

Education Sector Hotline

May 24, 2019

CONTRACTING "APP"TLY

Let's face it -apps dominate every minute of our daily lives. From food delivery, to cab booking, to health monitoring, there is an app for everything possible! Infact, apps exists for things we can't even think of. So why should education, an integral part of our well-being and growth, be left behind?

Education Technology or Edtech for short, has ensured that education reaches the fingertips of all. From nursery rhymes for toddlers, to learning science for school students, and AI for the professionals, the "app" world has it all. Just a click away.

Each app that we download dictates its own terms and conditions, which govern the relation between the app owner and the users, the manner of use, the purpose of use, et all. Thus, these terms and conditions result in a contract between the app owner and users. The users, in most instances are adults, who are capable of concluding a valid contract. However, what happens when the apps are targeted for use by children and are downloaded by them? Between whom is the contract formed in such case? Are children capable of forming a valid contract in such case?

Under Indian law, a child is not competent to contract. This is because as per Indian Contract law, only a person who has reached the age of majority is competent to contract. The age of majority in India is 18 years as provided under the Indian Majority Act, 1895. Therefore, contract with a child would be void *ab initio*. This means that the app owner cannot enforce the contract with minor child even if they would want to.

However, a guardian can enter into a contract on behalf of the minor (i.e child) for their benefit. Under Indian law, a guardian can either be a natural guardian (parent) or a court appointed guardian under the Guardians and Wards Act, 1890. Under Hindu law, the father and then the mother are considered natural guardians. Under Muslim law, the father is the natural guardian.

"Benefit of the minor" has been interpreted broadly by the courts and is usually a factual matter. For instance, a contract for purchase of property by a guardian on behalf of a minor has been held to be for the "benefit of the minor". Applying the analogy, a purchase of an app by a parent from the playstore or appstore, for use of their minor child is likely to be considered for the benefit of minor.

Thus, it is important to ensure that contracts / terms and conditions of apps directed towards minors should be entered into directly with a parents or guardian of a minor. For example, a contract for use of an online learning app offering game based solutions for minors should be entered into with a parent or a guardian, who may, in turn allow use of the services by a minor based on the parent/guardian's discretion. This can be ensured by clarifying in the terms and conditions clearly that the contracting party should be an adult capable of contracting under law, using tools checking for the age of the user who downloads the apps etc. These steps will ensure that the contracting party for all purposes is the person who has the capability to contract, i.e parent / guardian from a validity of contract perspective.

— Aparna Gaur, Aarushi Jain & Vivek Kathpalia
You can direct your queries or comments to the authors

DISCLAIMER

The contents of this hotline should not be construed as legal opinion. View detailed disclaimer.

This Hotline provides general information existing at the time of preparation. The Hotline is intended as a news update and Nishith Desai Associates neither assumes nor accepts any responsibility for any loss arising to any person acting or refraining from acting as a result of any material contained in this Hotline. It is recommended that professional advice be taken based on the specific facts and circumstances. This Hotline does not substitute the need to refer to the original pronouncements.

This is not a Spam mail. You have received this mail because you have either requested for it or someone must have suggested your name. Since India has no anti-spamming law, we refer to the US directive, which states that a mail cannot be considered Spam if it contains the sender's contact information, which this mail does. In case this mail doesn't concern you, please unsubscribe from mailing list.

Research Papers

Horizon Technologies

January 21, 2025

Compendium of Research Papers

January 11, 2025

FAQs on Setting Up of Offices in India

December 13, 2024

Research Articles

INDIA 2025: The Emerging Powerhouse for Private Equity and M&A Deals

January 15, 2025

Key changes to Model Concession Agreements in the Road Sector

January 03, 2025

The Revolution Realized: Bitcoin's Triumph

December 05, 2024

Audio

Securities Market Regulator's Continued Quest Against "Unfiltered" Financial Advice

December 18, 2024

Digital Lending - Part 1 - What's New with NBFC P2Ps

November 19, 2024

Renewable Roadmap: Budget 2024 and Beyond - Part I

August 26, 2024

NDA Connect

Connect with us at events, conferences and seminars.

NDA Hotline

Click here to view Hotline archives.

Video

"Investment return is not enough" Nishith Desai with Nikunj Dalmia (ET Now) at FI18 event in Riyadh

October 31, 2024

Analysing SEBI's Consultation Paper

on Simplification of registration for
FPIs

September 26, 2024

Scope of judicial interference and
inquiry in an application for
appointment of arbitrator under the
(Indian) Arbitration and Conciliation
Act, 1996

September 22, 2024