

# DDE-A New Era of Contracting

## Background

As per news reports, the number of dematerialised or demat accounts for securities have grown exponentially over the last few years. Everyday hundreds and thousands of transactions take place in the securities markets in which securities move in or out of such accounts with corresponding debit or credit in the bank account. Online trading of securities and growth of a smart phone culture has facilitated this, but transactions of such volumes could have been possible only because the underlying scrips were in dematerialised form and could therefore flow seamlessly like money in one's bank account. The other facilitator has been the robustness of the IT systems in which users could repose their trust and which could also scale up depending on market requirements.

## Launch of Demat Contracts

A similar execution and storage of contracts in fully dematerialized and digital mode is now possible. A flower vendor used the biometric authentication facility of the Digital Document Execution (DDE) platform of National E-Governance Services Limited (NeSL) to avail a subsidy-based loan in fully digital mode. A non-resident Indian in Germany executed a lease deed for his house in Chennai using the DDE platform of NeSL, without even stepping out of his house. These are a few examples of the transformation taking place in the realm of contract execution through the DDE platform of National E-Governance Services Limited (NeSL).



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## Digital Stamping-an integral part of DDE

A contract like a bank's loan document requires affixation of stamp duty. Therefore, arrangements have been made with the majority of state governments for digital stamping. To ensure a full digital experience, system integration has been done with state governments on one part and the bank's loan management software. A customer gets directed from the loan management portal of the bank to NeSL's website, stamps of appropriate amount are procured from a prefunded stamp account and the stamped documents are executed on the NeSL platform and then returned to the banks loan management platform. Both the customer and the bank get a copy of the executed document immediately and NeSL can also store the same and provide arrangements for easy retrieval.

## Advantages of DDE

The advantages of DDE are manifold, it is document execution at one's convenience with the opportunity to read all terms and conditions. It is fully digital, from procurement of stamp paper, affixation of the document text and execution by digital signature. It can be done across all customer segments like individuals and companies and across all product

categories like personal loans, vehicle loans, working capital and term loans. The digital signature can be done through Aadhaar based E-sign provided one's mobile number is linked to the Aadhaar number. It can also be done through the biometric mode or dongle-based DSC. It is especially convenient where there are multiple signatories to a document or signatories are available at multiple locations. The executed document is immediately available for perusal both by bank and borrower, can be retrieved by the bank separately or stored in a secure manner by NeSL. As per our records, one of the largest loan documents executed was for more than a thousand crores, while it was used with great success by banks for the smallest of loans like the street vendor loan scheme of the Government of India where the biometric authentication facility also ensured identification of the borrower.

### **Benefits to the State**

DDE is also a huge benefit to the state governments as it facilitates ease of doing business. The ease of procurement of stamp duty ensures against leakage of revenue and facilitates payment of correct stamp duty. The states also have access to MIS regarding stamp duty procurement in various regions of the state which is an indicator of economic activity in the region. This information can also be made available almost on a real time basis, based on which the state can take corrective action, if required.

### **NeSL- A regulated entity**

As a regulated entity NeSL has some obligations under the law. The law provides that NeSL shall have a Compliance Officer appointed by the Board of Directors who reports independently to the Regulator. Any document to be executed on our platform goes through a three-point check. Firstly, digital execution of the document should be permitted under the Information Technology Act, the principal law governing digital document execution. For example, mortgages are not permitted. Secondly, it should have

been permitted by the State Government under the Stamp Act of the state e.g., bank guarantees are not permitted by all states. Finally, if it passes the above two checks, it should also be permitted under the Insolvency and Bankruptcy Code (IBC), as NeSL is registered under the provisions of the IBC. For example, a document like an adoption deed would not be executed on the DDE platform.

### **An idea was born**

The idea of DDE came from the requirement of the IBC that the information utility (IU) has to get financial information authenticated by all parties. When a document is executed on the IU platform the authentication happens ab initio by the lender and the borrower. Further, the IBC requires a financial creditor (FC) to submit the loan documents to the IU. When document execution takes place through DDE, the FC does not need to submit the document separately as the documents executed on the DDE platform gets stored with NeSL at the option of the creditor. Thus, the regulatory compliances of banks are eased to a large extent.

### **Enforceability of documents under DDE**

The issues relating to admissibility and enforceability of digital documents has also been addressed under the various provisions of the Indian Evidence Act, 1872 (IEA). The term 'evidence' under the IEA includes electronic records within its ambit. Section 65B of IEA lays down the detailed procedure for proving the contents of electronic records, inter-alia providing that a computer output stored, recorded, or copied in optical or magnetic media produced by a computer, shall be deemed to a 'document'. A reference can also be made to Section 65B (2) of IEA, which lays down the conditions which are required to be satisfied for admitting an electronic record as evidence.

The other relevant issue is the place of execution of the document executed through the digital mode as in India stamp duty varies from one state to another. Based on applicable law and available jurisprudence,

the agreement executed electronically is deemed to be executed at the principal place of business of the borrower or the branch of the bank where the loans is disbursed. The stamp duty is payable in accordance with the stamp laws of the state where the principal place of business of the Borrower or the branch of the bank is situated, whichever is higher. However, the parties to the agreement may agree upon the place of execution and in such case, the stamp duty of such place shall be payable on the agreement. The difference in the stamp duty shall be payable in case the principal place of business is different from the registered place of business and the agreement is transmitted to the registered place of business for any purpose including for filing charge with the office of Registrar of Companies.

#### **DDE to facilitate Secondary Loan Market transactions**

Globally secondary loan market transactions are fairly common in corporate loans, while In India we have taken the first steps by incorporation of a self-regulatory body with the primary objective to promote and grow the secondary market for corporate loans in India. DDE will facilitate such transactions as all documents executed on DDE are stored with NeSL. The seller can authorize the purchaser to view the

document; if required, documents can move from purchaser to seller, and subsequent documents can also be executed on the platform.

#### **Security Features of DDE**

Users of the DDE have the comfort of dealing with an entity like NeSL which is regulated by Insolvency and Bankruptcy Board of India (IBBI) and which also which conducts an annual inspection of NeSL. The law also provides for an audit of the information technology framework, interface, and data processing systems of NeSL every year by an external agency. NeSL also has a Technology Committee comprising of eminent persons to advise on technology related matters besides a Chief Technology Officer (CTO) and Chief Information Security Officer (CISO) who have overall responsibility for technology and information security, respectively. The security framework of NeSL is compliant with ISO 27001:2013 requirements and also adheres to the RBI guidelines on Cyber security framework. Data Security & Privacy is ensured in all applications and processes. The data is stored in Tier 4 Datacentre with the Primary, and the Disaster Recovery Centres located in different seismic zones. Accordingly, issues relating to technology and information security are given prime importance.

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There are two kinds of people, those who do the work and those who take the credit. Try to be in the first group; there is less competition there.

– Indira Gandhi

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