Evidence Act, 1872. Section- 12(3) of IT Act, 2000 provides detailed provisions for acknowledgement and attribution, of electronic records and secured electronic procedures.

Since e-contracts are not physical agreements and are concluded virtually, determining territorial jurisdiction in case of any dispute could be a challenge. There are certain provisions of CPC, 1908; which provides that the territorial jurisdiction of civil case could be concluded either by the place of residence of either party or the place where cause of action took place. The contracts in case of instantaneous mode of communication are concluded at the place of acceptance of the proposal. Hence, the contracts by instantaneous mode of communication should mention which court would have jurisdiction to try disputes arising out of the contract. If the jurisdiction is not mentioned in any e-contract, the jurisdiction can be determined; based on the principal place of

¹ Agama Law Associates, E- Contracts in India, <https://agamalaw.in/2015/06/03/e-contracts-in-india>.

business of either party². There are some case laws in India dealing with the validity and jurisdiction of E- contracts, which have been discussed in this research paper.

E- CONTRACTS

I. WHAT IS E-CONTRACTS

E-contracts, or electronic contracts, basically mean the types of contracts which are formed online. Though, e-contract and online contract are used synonymously, we must note that e-contract is a broader expression which includes 'online contract' in its ambit. E-contract can also include any exchange of any type of electronic record like short message service (SMS), MP3 audio file, etc. Talking about e-contracts, the major change between the electronic contract and ordinary contract is that the interaction between the parties in creating the contract is done by electronic means like e-mail, by two electronic agents programmed to recognize the contract formation, or through any computer program. Principles and remedies of contract law are applied to e-contracts. Basic requirements of binding contract are also same for both: an offer, an acceptance, consideration, capacity, competency, etc. For example, X has written contract in Microsoft word, but instead of printing it out he just mailed it to someone, and if they accept the contract they will sign it digitally and send it back to him. Similarly, these contracts are also in the form of 'Click to Agree' which is usually used with downloaded software: When user clicks on 'I Agree' button on a page which contains the software license, then the transaction is completed. Also, there are methods in which by typing your name in the signature box is also considered your signature where it is written that you understand that this is your legal signature. We, as consumers, click the 'I Agree' button or write our name in the signature box without reading that long and complicate documents because it is time taking but it can make you miss an important provision which can cause you further problems. So we must be aware and know what we are agreeing to.

II. IMPORTANCE OF E-CONTRACTS

In today's fast-paced world, internet has connected lot of people and has provided people to extend their business online. So for the parties who live in two different parts of the world and

² Little Law Books, Electronic Contracts: Validity and enforcement in India, <https://www.littlelawbook.com/electronic-contracts-in-india>.

wants to enter into a contract always have the option of e-contracts. A digital signature is all they require to enter into a contract with each other even though they are miles away. It is not paper based and is electronic in nature which makes it very convenient method to get into the contract without getting physically exhausted. It is also very speedy method which saves you a lot of time. It also eliminates the need for equipments and office supplies needed to enter into traditional contracts like papers, printing equipment purchase, postage, ink, etc. All such costs are not involved in electronic contract which makes it efficient. Electronic documents are also more secure and safe than paper document. There is risk of manipulation in paper documents throughout its creation, submission and signing whereas in electronic contracts, there are many software which can prevent or at least reduce the signee's ability to tamper the document. Another benefit of electronic contracts is that it is easier to track, monitor, and to find data. In electronic contract you can perform quick searches throughout your database and it is easy to find important terms, phrases, or a piece of information compared to traditional documents. Electronic contracts have many advantages over traditional contract whether it is of money, time, or security which makes it more important and influential and can be game-changing in coming years.

VALIDITY AND JURISDICTION OF E- CONTRACTS

I. VALIDITY OF E- CONTRACTS AS PER INDIAN LAWS

There are no rules or regulations specified regarding E- Contracts in any substantial or procedural laws in India as the Indian Contract Act, 1872 majorly deals with the provisions related to contracts made by post box rule, but somehow it also mentions the validity oral contracts; which are related to virtual contract. Section 10-A of ITA, 2000 deals with the validity of E- Contracts and also some provisions of the Indian Evidence Act, 1872.

A. Validity as per Indian Contract Act, 1872

E- agreement must fulfill all the essentials of a valid contract according to the provisions of ICA, 1872 i.e. free consent, consensus-ed-idem, competency of the parties and consideration etc. it is because electronic means or instantaneous mode of communications, oral communication and written documents are just a kind of platform on which a valid contract could be determined; the mandatory factors of any contract are apart from these platforms which are only essentials of a valid contract. The provisions of section 10, 11, 12 and free consent (14-22) of the Indian Contract Act, 1872 are sufficient to conclude the validity of a contract irrespective of its platforms on which the contract has been made.

The Indian Contract, 1872 has recognized the traditional agreements which include the oral contracts made by the free consent of the contracting parties. The free consent is considered as the main characteristics of the valid contract.³ The basic requirements of a valid contract are defined under sections 10 and 11 of ICA, 1872.

³ www.indialawoffices.com/legal-articles/e-contracts-and-validity-india.

- a. *Section 10 of ICA, 1872: What agreements are contracts.—All agreements are contracts if they are made by the free consent of parties competent to contract, for a lawful consideration and with a lawful object, and are not hereby expressly declared to be void.*⁴
- b. *Section 11 of ICA, 1872: Who are competent to contract.—Every person is competent to contract who is of the age of majority according to the law to which he is subject, and who is of sound mind and is not disqualified from contracting by any law to which he is subject.*⁵

The parties intend to be bound only when a formal agreement has been executed, the validity of an agreement would not be affected by its lack of formality.⁶ Here formality refers to the platforms on which contracts could be made.

B. Section 10-A of the Information Technology Act, 2000

*Validity of contracts formed through electronic means.—Where in a contract formation, the communication of proposals, the acceptance of proposals, the revocation of proposals and acceptances, as the case may be, are expressed in electronic form or by means of an electronic records, such contract shall not be deemed to be unenforceable solely on the ground that such electronic form or means was used for that purpose.*⁷

Under the provisions of section 10-A of the Information Technology Act, 2000; an electronic contract is valid and enforceable, But it is important for that E- agreement to fulfill all the essentials of a valid contract according to the provisions of ICA, 1872. i.e. free consent, consensus- ed- idem, competency of the parties and consideration etc.

C. Evidentiary value of E- Contracts

The courts in India gave due regards to E- contracts even under the provisions of the Indian Evidence Act, 1872. In case of any disputes in E- Contracts between the parties; Indian Evidence Act, 1872 laid down some provisions related to validity of electronic

⁴ Section 10, Indian Contract Act, 1872.

⁵ Section 11, Indian Contract Act, 1872.

⁶ Maneck Mulla, Validity of Electronic Contracts in India, 4th May, 2020, www.mondaq.com/india/contracts-and-commercial-law/699022/validity-of-electronic-contracts-in-india.

⁷ Section- 10A, Information Technology Act, 2000.

evidences incurred in the proceedings of that case. It may include the electronic witnesses, records, agreement which resulted in the formation of E- Contracts by instantaneous mode of communication i.e. e mail, any social media platform etc.

a. *Section 65-A of Indian Evidence Act, 1872 provides the procedure for furnishing electronic documents as evidence is provided under Section 65-B of the Indian Evidence Act, 1872.*⁸

b. *Section 65-B (1) of Indian Evidence Act, 1872: Admissibility of electronic records.— (1) Notwithstanding anything contained in this Act, any information contained in an electronic record which is printed on a paper, stored, recorded or copied in optical or magnetic media produced by a computer (hereinafter referred to as the computer output) shall be deemed to be also a document, if the conditions mentioned in this section are satisfied in relation to the information and computer in question and shall be admissible in any proceedings, without further proof or production of the original, as evidence of any contents of the original or of any fact stated therein of which direct evidence would be admissible.*⁹

Thus the above mentioned provisions of Indian Evidence Act, 1872 clearly states that electronic records are valid while giving the witnesses in any proceedings. This rule is also applied in case of any dispute of E- Contracts.

II. JURISDICTION OF COURTS UNDER E-CONTRACTS

Issues related to Jurisdiction are bound to rise in e-contracts since the positive limits of classic statute don't slot in the eternity of the internet. It is tough opportunity for the courts to determine their jurisdiction upon the disputes regarding e-contracts when there is this boundlessness on the internet and the transactions are also instantaneous. To determine that which court would have jurisdiction to try disputes arise out of such e-contracts, the CPC prescribes the manner in section 9¹⁰ and section 20¹¹ based on two fundamental principles-

⁸ Maneck Mulla, Validity of Electronic Contracts in India, 4th May, 2020, www.mondaq.com/india/contracts-and-commercial-law/699022/validity-of-electronic-contracts-in-india.

⁹ Section-65(B), Indian Contract Act,1872.

¹⁰ Section 9, Code of Civil Procedure, 1908.

¹¹ Section 20, Code of Civil Procedure, 1908.

- The place where the defendant resides; and
- The place where course of action arises.

While, it is on parties to decide the court of their choice to adjudicate their disputes, they can only choose those court(s) which is/are not barred to exercise their jurisdiction i.e. parties cannot determine the court which does not have jurisdiction to entertain their case.

Ordinarily, contracts contain a specific provision with respect to the place of execution thereof, and the courts of such a place would have territorial jurisdiction to entertain and try the disputes arising under such contracts if in accordance with the CPC as aforesaid.

However, since e-contracts are not physically signed/ executed and are concluded in a virtual space, simply imposing the traditional principles of jurisdiction, applicable to physical contracts, to such transactions can prove to be challenging.

The jurisdictional issues of e-contracts have, however, been addressed to an extent under section 13¹² of the IT Act. Its application is further illustrated in cases like PR Transport Agency vs. Union of India¹³, and Casio India Co. Ltd. vs. Ashita Tele Systems Pvt. Ltd.¹⁴ which we will discuss in the section of judicial precedents.

Summing up all the aforesaid sections and verdicts of the courts, it can be said that the place of contract in e-contract for the purpose of determining jurisdiction (i.e. the place where the cause of action arose) would be regarded to be where the originator has his site of business and where the addressee has his site of business. Yet, since Section 13 of the IT Act is subject to mutual agreement between the parties with agreed site of business, it is suggested that all parties in their e-contracts provide for a specific clause on jurisdiction.

¹² Section 13, Information Technology Act, 2000.

¹³ AIR 2006 All 23: 2006 (1) AWC 504.

¹⁴ Casio India Co. Ltd. vs. Ashita Tele Systems Pvt. Ltd., 2003 27 PTC 265 Delhi

JUDICIAL PRECEDENTS

I. TRIMEX INTERNATIONAL FZE LIMITED VS. VEDANTA ALUMINIUM LIMITED¹⁵

Trimex (registered company under Dubai laws) made an offer for 45000 metric tonnes of Bauxite and Vedanta (Indian company) accepted the said offer. Trimex, counting on the agreement with Vedanta, reached a Bauxite supplier in Australia who agreed to provide the shipments and entered into a Charter Party with a ship owner of Oslo, Norway. Trimex mailed the terms of the Charter Party as accepted from the owners of the ship to Vedanta. Additionally, Trimex asked Vedanta to complete the contract and the Letter of Credit. Formal agreement was sent by Vedanta to Trimex. On the same day, Trimex gives certain clarifications on the “draft contract”. Vedanta asks Trimex to hold the next consignment of Bauxite till further notice. Trimex replied stating that Vedanta would have to indemnify Trimex for any claims from the ship owner for any delay/ cancellation of the shipments. Trimex said that it was impossible to hold the consignment and asked Vedanta to purchase the same. Trimex terminated the contract and reserved its right to claim damages against Vedanta.¹⁶ Trimex gave a formal notice to ship owners informing them about the termination of the Charter Party. The ship owner claimed for US \$ 1 million. Trimex called upon Vedanta to pay compensation to it and treat the notice as a notice invoking arbitration under Cl. 29 of the Formal Agreement if Vedanta failed to pay the same. Vedanta rejected the notice invoking arbitration on the ground that there was no concluded contract between the parties.

A single bench of the SC, consisting of Justice P. Sathasivam, had to decide whether there was a contract and consequently, an arbitration agreement, between the parties. The court disagreed with the contentions of Vedanta that no contract was formed. According to it, the Contract was concluded on 17.10.2007 when, in terms of Section 4 of the Indian Contract Act, 1872 (“Contract Act”), the acceptance was communicated to Trimex through email. Against contention of ambiguity, the court held that there was an agreement on essential terms. The court held that commercial parties often enter into an agreement on material terms and enter into a

¹⁵ Trimex International FZE Limited v. Vedanta Aluminium Limited (MANU/SC/0057/2010: 2010 (1) SCALE 574).

¹⁶ Nikhil Anand, A case comment on Trimex v. Vedanta, www.scribd.com/document/259810177/Case-Comment-Trimax-Vedanta8027.

formal agreement later. Simply because parties intended to enter into a formal agreement does not prevent the contract reached from being enforced.

II. CASIO INDIA CO. LIMITED VS. ASHITA TELE SYSTEMS PVT. LIMITED

There was an occurrence where the Defendant was carrying on business from Bombay. The Defendant got the registration of domain name www.casioindia.com and Defendant no. 2 was the Registrar with whom the domain name was registered. The Plaintiff, on the other hand, asserted its ownership of Casio Computer Ltd., Japan (Casio Japan) which was the registered possessor of the trade mark Casio in India used for a big number of electronic and different products. He had also got the registration of big number of domain names in India like CasioIndiaCompany.com, CasioIndia.org, CasioIndia.net as well as Casio India.info, CasioIndia.Biz.¹⁷ Defendant no. 1 got the registration of these domain names during the time when it held a distributorship agreement with the Plaintiff.

The Honorable Delhi High Court has noted that access to the Defendants website could be had from anywhere else, then jurisdiction cannot be confined to the territorial limits of the place where the Defendant resided and the fact that the Defendants website could be accessed from Delhi was enough to call on the territorial jurisdiction of a court in Delhi. Ultimately, it was held that once a web site is accessed from Delhi, it is enough to invoke the territorial jurisdiction of the Court.¹⁸ For reaching the conclusion, the court depended upon the judgments of *Dow Jones & Co. Inc. vs. Gutnick*¹⁹ and *Rediff Communication Limited vs. Cyber Booth*.²⁰

III. PR TRANSPORT AGENCY VS. UNION OF INDIA

An e-auction was held by Bharat Coking Coal Ltd (BCC) for coal in different lots. P.R. Transport Agency's (PRTA) bid was highest bidder for 4000 metric tonnes of coal from Dohari Colliery. The acceptance letter was circulated on 19th July 2005 by e-mail to PRTA's e-mail address. PRTA deposited the full price of Rs. 81.12 lakh to BCC. BCC accepted the money. BCC, instead of coal send the email saying "due to some technical and unavoidable reasons" the

¹⁷Abhyu, JURISDICTIONAL CHALLENGES WHILE DOING ONLINE TRANSACTIONS, <https://blog.ipleaders.in/jurisdictional-challenges-while-doing-online-transactions/>.

¹⁸Rishabh Aggarwal, Jurisdiction issues in E-Contracts, 15th dec, 2019, https://www.legalbites.in/jurisdictional-issues-in-e-contracts/#_ftn28.

¹⁹ *Dow Jones & Co. Inc. vs. Gutnick*, (2002) HCA 56 (Australia).

²⁰ *Rediff Communication Limited vs. Cyber Booth*, 1999 SCC Online Bom 275: AIR 2000 Bom 27.

coal transfer is cancelled. The reason was that there was one more person whose bid was slightly higher. This communication was challenged by PRTA in the High Court of Allahabad. BCC objected to the “territorial jurisdiction” of the Court on the grounds that it was not arisen in U.P. The IT Act in Section 13 (3) was read. Thus, the acceptance of the tender, will be deemed to be received by the petitioner at Varanasi/Chandauli. Therefore, a part of the cause of action arose U.P., so the court had territorial jurisdiction to entertain the writ petition.

CONCLUSION

It can be concluded that E- contracts are the necessity of the today's generation as it made easier to make contracts for our respective places instead of contracting in a paper or by doing documentation work. The E- Contracts are always valid and enforceable too as per the Indian Contract Act, 1872, Information Technology Act, 2000 and Indian Evidence Act, 1872. The E-Contracts, But it must fulfill all the essentials of a valid contract according to the provisions of ICA, 1872. i.e. free consent, consensus-ed-idem, competency of the parties and consideration etc. concluded virtually, determining territorial jurisdiction in case of any dispute could be a challenge. There are certain provisions of CPC, 1908; which provides that the territorial jurisdiction of civil case could be concluded either by the place of residence of either party or the place where cause of action took place. These contracts are the need of today's youth.