

# DIGITAL STAMPING & DIGITAL EXECUTION OF LEGAL DOCUMENTS

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# THE ROADMAP

## ❖ **Understanding E-Stamping**

- The Regulatory Framework
- Benefits
- NeSL and DDE

## ❖ **Understanding Electronic Execution of Documents**

- Modes of Electronic Authentication of Documents
- Electronic Signature
- Electronic Contracts: Types and Legality

# STAMPING & EXECUTION OF AN INSTRUMENT

Stamping refers to putting an adhesive stamp or impressing a stamp upon a document.

[section 2(11), Indian Stamp Act, 1899]

Execution means signing on the documents.

[section 2(12), Indian Stamp Act, 1899]

Instruments chargeable with duty to be stamped before or at the time of execution.

Permissible modes:  
Physical + Online

Permissible modes:  
Physical + Online

# E- STAMPING

- ❖ Electronically generated impression on paper denoting payment of Stamp Duty.
- ❖ Online method of payment of non-judicial Stamp Duty to the Government on a concerned instrument.
- ❖ *Stock Holding Corporation of India Limited (SHCIL)* as the Central Record Keeping Agency (CRA) responsible for e-stamping operations including collection of stamp duty.

# THE REGULATORY FRAMEWORK

- ❖ 2 categories of stamp-

- (a) *Adhesive stamps*

- (b) *Impressed stamps*

- Labels fixed or impressed

- Stamps embossed or engraved

- Impression by franking & other machines

- ❖ E-stamp paper/certificate falls within the scope of ‘impressed stamps’.

- ❖ SHCIL, as the CRA, is the authority concerned with the overall e-stamping application operations, user registration and maintenance.

- ❖ The CRA may appoint Authorised Collection Center (ACC), an intermediary between the CRA and the stamp duty payer, who issues Certificates to the clients.

- Scheduled banks and post offices can become ACC

- ❖ Users can also self print the Stamp Certificate on completion of the requisite steps and payment of the stamp duty.

# e-Stamp

## INDIAN – NON-JUDICIAL GOVERNMENT OF UTTAR PRADESH

Certificate No IN-UP23627017162305Q

Certificate Issue Date 11-11-2020 11:11:08

Account Reference No NONACC(FI)/RJNESL08/BANGALORE1/RJ-BA

Unique Doc. Reference SUBIN-UPUPNESL8829550252842978C

Purchased by ABC BANK

Description of Doc. LOAN AGREEMENT

Consideration Price (Rs) 500000

First Party ABC Bank

Second Party Mr XYZ

Stamp Duty Paid By Mr XYZ

Stamp Duty Amount (Rs) 500



### e-Stamping Application Form

|                      |         |                  |                                       |   |
|----------------------|---------|------------------|---------------------------------------|---|
| Application Date     | / / 20  | (✓ Tick any one) | <input type="checkbox"/> Registerable | <input type="checkbox"/> Non-Registerable |
| Document Description | Article |                  | Stamp Duty Amount                     | ₹ Indian Rupees only                      |

#### Property Description (not exceeding 100 characters)

|   |   |
|---|---|
| Property Description (not exceeding 100 characters) |   |
| Consideration of Property                           | ₹ |

#### First Party Details (name not exceeding 50 characters)

|         |     |  |  |          |
|---------|-----|--|--|----------|
| Name    |     |  |  |          |
| Address |     |  |  |          |
| Phone   | PAN |  |  | Pin Code |

#### Second Party Details (name not exceeding 50 characters)

|         |     |  |  |          |
|---------|-----|--|--|----------|
| Name    |     |  |  |          |
| Address |     |  |  |          |
| Phone   | PAN |  |  | Pin Code |

#### Stamp Duty Payment Details (name not exceeding 50 characters)

|                             |                                    |                                    |                 |  |
|-----------------------------|------------------------------------|------------------------------------|-----------------|--|
| Stamp Duty Purchased by     |                                    |                                    |                 |  |
| Stamp Duty Paid by (✓ Tick) | <input type="checkbox"/> 1st Party | <input type="checkbox"/> 2nd Party | Type of Payment | <input type="checkbox"/> Cash <input type="checkbox"/> Cheque <input type="checkbox"/> DD <input type="checkbox"/> Pay-Order <input type="checkbox"/> NEFT |
|                             |                                    |                                    |                 | <input type="checkbox"/> RTGS <input type="checkbox"/> Account to Account Transfer   |

|                                      |                               |                                 |  |                                 |
|--------------------------------------|-------------------------------|---------------------------------|--|---------------------------------|
| Stamp Duty Paid by - Gender (✓ Tick) | <input type="checkbox"/> Male | <input type="checkbox"/> Female | <input type="checkbox"/> Jointly paid by Male & Female | <input type="checkbox"/> Others |
|--------------------------------------|-------------------------------|---------------------------------|--|---------------------------------|

| Cheque / DD / Pay-Order / NEFT / RTGS / Account Details |             |  | Cash Deposit |        | ₹ |
|---|-------------|--|--------------|--------|---|
| Bank Name   | Branch Name | Cheque / DD / PO / UTR / REF / Account No. | Deno.        | Pieces |   |
|   |             |  | 1000 X       |        |   |
|   |             |  | 500 X        |        |   |
|   |             |  | 100 X        |        |   |
|   |             |  | 50 X         |        |   |
|   |             |  | 20 X         |        |   |
|   |             |  | 10 X         |        |   |
|   |             |  | 5 X          |        |   |
|   |             |  | 2 X          |        |   |
|   |             |  | 1 X          |        |   |
| Rupees ( in Words ) :                                   |             |  |              |        |   |
|   |             |  |              |        |   |
| <b>Total</b>  |             |  |              |        |   |

- Please submit the duly filled and signed form along with stamp duty amount at the e-Stamping counter
- Stamp Duty amount should be rounded off to the nearest Rupee
- The correctness of Article type and Stamp Duty amount cannot be confirmed at the e-Stamping counter
- Once the e-Stamp is generated no modifications/changes are possible, so carefully check the preview of the e-Stamp and only then sign the preview
- Once the e-Stamp has been generated, payment cannot be cancelled or refunded by StockHolding. For cancellation you need to get in touch with the Competent Authority at the Stamp Office appointed by the State Government
- Cancellation charges are applicable as levied by the State Government

I have read and understood the above instructions and the information given by me in this form is true to the best of my knowledge and belief.

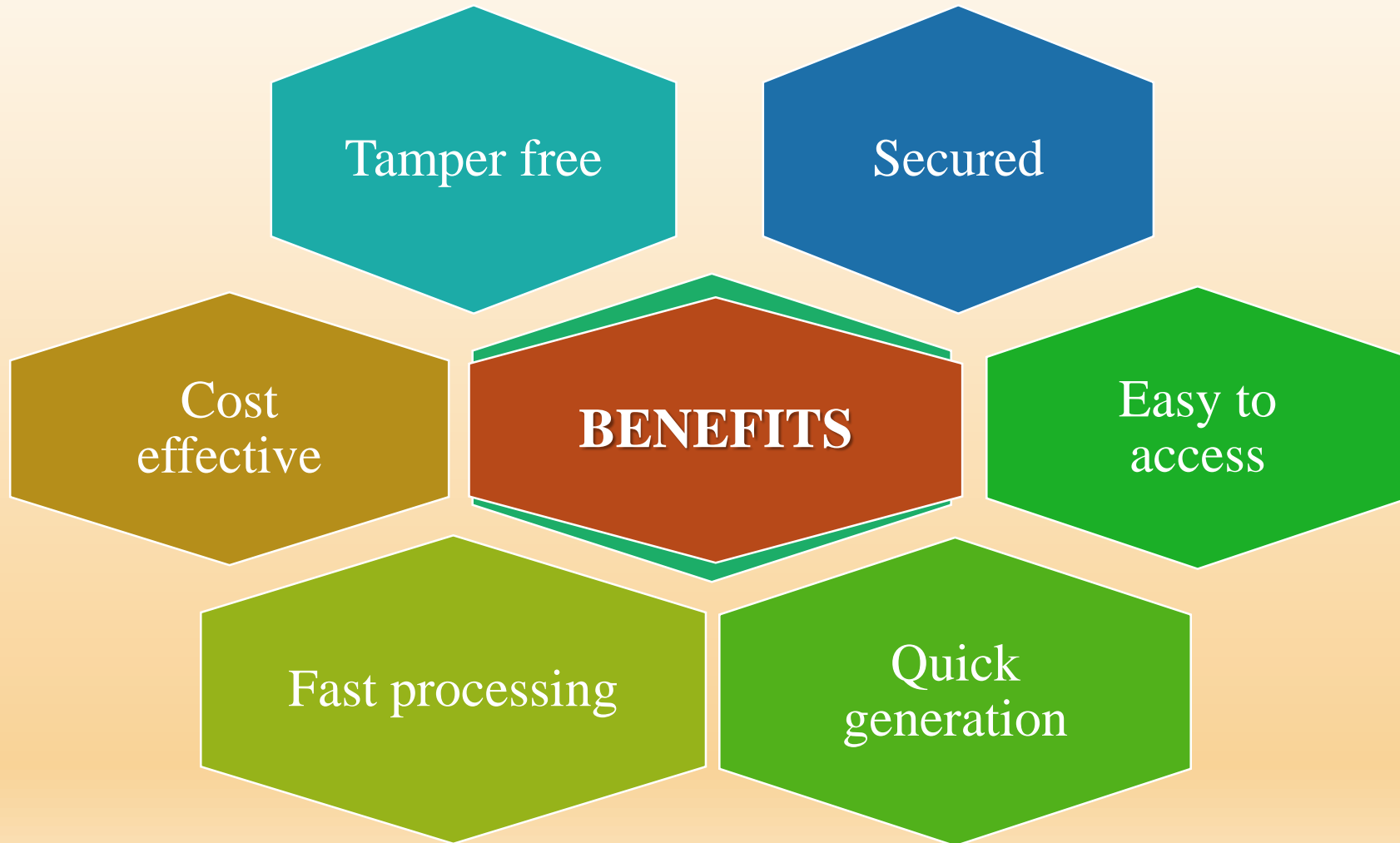
Name of the Party/ Representative: \_\_\_\_\_ Signature: \_\_\_\_\_  
(For Office use only)

I verify that the Application Form is in order  
To be filled by USER To be filled by SUPERVISOR

|                               |                    |            |
|-------------------------------|--------------------|------------|
| SUBIN                         | Certificate Number | IN         |
| Signature                     | Signature          |            |
| Stamp Certificate received by | Name:              | Signature: |

#### StockHolding e-Stamping Receipt (To be filled in by the client)

|                                      |                    |  |
|--------------------------------------|--------------------|--|
| Stamp Duty Purchased By              | Stamp Duty Paid by | <input type="checkbox"/> 1st Party <input type="checkbox"/> 2nd Party  |
| Stamp Duty Amount ₹                  | Type of Payment    | <input type="checkbox"/> Cash <input type="checkbox"/> Cheque <input type="checkbox"/> DD <input type="checkbox"/> Pay-Order <input type="checkbox"/> NEFT |
|                                      |                    | <input type="checkbox"/> RTGS <input type="checkbox"/> Account to Account Transfer   |
| Cheque/ DD/ PO/ UTR/ REF/Account No. | Date: / / 20       |  |
| Bank Name                            | Branch Name        |  |
| Counter Signature with Seal          |                    |  |



# **NATIONAL E-SERVICE GOVERNANCE LIMITED (NeSL) & DIGITAL DOCUMENT EXECUTION (DDE)**

**Integration between NeSL and banks to process and execute contracts/loan agreements.**

- ❖ Ministry of Finance called for the integration of NeSL's DDE API during the initial stages of the COVID-19 pandemic in August 2020.
- ❖ NeSL, an Information Utility under the IBC 2016, performs core services.
- ❖ DDE, a remote platform set up by NeSL for paperless execution and storage of financial contracts.
- ❖ Digital stamping and digital signing undertaken on the IU platform by technology integration with SHCIL.



| List of Banks/NBFCs onboard using NeSL DDE |   |
|--|---|
| BANKS                                      |   |
| SN   | Live with Technical integration for DDE |
| 1  | Axis Bank                               |
| 2  | Bank of Baroda                          |
| 3  | Bank of India                           |
| 4  | Bank of Maharashtra                     |
| 5  | Canara Bank                             |
| 6  | Central Bank of India                   |
| 7  | HDFC Bank                               |
| 8  | ICICI Bank                              |
| 9  | IDBI Bank                               |
| 10   | Indian Bank                             |
| 11   | Indian Overseas Bank                    |
| 12   | IndusInd Bank                           |
| 13   | Karnataka Bank                          |
| 14   | Kotak Mahindra Bank                     |
| 15   | Punjab & Sind Bank                      |
| 16   | Punjab National Bank                    |
| 17   | SIDBI                                   |
| 18   | State Bank of India                     |
| 19   | The Federal Bank                        |
| 20   | The Karur Vysya Bank                    |
| 21   | The South Indian Bank                   |
| 22   | UCO Bank                                |
| 23   | Union Bank of India                     |

| NBFCs |                                 |
|-------|---------------------------------|
| 24    | Sundaram Finance                |
| 25    | IFIN Securities Finance         |
| 26    | Tata Capital Financial Services |

| List of States and Union Territories Live with DDE-Digital e-Stamping |   |
|---|---|
| STATES and UTs  |   |
| SN  | Live with Technical integration for DDE |
| 1   | Andaman & Nicobar                       |
| 2   | Andhra Pradesh                          |
| 3   | Assam                                   |
| 4   | Bihar                                   |
| 5   | Chhattisgarh                            |
| 6   | Delhi                                   |
| 7   | Gujarat                                 |
| 8   | Himachal Pradesh                        |
| 9   | Jammu & Kashmir                         |
| 10  | Jharkhand                               |
| 11  | Karnataka                               |
| 12  | Kerala                                  |
| 13  | Madhya Pradesh                          |
| 14  | Maharashtra                             |
| 15  | Meghalaya                               |
| 16  | Odisha                                  |
| 17  | Puducherry                              |
| 18  | Punjab                                  |
| 19  | Rajasthan                               |
| 20  | Tamil Nadu                              |
| 21  | Tripura                                 |
| 22  | Uttar Pradesh                           |
| 23  | West Bengal                             |

# FEATURES & BENEFITS NeSL- DDE

Banks



NeSL-  
DDE



**Executed  
Loan  
Contracts**

❖ Cost reduction  
and hassle free

❖ Safe and secure  
digitally

❖ Speedy process

❖ Process  
uniformity

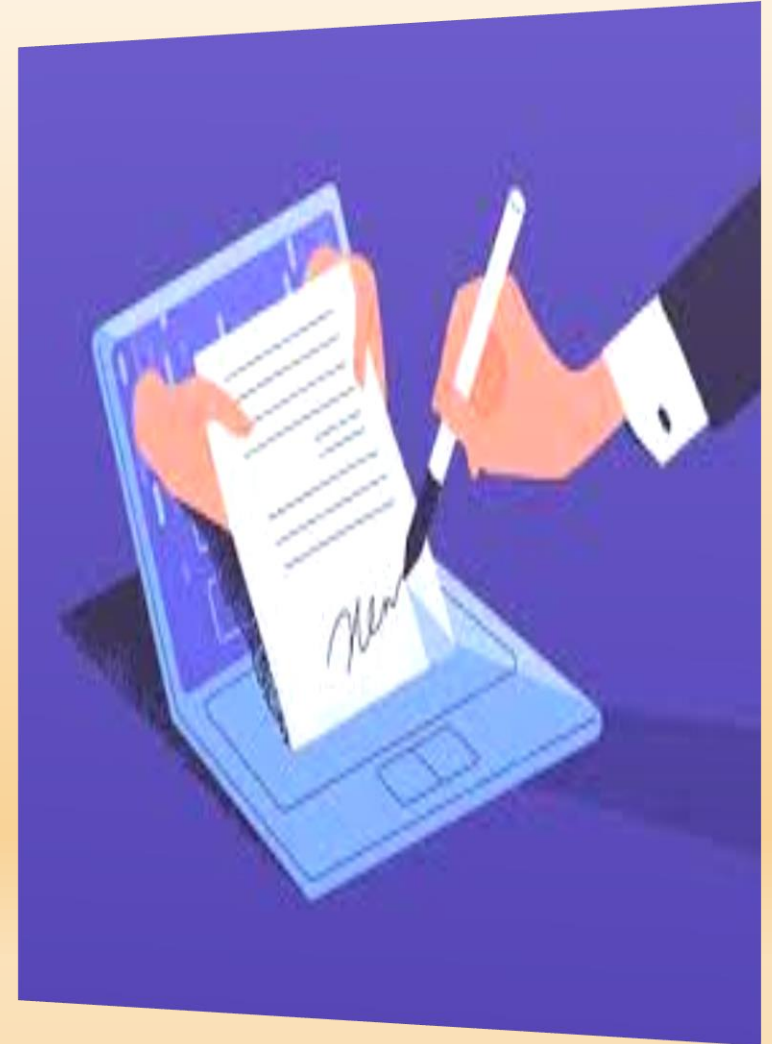
❖ Contract  
generated in  
demat form

❖ Cashless  
payment of stamp  
duty and e-  
stamping

**❖ *Ease of Doing Business***

# MODES OF EXECUTION OF AN INSTRUMENT

- ❖ Wet Signature: the conventional pen & paper based method
- ❖ Digital & Electronic Signature: governed under the Information Technology Act, 2000 ('IT Act')
- ❖ Attribution: pursuant to section 11 of the IT Act



# ELECTRONIC AUTHENTICATION OF DOCUMENTS

## DIGITAL SIGNATURE

- Defined u/s 2(1)(p) of the Information Technology Act, 2000 ('IT Act')
- Use of asymmetric crypto system & hash function (section 3)

## ELECTRONIC SIGNATURE

- Defined u/s 2(1)(ta) of the IT Act
- Also includes digital signature within its ambit
- Mode of e-signature (section 3A):
  - The method *maybe* specified in the II Schedule
  - AND
  - The method must be *reliable*

## **‘RELIABILITY’ OF E-SIGNATURES AS EXPLAINED IN SECTION 3A OF IT ACT**

- ❖ The signature creation data is linked only to the signatory.
- ❖ The signature creation data, at the time of signing, was under the control of only the signatory.
- ❖ Alteration to the electronic signature is detectable.
- ❖ Alteration to the information made after authentication is detectable.

# LEGAL RECOGNITION OF E-SIGNATURES

**Section 5 of the IT Act** explicitly gives legal recognition to e-signatures:

*“Where any law provides that information or any other matter shall be authenticated by affixing the signature or any document shall be signed or bear the signature of any person, then, notwithstanding anything contained in such law, such requirement shall be deemed to have been satisfied, if such information or matter is authenticated by means of electronic signature affixed in such manner as may be prescribed by the Central Government.”*

# MODES OF E-SIGNATURE

Modes of affixing e-signature:

- Signature or Electronic Authentication Technique and Procedure Rules, 2016
- Digital Signature (End Entity) Rules, 2015
- Schedule II of IT Act
- e-KYC Guidelines

I. Hash & Asymmetric Crypto Techniques generating Digital Signature Certificates (DSCs) (Digital Signature)

II. Aadhar based e-KYC

III. Other e-KYC services, such as biometric based e-KYC

# WHICH DOCUMENTS CANNOT BE EXECUTED ELECTRONICALLY?

## Transactions under Schedule I of the IT Act

- ❖ Negotiable Instrument, except a cheque
- ❖ Power of Attorney
- ❖ A trust
- ❖ A will
- ❖ A contract for sale of immovable property



# E-CONTRACTS

*“A contract is no less a contract simply because it is entered into via a computer.” (Forrest v. Verizon, 1980)*

❖ **Derive legal validity from section 10A of the IT Act:**

*“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 record, such contract shall not be deemed to be unenforceable solely on the ground that such electronic form or means was used for that purpose.”*

❖ **Offer and acceptance through e-mails** also constitute valid contract in the absence of a formal contract. *“Once the contract is concluded orally or in writing, the mere fact that a formal contract has to be prepared and initialed 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.” (Trimex Internal FZE Ltd Dubai v. Vedanta Aluminium Ltd., India [2010 2 SCC 1])*

# VALIDITY OF E-CONTRACTS

## ❖ Essentials of a contract:

- *Competent parties*
- *Free consent*
- *Lawful consideration*
- *Lawful object*

❖ All electronic agreements, in order to be enforceable, must satisfy all the stipulations of a valid contract given under the Indian Contract Act, 1872.

# TYPES OF E-CONTRACTS

- ❖ ***Browse Wrap Agreement***- contractually bind the user on mere continuous browsing of the website.
- ❖ ***Shrink Wrap Agreement***- agreement is packaged with the product and inaccessible until ‘opened’. The usage of the product is a deemed acceptance of the terms and conditions attached.
- ❖ ***Click Wrap Agreement*** – consent of the user required, however, in the form of ‘Take it or Leave it.’

# **ADMISSIBILITY UNDER EVIDENCE ACT, 1872**

- ❖ Section 85A: An e-contract will be presumed to be concluded by affixing electronic signatures of the parties.
- ❖ Section 65B: -
  - information stored electronically is deemed as a ‘document’;
  - When used in judicial proceedings, a certificate will have to be produced by the relevant authority in relation to the device, giving particulars of the device involved.

# **DETERMINING THE VALIDITY OF CLICK WRAP/SHRINK WRAP AGREEMENTS**

- ❖ Bargaining Power**
- ❖ Consent of the Consumer**
- ❖ Are the terms and conditions placed conspicuously?**
- ❖ Did the user have an adequate opportunity to read the terms?**
- ❖ Was an adequate notice provided to the terms in order to subscribe?**

# THE LEGAL JURISPRUDENCE SURROUNDING E-CONTRACTS

- ❖ *"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." [LIC India v. Consumer Education and Research Center, 1995 AIR 1811]*
- ❖ Browse Wrap, Click Wrap and Shrink Wrap are in the nature of contracts of adhesion, offering negligible bargaining power to users.
- ❖ Validity of Click Wrap Agreements upheld on various occasions in the courts of the U.S.

# JUDICIAL PRECEDENTS

|   |   |
|---|---|
| <p><b><i>Feldman v. Google</i></b> [513 F. Supp. 2s 229 (E.D. Pa. 2007)]</p>                  | <p>Enforceability of Click Wrap upheld: reasonable notice of the terms and manifested assent of the Contract, without which no purchase could have made.</p>          |
| <p><b><i>Specht v. Netscape Communications</i></b> [306 F. 3d 17 (2d Cir. 2002)]</p>          | <p>Enforceable when the terms are clearly and conspicuously posted on website. Held, agreement not enforceable as the terms were placed inconspicuously.</p>          |
| <p><b><i>Burcham v. Expedia</i></b> [2009 WL 586513, 2 (E.D. mo. 2009)]</p>                   | <p>Failure to read an enforceable online agreement will not excuse compliance with its terms.</p>   |
| <p><b><i>A.V. , et al. v. iParadigms LLC</i></b> [ 544 F. Supp. 2d 473 (E.D. Va. 2008)]</p>   | <p>Click Wrap Agree held enforceable</p>  |
| <p><b><i>DeJohn v. The TV Corp. Int'l</i></b> [245 F. Supp. 2d 913, 921 (N.D. Ill. 2003)]</p> | <p>Click Wrap Agreement enforceable and adequate notice provided of agreement terms where users had to click "Accept" to agree to the terms in order to subscribe</p> |

# INDIAN PRECEDENT FOR SHRINK WRAP AGREEMENT

The Income Tax Appellate Tribunal, Mumbai in *DDIT (IT) 3(1), Mumbai v. Gujrat Pipavav Port Ltd, Mumbai*, vide Order dated 10-02-2017 had rejected the enforceability of such Shrink Wrap/License Agreements w.r.t. to vicarious liability of the Directors for violation of the terms of Licence Agreement after the employee had clicked on 'I Accept' while installing a software:

*“...can such license agreement be enforced against the company or the Directors of the company can be held liable for any such infringement, especially when they are not signatories to such an agreement and nor they have authorized any employee of the company to sign any agreement on behalf of the company and even no name of the company is even written in such type of agreement and even it is also not known as to who actually clicked the button 'I agree'. Under these circumstances, the enforceability of such a license is highly doubtful. So far as the legal enforceability of such Licence Agreements is concerned, in spite of the fact that it may fulfill all the requirements of a valid contract, such an agreement may not be enforceable, if its stipulations conflict with the law governed in the country where such licenses are intended to be enforced, or if it is an unconscionable or unreasonable bargain... if the license severely limits the rights of the consumers, such as implied conditions and warranties in a contract, it cannot be enforced. If in the license agreement, there are certain conditions which are in violation of the provisions of the Contract Act, then such conditions cannot be enforced and even under some circumstances, the whole contract can be held to be void.”*



# APPLICABILITY OF STAMP DUTY ON E-CONTRACTS

- ❖ The Indian Stamp Act has no specific provision dealing with stamping of e-contracts. However, electronic document for transaction stock exchanges have been brought within the purview of the Act.
- ❖ ‘Instrument’ as defined includes every document, by which any right or liability is, or purports to be, created, transferred, limited, extended, extinguished or recorded.
- ❖ Maharashtra, Karnataka, Uttarakhand, Rajasthan, Gujarat, Uttar Pradesh have included ‘electronic records’ within the definition of ‘instruments’ in their State Stamp Acts.
- ❖ E-contracts, entered into in accordance with IT Act and Indian Contract Act, 1872 are enforceable and fall within the ambit of ‘document’ under Evidence Act. If it has been duly executed with recognized forms of signature in accordance with Indian Stamp Act, such e-contracts should attract stamp duty.

***Thank you!***