End of the Mighty Pen

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Synopsis

When English author Edward Bulwer Lytton said in 1839 that, **"*The pen is mightier than the sword*"** he only meant that the written word is more effective than violence as a tool for communicating one's opinion on any issue. In 2025 the written word will continue to be effective as before but will not be conveyed through a pen but through the digital mode, through a digital pen or a direct digital message.

The other day there was a visitor to my office after many years and as he was ushered into my cabin, he remarked "You have a nice collection of pens!!". I was surprised as I realized only then that I did have a decent collection of pens. It also dawned on me that I had not used a pen for months. The digitization in our lives has increased in the wake of lock downs because of COVID-19. In the IT hub of Bengaluru where I stay, on my way to office and back, I see several ATMs of banks, and I never see a soul inside or outside. Even I have never been to an ATM in the last 6 months as my maid and driver accept digital payments and when I go for walk and have coconut water, I make payments through my mobile. A colleague of mine even got his shoes polished in Mumbai and paid for it digitally. I do not need to carry my wallet any more except to ensure its safe custody till the time I am able to give up the numerous credit and debit cards and remaining cash. It is often lamented that, while a couple of decades back, India and China were in the same stage of development, but today in most indices of development, China is ahead. However, as far as digital payments are concerned, it is India, which has surpassed China.

I think many of us had similar experiences wherein every financial transaction is being done through the digital mode. However, when we go to a bank in India to avail a loan oreven when we apply online for a loan, how is it that we still need to take our pens to makethat rare signature to get access to certain services. All that is now changing, and it has already changed for many of the banks and financial institutions who have already availed the Digital Document Execution (DDE) services of NeSL. More than three lac transactions have now been carried out on the DDE platform and these are valued at hundreds of thousands of crores. Everyday thousands of transactions are taking place onthe NeSL DDE platform, and it is estimated that 20% of these transactions are happeningoutside of banking hours. And we have not even scratched the surface, if we consider thetotal number of financial transactions done by the banks and financial institutions.

Even before the launch of DDE, banks were sanctioning and disbursing loans online but in the absence of a mechanism for online procurement of stamp duty or authentication, they were doing so by way of a click wrap agreement. This is like the acceptance of termsand conditions, which one would do when installation of the latest version of software onour phone. As the law of the land earlier did not permit payment of stamp duty for loan documentation through the digital mode, the click wrap agreement served a usefulpurpose in ensuring loan sanctions and disbursements happened in a fully digital mode. The banks and other lending institutions were also happy with this arrangement especially as the delinquency rate in such loans was very low.

During the last couple of years, the number loans disbursed through the digital mode has increased exponentially, it is also possible that the delinquency rate would increase because of external events like the outbreak of COVID-19. The time has probably come to reconsider if the documentation for such loan products needs to be more robust. To meetthe requirements of banks, NeSL has also launched its Digital Documentation Execution (DDE) platform which ensures that documentation and disbursement happens through the digital mode. The banks are now able to secure themselves with documentation, which is fully digital, but which is quite like the offline or physical mode.

One of the challenges faced by NeSL in the implementation of a fully digital document execution platform was that stamp duty is under the jurisdiction of the State Governments. Accordingly, NeSL approached each of the State Governments separately and with the facilitation of the state government and the support of the Central Government, digital execution of contracts and payment of stamp duty is today valid in 22 states of this country. Another challenge was the integration with the loan management and accounting system of banks to ensure a seamless digital journey of the customer starting from submission of the loan application, processing by the bank, the documentation and disbursement of the loan. Many banks have now done this integration, and this now ensures a fully digital journey for the customer, which is the need of the hour.

DDE is not just about giving up the pen, DDE 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.

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.

Now the question may arise as to why a company like NeSL, which is registered as an Information Utility (IU) under the Insolvency and Bankruptcy Code (IBC), gets into DDE. The reason is that the role of the IU, under the IBC is that of a repository of financial information including loan documents. An obligation for IUs under the IBC is get information submitted by a creditor authenticated by all parties to a debt like borrowers/co-obligants/guarantors. By getting the documents executed through DDE, this is being accomplished *ab initio* at the time of execution of contract. This is followed by submission of other information like the outstanding, date of disbursement etc. This information can be available to other creditors who are registered on the IU with the consent of the debtor, as per the provisions of the IBC. Moreover, when, insolvency proceedings are initiated against the person, all information including documents are readily available to the insolvency professional. It can seamlessly flow to the IP when the law permits the same. This information can also be provided to the Adjudicating Authority to take decisions like that of admission of insolvency proceedings.

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. Further, Section 91 of the IEA provides that when the terms of a contract have been reduced to the form of a document, then, no evidence shall be given to prove the transaction, except the documentitself or secondary evidence of its contents, while Section 61 provides that the contents of a document may be proved either by primary evidence or secondary evidence. Section 65B 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), which lays down the four conditions which are required to be satisfied for admitting an electronic record as evidence, while 65B (4) provides for production of a certificate for giving evidence in relation to these matters. This certificate is being provided by NeSL and can be downloaded by the user on completion of the documentation through the DDE.

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 applicablelaw 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.

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 eg bank guarantees are not permitted by all states. Finally, if it passes the above two checks, it

should also be permitted under the IBC, as NeSL is registered under the provisions of theIBC. For example, a document like an adoption deed would not be executed on the DDE platform.

The inspiration for the DDE came from the dematerialization of securities under the directions of the SEBI a couple of decades back. This marked a paradigm shift in the waysecurities are traded in the Indian stock markets, it brought in confidence among shareholders by eliminating the risks of loss, forgery or destruction and increased the size of the market manifold. A similar transformation can take place in the banking industry. The banks/FIs can go for increased digitization in all loan processes, including loan documentation, without being concerned about getting all the signatories of a document at one place, identification of the signatories and subsequently storing the documents and avoiding the attendant risks

Today banks are facing increasing competition from digital lending platforms for their sheer convenience and ease of operations. This has also posed some challenges as some of these platforms are not regulated, levy usurious rates of interest and are not transparent in their dealings with customers. In some cases, borrowing from such platforms have brought about financial distress on the borrowers and lenders have resorted to unethical methods of recovery which in turn has led to the borrowers even ending their own lives. Using the DDE platform, even mainstream banks can offer a fully digital lending product which meet the requirements of the regulators and fulfil the expectation of stakeholders. On a later date, if banks feel the need to set up a digital banking unit, they have a platform which can support their operations.

Finally, I would say that I have nothing against the humble pen. When mobile phones became omni present, the utility of a watch as a time keeping instrument has come down,but watches have not disappeared. So, brands like Rolex continues to thrive and the smart watches which have come up, serve all purposes along with the conventional one of keeping time. Similarly, pens can still be a premium product to adorn our desk or as an utility for our laptop or tablet. But the days of taking out your pen to sign a document are over.

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