

Legal Validity of E-Contracts: A Paradigm Shift from Conventional Transaction to Digitization

Maryanka*

Abstract

The legal validity of a general contract still holds good while facilitating electronic modes of contract conclusion. The electronic transactions are dependent on the legal framework that governs it and stipulates due recognition to electronic records of digital signatures. For efficient execution of contracts entered in the electronic medium, the mode should be a one that facilitates a secure environment and be of a significant evidentiary value. Like an ordinary paper contract, an electronic contract (or e-contract) is also primarily governed by the codified provisions of Indian Contract Act, 1872 (“ICA”), as applicable to contracts in general. Moreover, the Electronic Records find statutory recognition under the Information Technology Act, 2000 (“IT Act”). The IT Act also recognizes “digital signatures” or “electronic signatures” and validation of the authentication of electronic records by using such digital/electronic signatures. The contents of electronic records can also be proved in evidence by the parties in accordance with the provisions of the Indian Evidence Act, 1872. India witnessed huge expansion of e-commerce in the last decade. Information Technology, actively has been used as a tool in combating geographical and time related constraints thereby resulting in a shift from traditional notions of doing business triggering a fundamental shift of approach of businesses from seller oriented to a more buyer friendly approach”.

Keywords: Contract, Electronic Contract, Electronic Data Interchange, Cyber Contracts, Information Technology Act 2000, UNCITRAL Model Law

Introduction

In the present Indian context, the general principles of contract formation and laws relating to it govern the domain of a contract. A contract is an agreement between two or more parties with a view of conducting any business or transaction. It is

upon the fulfilment of certain requirements that the agreement entered therein is said to be legally valid and enforceable under the law. A contract essentially being an agreement between two or more parties is done with a view to conduct any business transaction, entered orally or in

a written format as prescribed by the law that applies to it. With the evolution of society, the entering of parties in a contract with respective sets of rights and liabilities extended its application over the electronic medium without the requirement of meeting of parties as stipulated in the traditional contracts. The legal validity of a general contract still holds good while facilitating electronic modes of contract conclusion. The electronic transactions are dependent on the legal framework that governs it and stipulates due recognition to electronic records of digital signatures. For efficient execution of contracts entered in the electronic medium, the mode should be a one that facilitates a secure environment and be of a significant evidentiary value.

The advancements in telecommunications and Information Technology have led to a drastic increase in use of computers serving as a channel for electronic trading worldwide. Broadly defined, electronic commerce encompasses all kinds of commercial transactions that are concluded over an electronic medium or network, essentially the Internet.¹ India witnessed huge expansion of e-commerce in the last decade. Information Technology actively has been used as a tool in combating geographical and time related constraints thereby resulting in a shift from traditional notions of doing business triggering a fundamental shift of approach of businesses from seller oriented to a more buyer friendly approach. Conclusion of contracts through electronic means, such as through e-mail communications (or execution of

electronic contracts) have also been recognized by Indian courts from time to time. “*For instance, in the case of Trimex International FZE Limited, Dubai vs. Vendata Aluminum Ltd.*”, the Hon’ble Supreme Court of India held the view that the contract between the parties was unconditionally accepted through e-mails and was a valid contract which satisfied the requirements of the ICA”.³

I. CLASSIFICATION OF CONTRACTS

TRADITIONAL CONTRACTS

Ancient theories of political science suggest the identification of a contractual relationship between society and the state thereby highlighting importance of a contract in a multicultural society. In the absence of a specific law on contract, reliance in the primitive societies was placed on natural principles of a contract wherein the amount of compensation received was proportional to the loss incurred.⁴ Under the British Rule, there was establishment of principles of Law of Contract entailing doctrines of equity, justice and good conscience. It was upon the recommendation of the First Law Commission that a set of uniform principles governing contractual relationship was established which was called Contract Act 172.

ELECTRONIC CONTRACTS

With the advancements in technology, there was a sudden shift in the mode of execution of contracts through e-mail or other electronic media or devices. The present Law of Contract was not essentially equipped to extend its applications

to such transactions executed in the electronic medium. The dire need of reformations in law suggested the need for a separate law. Upon this, the Legislatures in 1998 framed a new law which was called E-commerce Act 1998.

Mutual collaboration of individuals in a society recognizing existence and certain rights and obligations arising therein after forms essence of a contract. "A contract is an agreement enforceable by law which offers personal rights and imposes personal obligations; which the law protects and enforces against the parties to an agreement". As under the India Contract Act, 1872, "*a contract is an agreement enforceable by Law*".⁵ It is upon the enforceability that a valid contract operates in the brick or the click world.

Various types of economic transactions specify certain obligations as well as prohibitions associated with it that are demonstrated by the signatories in the forms of actions and penalties that are enforceable in the event of essential conditions not being met fully. Since there is involvement of a computer source, the computer programs play the role of automating business tools that governs electronic transactions. The objectives are:

- a) Creation of a secure environment of online commercial platform as an alternative to traditional forms of contracts
- b) Adequately sufficient documenting system to safeguard interest of contracting parties

- c) To create statutory status monitoring/ verifying authorities for such electronic transactions.
- d) Requirements of an efficient legal structure and institutional mechanisms establishing standard rules and regulations for monitoring online transactions
- e) To make Digital Signature legally valid and incorporating the same with the existing legal regime of contracts, sale of goods, evidence and consumer acts.
- f) To check frauds, intentional and unintentional transactions to promote and build confidence in genuine online transactions

The Information Technology Act, 2000, defines 'data' as "*a representation of information, knowledge, facts, concepts or instructions which are prepared or have been prepared in a formalised manner, and is intended to be processed, is being processed or has been processed in a computer system or a computer network, and may on any form (including computer printouts, magnetic or optical storage media, punched cards, punched tapes) or stored internally in the memory of the computer*".⁶

Electronic contracts broadly can be classified under two heads:

- a. Contracts executed by - Electronic Data Interchange
- b. Cyber contracts

ELECTRONIC DATA INTERCHANGE

Electronic Data Interchange (“*hereinafter EDI*”) refers to exchange of standard computer based business related information from one source to the other vis-à-vis a standard electronic format. These contracts provide direct exchange of business information among the parties through computers, in computer process able format and are generally used by the parties having continued business relationship. EDI can be defined as, “*The electronic interchange of machine process able structured data which has been formatted according to the agreed standards and which can be transmitted directly between different computer systems with the aid of telecommunication interface with or without human interference*”.⁷In the 1960’s, business exchanges involving documents of shipping of goods, invoices, bills of lading etc. involved same set of information for various exchanges. Therefore, to save time and money, a standard set of format for enhancing efficiency in transmission through the electronic medium was encouraged. Using this mechanism, the businesses were able to reduce errors and eliminate additional costs incurred initially. EDI users are referred to as “trading partners” and the standard format that is followed in these transmissions is usually the same as that in the standard paper invoices, purchase orders and shipping documents.

These parties before establishing any contractual relationship generally exchange an agreement called the “trading

partner agreement” in which the details about the warranties disclaimers, liabilities and the relevant rules that will be applicable in case of disputes are mentioned. EDI enables a contracting spectrum but not all the electronic messages transmitted herein do not necessarily result in an electronic contract. Documents with offer and acceptance implications include Purchase orders Invoices, Solicitation and submission of bids, filling documents electronically with the government etc. Third party arrangement is not included in the EDI arrangement.

CYBER-CONTRACTS

“A cyber contract is “a contract created wholly or in part through communication over computer networks”. The most common form of execution of E-contracts are ‘Click Wrap’, ‘Browse Wrap’ and ‘Shrink Wrap’ agreements. The stark difference here is the way in which terms and conditions are laid down in these contracts, thereby making it distinguishable from the traditional contracts. In the case of a Click Wrap agreement, a dialogue box appears diagrammatically representing the ‘I Accept’ option that concludes the affirmative acceptance of the parties. On the other hand, in cases of a Browse Wrap agreement, the agreement impliedly becomes binding as soon as such website is accessed. Whereas, a Shrink Wrap agreement does not have a direct connection to the electronic platform but becomes operative if the goods in consideration have a nexus with these agreements.

II. VALIDITY OF ONLINE CONTRACTS

Contracts, in general provide the basic arrangement in relation to any commercial activity to be undertaken. It is the enforceability of the contract that determines its conclusion and corresponding rights and liabilities of the parties whether entered in the brick arena or the click domain. The technical intricacies and the dynamic processes involved in electronic commerce call for an analysis of the plausible principles that govern online contracts.⁸

In any scheme of contract formation, it is the presence of valid attributes backed by legal recognition that forms crux of a contract that is entered in any form, including the ones effectuated through the electronic medium. Indian contract Act 1872 (“*hereinafter Contract Act*”) governs every form of contract and has its scope of applicability to the electronic contracts as well; thereby attracting the instillation of basic principles as contemplated by the contract act, mandating several pre-requisites of a valid contract. The Contract Act directs the following requirements:

- For purposes of entering into a contract, the contracting parties therein should render free consent⁹ for the contract;
- Consideration, being the essence of the contract should be lawful;
- Competency of parties;
- Additionally, the object for which such contract is entered should be lawful;

The conditions apply in parlance for electronic transactions as well provided any other prohibition/condition provided by any other law. The accuracy of the essentials in the contract concluded over the electronic medium is maintained through a scrutinised observation of the Terms & Conditions associated with the electronic platform that assures the fulfilment of conditions of a valid contract. The agreement fits into a contract’s outline when it is backed by legal force as mentioned under Section 10 of the Contract Act, which provides for conditions when an agreement takes shape of a contract.¹⁰

III. ESSENTIALS OF E-CONTRACT

Therefore, the essential elements of an Online Contract are as follows:

OFFER

Similar to a traditional contract formation, the quintessential element in the case of an online contract is initiation of an offer. The proposer should make a lawful offer that acts as establishing the foundation of a valid electronic contract. For instance, browsing through the website that hosts various goods and services and then by selecting options, the customer offers to purchase in lieu of the “invitation to offer” made by the seller. The offer stands revocable till it is accepted by the other party, once acceptance is affirmed, it forms a promise.

PROMISE AND ACCEPTANCE

The acceptance of the offer makes it a promise; the transition would attract essential attribute like ‘unconditional accep-

tance' coupled with the indispensable and absolute requirement of being effectively communicated¹¹ to the other party. The acceptance, in case of an online contract is often made through e-mails or forms on the website. With the recognition of instantaneous means of communication, the propositions of applicability of 'postal rule' took a paradigm shift. Initially, it was advocated that the same rule could suffice with certain changes, but later in the case of *Entores vs. Miles for East Corporation Ltd.*¹² It was held that telex being an instantaneous mode of communication has starked differences in the way it is concluded and hence the old rule was inefficient in providing clarity with respect to completion of an acceptance. Following congruent rationale, the Supreme Court in *Bhagwandas Goverdhandas Kedia vs. Girdharila Parshottomdas and Co.*,¹³ adopted the rule of instantaneous means of communication laid down in *Entores* case. The court restricting the applicability of Section 4 to the postal communication marked differences in both modes of communication thereby stating that the contract, in case of the instantaneous mode, is concluded only when its acceptance is received. Communication in Cyber-world has several dimensions. It is pertinent to inquire the position with respect to the issue of consideration of intention in cases of an online transaction. The absence of 'intent to create legal relationship'¹⁴ on part of either party would not bring a contract in existence. The intention in cases of electronic contract is usually derived from the terms

of the agreement and other circumstantial conditions.

LAWFUL PURPOSE

Any contract would only attract legal backing when it is entered for a 'lawful purpose'. In furtherance of the same, it should not be detrimental to provisions of law or of a nature that stands to commit fraud. For instance, any contract entered on a website dedicated to selling of illegal drugs would be a void contract.

LAWFUL CONSIDERATION

Consideration being one of the most elements of a contract should be something that has value in the eyes of law. For e.g. any benefit, interest, right or profit given in relation to fulfilment of a promise. The factors determining the question of competence include age of majority,¹⁵ soundness of mind and not disqualified by any law for the purposes of contracting. For purposes of facilitation of electronic contracts, several modes exist, the most commonly used one being e-mail exchanges where offer and acceptance is effectuated.

The Information Technology Act, 2000 lays down several procedural, administrative guidelines with respect to computer data protection, authentication of documents by way of digital or electronic signature relating to all kinds of electronic transactions. Though legitimate recognition has been accorded to the electronic contracts, yet, a large percentage of fear on contracting through this mode in the absence of judicial precedents establishes a concrete mechanism for enforce-

ability in India. A mere click on the ‘ I Agree’ option in cases of a browse wrap agreement signifies the assent while a shrink wrap agreement fulfils the criteria of consent only when the purchaser tears and uses the product. In India, where usually a classified population is either unaware, illiterate or careless as to submitting itself to the conditionality prescribed by the “T&C” of the website, it is difficult to establish presence of intention leading the formation of an electronic contract. It was in the case of *Hotmail Corporation v. Van \$ Money Pie Inc.*¹⁶, et al that highlighted for the very first time the cardinal question of validity of Click-wrap agreements in 1998, whereupon the court indirectly upheld the validity of licenses in a wrap agreement and said that the terms of the license would be binding ‘on the defendant by virtue of him having clicked on ‘I agree’ option that substantially indicates his assent to the offer. In the famous case of *Pro Cd, Inc v. Zeidenburg*,¹⁷ the issue of validity of Shrink-wrap agreements was taken up whereby the court pronounced that by virtue of reading the terms of license, featured outside the wrap signifies the fact about acceptability of the terms of the license and that would constitute acceptance on his part. With the purpose of bringing uniformity in the laws, Uniform Commercial Code (“*hereinafter UCC*”)¹⁸ entails a compilation of a number of uniform acts given a legal recognition with the objective of bringing about harmonization in the field sales law governing commercial transactions across the United States of

America. The goal of harmonizing state law is important because of the prevalence of commercial transactions that extend beyond one state. Additionally, as upon the question of according statutory recognition in respect to mass market licenses, the same has been evidentially backed by Article 2B of the UCC¹⁹ which was then replaced by Uniform Computer Information Transaction Act (“*hereinafter UCITA*”) in the year 1999. Further, Sec 209 clarifies the time frame with respect to which assent may be conceived as effectively adopted thereby stating the other party should manifest the assent before or during the party’s initial performance or use and access of the information.²⁰ Over the question of the manner in which the assent has to be adduced, Sec 112 of the same provides that a person through his conduct, intentionally and with the knowledge that the conduct would be construed as an assent by the other party in the electronic transaction signifies so, it would amount to portrayal of assent provided he has sound knowledge of the terms and conditions and had the chance of reviewing it. Also the UNCITRAL Model law on Electronic Commerce (1996) through Article 11 titled “*Formation and validity of contracts*” provides the habitual channel for facilitating offer and acceptance that is through means of data message unless the parties have agreed on any other means of facilitation. Through the resolution 2205 (XXI) of 17 December 1966, by which creation of the United Nations Commission on International Trade Law was effected, that seeks to harmonize law

of International Trade, it was marked that the countries of the world especially the developing nations are increasingly involving in transnational transactions or trade particularly being carried out by means of electronic data interchange and other means of communication involving on-paper based methods of exchange of information. Therefore it becomes important to evolve laws that recognise and govern electronic transactions universally. The validity of data message could be traced in the latter part of the article that states “*that contract shall not be denied validity or enforceability on the sole ground that a data message was used for that purpose*”.²¹ “*Data message*” means information generated, sent, received or stored by electronic, optical or similar means including, but not limited to, electronic data interchange (EDI), electronic mail, telegram, telex or telecopy.²²

INVITATION TO OFFER IN ELECTRONIC CONTRACTS

The law of auctions propelled the common law courts to bring in distinction between ‘offer’ and ‘invitation to offer’. The thin line differentiating the two is remarkable and dependent upon the intention as precluded from the language used. The courts have time and again accorded interpretation to the subject especially in cases where a website hosts various products with heavy discounts and gifts by the supplier. The reasoning behind the analogy of this distinction fails to be true in cases where the websites accessed for contracting commercial transactions entail the dichotomy that acceptance of goods are

not in parlance with goods in stock and qualify as being rendered automatically withdrawn. In cases of cyber transactions, establishment of universally endorsed set of principles could not be practically applicable. The flexible nature of transactions coupled with fusion of advertising and selling makes application of general rules infeasible. The intention therefore has to be adjudged by the language and usage of trade. Farooq Ahmad notes that no rule can be of a universal applicable and hence generalisation of a set of principles is not possible. Further he states, “*A statement on a website may be treated an offer where the person making it intends to be bound as soon as the offeree accepts its terms, but where it can be read from the language used in the statement that the seller is simply making known to others the terms on which he is willing to negotiate, he cannot be said to have made an offer but only invitation to treat*”.²³

It is pertinent to mention Sec11 of India’s Information Technology Act 2000 whereby the legislators accept offer by way of data message either by himself or by any electronic system programmed for that specific purpose (inclusive of offer in case of Click-wrap) but is silent as regards mode of assent or acceptance of the same. Thus Click-wrap agreements are valid and enforceable contracts as far as offer and acceptance is concerned.

IV. SIGNATURE REQUIREMENTS

The Indian Contract Act does not mandate contracts to be physically signed but certain statutes volunteer such require-

ments. For instance the Indian Copyright Act, 1957 (“*Copyright Act*”) states that an assignment of copyright needs to be signed by the assignor. In cases where in certain statutes confer a mandatory obligation of signature; the IT Act permits substitutability of electronic signature with physical signatures. Further, the IT Act provides for issuance of an electronic signature by a certified authority but till date, notification of any electronic signature has not been provided by the Central Government.

V. POSITION OF MINOR’S CONTRACT

The complex nature of online contracts makes it impossible for the person entering into a contract to know if the other contracting party is competent or not. In an electronic transaction, it is nearly impossible to determine the age of the person entering in any online transaction that poses several problems with respect to determination of liabilities in cases of any discrepancy in the transaction that is carried. The Indian Law, for purposes of entering in any contract prescribes the age of majority as an indispensable requirement. In such condition, the presumption of competency of parties upon conclusion of an online contract is reasonably ought to establish that neither party could contest for want of competence at a later stage. It is done in consonance with the doctrine of *uberrimafidei*²⁴ must be strictly adhered to in case of online contracts.

India has certainly while evolving the jurisprudence of contract law through cas-

es, witnessed instance whereby the parties to the contract have negotiated the terms from an unequal bargaining perspective. The important parts of the contract act in this regard relates to provisions that deal with characters of unconscionable contracts where either the object or the consideration of the contract is seen to be deviant to the pre-established notions of public policy. The problems over the issue indicate absence of a settled jurisprudence over the subject. Instances where the object or consideration stands in opposition to the understood norms of public policy, it frustrates the entire procedure of contracting thereby rendering the contract invalid. The burden of proof in such cases lies on the person in dominant position to establish that there was no instillation of undue influence while concluding the contract. As far as dealing with the actual interpretation of public policy is at hand, the provisions do not furnish a definite expression of the term. Section 16 (3) of the act that in the event of any contract entered by a person who stands in a position determinative of his dominance over the will of the other, thereby conducts the transaction that signifies either prima facie or through evidences to be unconscionable, it is upon him to prove that the contract was not induced by such influence and should not be rendered unconscionable. Further, section 23 provided instances whereby the consideration or object of any agreement is unlawful:

- *An act that stands forbidden by law,*
or

- *The nature of the act being such that if permitted, it would defeat the provisions of any law; or*
- *Is fraudulent, or*
- *Involves or implies injury to the person or property of another, or*
- *The Court regards it as immoral or opposed to public policy²⁵*

The Supreme Court in the case of *LIC India v. Consumer Education & Research Center*²⁶ dealt with interpretation of an insurance policy which was issued by Life Insurance Corporation of India in the light of tenants of public policy and purposes. One of the clauses of the policy had put restrictions on the benefit of the policy to be enjoyed by people employed as Government servants, which happened to be a prime issue at hand. The court, while declaring the terms to be void attempted providing clarity to the position of bargaining and unconscionable doctrine, lamented “*In dotted line contracts there would be no occasion for a weaker party to bargain as to assume to have equal bargaining power. He has either to accept or leave the service or goods in terms of the dotted line contract. His option would be either to accept the unreasonable or unfair terms or forgo the service forever*”.²⁷

CONCLUSION

The rapid pace of growth of the e-commerce industry is not only indicative of the increasing receptiveness of the public but has also brought to the fore the issues that the legal system of the country has been faced with. A critical evaluation of the case-law taken in reference, makes it abundantly clear that operation of global networks and the concept of quasi-physical territory associated with cyberspace, call upon the need for a new legal perspective and pragmatic approach in handling cyber related crimes by the judiciary. With the tremendous growth of e-commerce, e-banking and e-service regime, the law applicable and administered to cyberspace crimes should be in tune with legal requirements for avoiding the vagaries and discrepancies of national administration of justice system, be it criminal or civil. Looking upon the various consideration what seems obvious is the partial denial coupled with less knowledge of the intricacies involved in transactions that form reasons for increase in the number of crimes committed over the cyberspace. Despite due recognition is accorded to the transactions taking place, medium being computers, the problem still stands still over the question of establishing evidences in this medium due to the very nature of the transaction.

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- ❖ The Foreign Exchange Management Act, 1999
- ❖ Universal Commercial Code, 1952
- ❖ Uniform Computer Information Transaction Act, 1999

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- ❖ UNCITRAL Model Law on Electronic Signatures, 2001

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- ❖ C.M. Abhilash, “*E-Commerce Law in developing countries: An Indian Perspective*,” 2002, Information and Communication Technology Law, Vol.11, No.3, Carfax Publishing, Available at <https://pdfs.semanticscholar.org/e5d3/40b2b66e55baacec1242a3a8ed18e98108be.pdf>

END NOTES :

- ¹ See Enforceability of E-Contracts; Available at www.lawyersclubindia.com
- ² See, *Trimex International FZE Limited, Dubai vs. Vendat aAluminum Ltd* 2010 (1) SCALE 574
- ³ *Trimex International FZE Limited, Dubai vs. Vendata Aluminum Ltd* 2010 (1) SCALE 574; Available at <https://indiancaselaws.wordpress.com/2013/01/17/trimex-international-fze-limited-v-vedanta-aluminium-limited/> (Last Visited on 20th April, 2018)
- ⁴ See, Rule of Damdupat (Hindu Texts) wherein any money lender was liable to recover the interest attributable to the amount in question and charging an increased lump sum amount was held to be unjust and violative of natural principles of a contract.
- ⁵ Section 2(h) of the Indian Contract Act, 1872; “An agreement enforceable by law is a contract”.
- ⁶ S.2(o) of Information Technology Act, 2000
- ⁷ FAROOQ AHMED, CYBER LAW IN INDIA- LAW ON INTERNET, 2nd ED., P. 8
- ⁸ Raghavendra S. Srivatsa and Sukruta R., “Online Contracts” in S.K. Verma and Raman Mittal, Legal Dimensions of Cyberspace, Indian Law Institute, New Delhi, 2004, p. 67.
- ⁹ *Consent, being an act of granting assent to an offer, takes place when two or more persons agree upon the same thing in the same sense.* Moreover, consent is said to be free when there is no coercion in something that causes such assent (Sec.15 of Contract act) or some undue-influence (Sec.16 of Contract act), fraud that lead to producing such consent (Sec.17 of Contract act) or misrepresentation (Sec.18 of Contract act).
- ¹⁰ See S. 10 of Indian Contracts Act, read thus
“What agreements are contract: 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. —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.” Nothing herein contained shall affect any law in force in 1[India], and not hereby expressly repealed, by which any contract is required to be made in writing or in the presence of witnesses, or any law relating to the registration of documents”.

¹¹ *See, Lalman Shukla vs. Gauri Dutt*; the quintessential requirement for validating an offer stands good only when it is brought to the knowledge of the other party and hence action without the knowledge of proposal would be no acceptance.

¹² 1955 2 Q.B. 327.

¹³ AIR 1966 SC 543.

¹⁴ In the case of *Balfour v. Balfour*, the court declared that in the absence of an intention to create legal relationship, the agreement stands unenforceable. Also, in *Rose & Frank Co v. J R Compton & Bros Ltd*, the court held that for conversion of agreement into a contract, the intention to create legal relationships is an indispensable condition.

¹⁵ In *Mohori Bibee v. Dharmodas Ghose*, (decided on 4th March 1903), the court declared a contract with a minor to be void-ab-initio.

¹⁶ Date of Decision 16th April, 1998

¹⁷ 86 F.3d 1447 (7th Cir. 1996).

¹⁸ The Uniform Commercial Code, published in 1952 is a uniform act that aimed at bringing a harmony and coherence in law relating to sales and governing of commercial transactions across the United States.

¹⁹ *Ibid*

²⁰ Rupak Ghosh, The Contractual Validity of “E-Contracts”: An Overview, P. 4, par. 2; Available at http://www.naavi.org/cl_editorial_03/rupak_ghosh_econtract.pdf (Last Visited on 22nd March, 2018)

²¹ *See*, Art. 11 of UNCITRAL Model Law on Electronic Commerce; Available at https://www.uncitral.org/pdf/english/texts/electcom/05-89450_Ebook.pdf (Last Visited on 12th March, 2018)

²² *Ibid*, Article 2(a)

²³ Farooq Ahmad, “Electronic Commerce: An Indian Perspective”, International Journal of law and Information Technology, Vol. 9, No. 2, Oxford University Press, 2001, pp. 141-142 ¶3a

²⁴ *Uberrima Fidei*: It is a Latin expression, which literally means ‘the utmost good faith’ and relates to observance of a minimum standard of honesty to be practiced

by both, the buyer and the seller while acting in a contractual capacity and dictates a fair conduct towards each other, not to act dishonestly or furnish any misleading fact relevant to the transaction in question which would prejudice the interest of the party in a detrimental manner. The doctrine of utmost good faith applies to many common financial transactions.

²⁵ Section 23 of the Indian Contracts Act, 1872

²⁶ 1995 AIR 1811.

²⁷ "*E-Commerce in India: Legal Tax and Regulatory Analysis*", Nishith Desai Associates, July 2015, P.9; Available at http://www.nishithdesai.com/fileadmin/user_upload/pdfs/Research%20Papers/E-Commerce_in_India.pdf (Last Visited on 2nd April, 2018)