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LEGAL VALIDITY AND ENFORCEABILITY OF E-COMMERCE CONTRACTS IN CORPORATE TRANSACTIONS

“Every Transformation is focused on the betterment of the society, so is Digital Transformation, which is consumer-focused transformation in corporate transaction – Technology a catalyst act as an enabler”.

Anytime anywhere E-commerce platforms made E-contracts an inseparable segment of our society, which is a result of technological advancement, by which people opt a new modus operandi of trading and contracting, that is Electronic Contracts (E-contracts).

Contract is the formal communication between two individuals, wherein they mutually agreed on a subject matter in a same sense. In business world, contract is a predominant condition in business dealing. The moment internet comes into the ordinary course of business communication; the trend in business dealing of exchanging data has been drastically changed to electronic medium of exchanging data, which results into new embodiment of trade and commerce that is Electronic Commerce (E-commerce). In simple terms, it's a business transaction of goods and services through the internet.

Technological advancement of internet enhanced international trade of E-commerce. Primarily, in 1960s, execution of E-transactions used to be done through Electronic Data Interchange (EDI). Than in 1990s, World Wide Web (WWW) helped to emerge E-commerce through websites such as Amazon, eBay. In India, the Indian Railway Catering and Tourism Corporation Limited (IRCTC) was the 1st company to have an E-commerce platform.

In 2000, India enforced Information Technology Act (IT Act) to deal with E-commerce transactions at the time of peak of globalization. For the purpose of contracts, every agreement

and agreement which is a contract (E-contracts also) and is enforceable by law, wherein, law is Indian Contract Act, 1872 (ICA) is a valid contract or agreement. By which E-commerce contracts are valid and enforceable in India.

To be govern as a valid contract, as per section 10 of ICA, there must be an offer & acceptance for a consideration with mutual consent in a same sense between legally contracting parties (above the age of 18 years, mentally sound and solvent), with this object of contract should be legal (not to oppose public policy), and also with capacity and intention to enforce legally under specified term and conditions.

For the purpose of E-contracts, a valid E-contract should adhere ICA & IT Act (both).

Illustration on specified term and condition in E-contract is the moment, when the user clicks on the “I Agree” bar then it becomes legally binding contract (with that, such a contract should also fulfill the prerequisites of valid contract as mentioned in ICA).

E-contracts are legally enforceable E-agreements, wherein E-contract can be formed expressly or impliedly (by the conduct of parties such as placing order on Amazon) through the channel of electronics on internet such as Email, Websites forums, End User License Agreements (EULA). In Email, interchange of communication of valid offer and acceptance may consist of document, faxes and messages. In Website forum, E-commerce website offers good and services for sale and purchase, wherein, user offer to purchase a good on a certain price and vendor accept it for sale, thereby it becomes a contract (it is immaterial that delivery is in physical nature) with that term of using a website also forms a valid contract on the moment user clicks the “I Agree” bar and accept the conditions laid down in the contract. In EULA, when user fill form such as application form and then user clicks the “I Agree” bar and accept the conditions laid down in the agreement.

One of the biggest issue arise in E-commerce contract is the jurisdiction and the place of the execution of the contract, as E-commerce contract are made to deal in national and international trade and commerce, wherein business transactions are not limited to a particular territory or jurisdiction. For the purpose of this issue, there can be two ways, firstly, mutual agreement between the parties in their original or specific agreement or contract (conventionally a part of every business dealing document such as Non –Disclosure Agreement, in which a clause is

always mentioned governing laws and dispute clause), by such mutual agreement, both the parties shall agree on the laws by which they bound themselves and the jurisdiction under which they compel themselves to confront the dispute. Secondly, to avail the jurisdiction of the court in which the cause of action arise, this is the case mostly happened when a user is dealing with a Website forum, wherein there is no written agreement or contract is signed between the parties for a specific business transaction.

Another question may arise is with respect to E-signature, whether it is valid or not or required or not to form a contract?

For the purpose of contract, ICA allows oral and/or written communication to form a contract, so, E-contract can be formed with or without E-signature and it is valid. But in certain laws, there is a specific requirement of signature such transfer deed, assignment of copyright, than in that case IT Act comes into play which made E-signature equivalent to physical signature. Under IT Act, E-signature shall be issued by authorized competent authorities only.

With that, IT Act also specifically exempts certain documents from E-transactions such as Negotiable Instruments, Will, Trust Deed, Power of Attorney, Sale/Conveyance Deed of immovable properties.

In corporate transaction, E-commerce contracts are legally valid and enforceable as conventional contracts and with rise of technological advancement, law needed to be well efficient to cope with the difficulties and challenges a society brings to compete with.