



NEGOTIABLE INSTRUMENTS (AMENDMENT) ACT, 2018

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ABSTRACT

Negotiable Instrument means a promissory note, bill of exchange or cheque payable either to order or to bearer. In India, law relating to negotiable instruments is provided in the Negotiable Instruments Act, 1881 which come into force on March 1, 1882. It was amended from time to time. In 1988, section 138 was inserted making the bouncing of cheques a punishable offence with punishment of imprisonment or fine or both. The object of criminalizing dishonour of cheque was to enhance acceptability of cheques in business transactions by preventing harassment of honest cheque bearers. Later on two Sections i.e. 143A and 148 was inserted to reduce unnecessary delay in legal proceedings related to bouncing of cheques and provide relief to the payee in such cases. The objective of these amendments was to enhance credibility of cheque issuances in business transactions. The present paper focused on the proposed amendment in Negotiable instrument Act. And to study how the latest amendment contributed in ease of doing business.

KEYWORDS: *Negotiable instrument, interim compensation*

INTRODUCTION

Finance Minister, Arun Jaitley had made an announcement in the Budget 2017-18 “As we move faster on the path of digital transactions and cheque payments, we need to ensure that the payees of dishonoured cheques are able to realize the payments. The Government is therefore considering the option of amending the Negotiable Instruments Act suitably”.

The Cabinet approved the proposal of amending Negotiable Instrument Act on 15 December 2017 and introduced the Negotiable Instruments (Amendment) Bill, 2017. The Negotiable Instruments (Amendment) Bill, 2017 was put forth before the Lok Sabha by the Finance Minister on 02 January 2018 and it received the assent of the President and was notified in the Official Gazette on 02.08.2018 to become an Act called the Negotiable Instruments (Amendment) Act, 2018. The amendments in the Negotiable Instruments Bill, 2017 has implications on over lakhs of cheque bounce cases pending in various courts.

Section 138- Dishonour of Cheque: A Criminal Offence

This section was inserted in 1988 in Negotiable Instruments Act, under which-

If any cheque drawn by one person to other person for discharge of any debt or liability is returned by the bank unpaid because of insufficient funds in drawer's bank account or it exceeds the amount arranged to be paid from that account

by an agreement made with the bank then it shall be deemed that such person have committed an offence and be punished with an imprisonment upto two years or fine which may extend to twice of the amount of the cheque or with both. But the following conditions must be fulfilled for filing a criminal complaint against the drawer in case of cheque dishonour such as;

- The cheque must be presented to the bank within six months from the date on which it is drawn or within the period of its validity, whichever is earlier.
- A demand notice for the said amount within a period of thirty days from the date of receipt of information of cheque dishonour must be issued by the payee or holder of cheque to the drawer.
- The drawer of said cheque fails to make payment of the said amount to the payee or holder within a period of fifteen days from the receipt of said notice.

The main objective of inserting this section in the act was to increase credibility in transacting business on negotiable instruments so that issuance of dishonest cheque can be stopped. But it required further amendment as

“The Central Government had been receiving several representations from the public including trading community relating to pendency of cheque dishonour cases. This was because of delay tactics of unscrupulous drawers of dishonoured cheques due to easy filing of appeals and obtaining stay on proceedings”.

Not only the punishment provided in the Act has proved to be inadequate, the procedure prescribed for the Courts to deal with such matter has been found to be cumbersome which resulted delay in disposing the cases. So, there was a need of further amend it.

AMENDMENTS

Section 143A- Power to direct Interim Compensation

Under it, the court is empowered to order to the drawer of cheque to pay interim compensation to the complainant. The amount of such compensation shall not exceed 20% of the amount of the dishonoured cheque. It must be paid within 60 days from the date of the order of the court which may be further extended by a period of thirty days on sufficient reason being shown by the drawer. If the drawer of the cheque is found to be defaulter then the amount of interim compensation recovered shall be deducted from the fine imposed under section 138 of Negotiable Instruments Act or the compensation imposed under section 357 of the Code of Criminal Procedure, 1973. In case where the drawer is acquitted then the payee has to refund the entire amount of interim compensation, plus the interest at the bank rate as published by the Reserve Bank of India at the beginning of the relevant financial year. It must be paid within 60 days from the date of the order or within an additional period of 30 days subject to the sufficient cause shown by the payee of the cheque.

Section 148- To order payment pending appeal against conviction

If drawer file an appeal against conviction under section 138, then Appellant court may pass an order to the appellate to deposit such sum which could not less than the 20% of the fine awarded by the trial court. The amount so payable shall be in addition to any interim compensation paid by the Appellant under Section 143A. Also, the same has to be deposited within a period of 60 days from the date of order or within such further period not exceeding 30 days or may be directed by the Court on sufficient reasons being shown by the Appellant This section provide a right to appeal to the drawer of the cheque against fake cases.

Contribution of proposed amendment in ease of doing business

- It facilitated quick and prompt business deals and transactions.
- Cheque was considered a safe means of transferring money as dishonour of cheque was a punishable offence.
- It provides a relief to the cheque payee who had to spend a significant amount of time and energy in the court to recover the money due to him in cheque bounce case.

All this oiled the wheel of commerce.

CONCLUSION

The Amendment Act is, certainly, a positive step towards ensuring the credibility of cheques. It was expected that the problem relating to the dishonour of the cheques shall be minimized to a great extent and the people shall realize that in case of dishonour of the cheques issued by them they may be put to trouble and suffer penal consequences. However, we find that the problem has not been solved to the extent It was expected and there has been a flood of litigation resulting from the amended Act. The solution may be that special courts should be formulated in which there is a quick disposal of cases and no wastage of time and money. Strident penalties should be imposed on the repeat offenders in the form of increased fine or prohibition on issuing cheques for a specified period. Thus, the Negotiable Instrument Amendment Act will take a long time in ensuring relief to the payee of the dishonoured cheques.

REFERENCE

1. <http://shodhganga.inflibnet.ac.in/handle/10603/132468>
2. <https://www.incometaxindia.gov.in/pages/acts/negotiable-instruments-act.aspx>
3. <http://vinodkothari.com/2018/07/interim-compensation-to-the-payee-of-the-dishonoured-cheque/>