

AN OVERVIEW OF NEGOTIABLE INSTRUMENTS (AMENDMENT) BILL, 2015*

Introduction

The Negotiable Instruments (Amendment) Bill, 2015 was introduced in the Lok Sabha, on July 27, 2015 by the Minister of Finance, Mr. Arun Jaitley. The Bill seeks to amend the Negotiable Instruments Act, 1881. The Act defines promissory notes, cheques and specifies penalties for bouncing of cheques, and other violations. The Bill replaces the Negotiable Instruments (Amendment) Ordinance, 2015 which was promulgated on June 15, 2015. During the Monsoon Session, the Negotiable Instruments (Amendment) Bill, 2015, was passed by the Lok Sabha on August 6 2015. However, this Bill was not passed by the Rajya Sabha. Therefore, the said Ordinance could not be replaced by the Parliament by passing the related Amendment Bill and a subsequent legislation.

The Negotiable Instruments (Amendment) Ordinance, 2015, was promulgated by the President of India on June 15 2015, and the Monsoon session of the Parliament started on July 21 2015 therefore, as per Art 123, this Ordinance shall cease to operate on the expiration of a period of 6 weeks w.e.f. July 21 2015. This means that this Ordinance has lapsed on August 31 2015.

The President of India has promulgated the Negotiable Instrument (Amendment) Second Ordinance 2015 with retrospective effect which means that it has come into force on 15th June 2015. This has caused huge uncertainty in a large number of dishonour of cheques cases pending before various courts as well as cases that are in the process of being filed with regard to jurisdictional competency of a court to entertain a cheque dishonour case u/s 138 of the Negotiable Instruments Act, 1881.

The Negotiable Instruments (Amendment) Bill, 2015

Section 138 of the NI Act deals with the offence that pertains to dishonour of cheque for insufficiency of funds in the drawer's account on which the cheque is drawn for the discharge of any legally enforceable debt or other liability. The object of the NI Act is to encourage the usage of cheques and enhancing the credibility of the instrument so that the normal business transactions and settlement of liabilities can be ensured.

* Adv. Khushbu Sahu, Delhi High Court, New Delhi.

Various financial institutions and industry associations have expressed difficulties, arising out of the recent legal interpretation of the place of jurisdiction for filing cases under Section 138 to be the place of drawers' bank by the Supreme Court. The difficulties were being faced by the payee or the lender in filing the cases under Section 138 of the NI Act, because of which, large number of cases were stuck, therefore in order to address this problem it became necessary that the jurisdiction for offence under Section 138 be clearly defined.

The Bill provides that cases falling under the category of section 138 of Negotiable Instruments Act, 1881 be filed only in a court within whose local jurisdiction, the bank branch of the payee, where the payee delivers the cheque for payment is situated. Further, where a complaint has been filed against the drawer of a cheque in the court having jurisdiction under the new scheme of jurisdiction, all subsequent complaints arising out of section 138 against the same drawer shall be filed before the same court, irrespective of whether those cheques were presented for payment within the territorial jurisdiction of that court.

Further, it has been provided that if more than one prosecution is filed against the same drawer of cheques before different courts, upon this fact having been brought to the notice of the court, the court shall transfer the case to the court having jurisdiction as per the new scheme of jurisdiction.

The main objective of proposed amendments to the Negotiable Instruments Act, 1881 ("The NI Act") is to clarify the jurisdiction related issues for filing cases for offence committed under section 138 of the NI Act. The clarity on jurisdictional issues for trying cases of cheque bouncing would increase the credibility of the cheque as a financial instrument. This would help trade and commerce in general and allow the lending institution, including banks, to continue to extend financing to the economy, without the apprehension of loan default on account of bouncing of a cheque.

In view of the urgency to create a suitable legal framework for determination of the place of jurisdiction for trying cases of dishonour of cheques under section 138 of the NI Act, the Government has decided to amend the law through the Negotiable Instruments (Amendment) Ordinance, 2015.

The amendments are made in the direction to ensure that a fair trial is conducted keeping in view the interests of the complainant by clarifying the territorial jurisdiction for trying the cases for dishonour of cheques. The Ordinance is similar to the Bill in the sense that the substantive principle for determination of the jurisdiction of cases under section 138 of the NI Act remains the same, except that that two distinct situations of payment of cheque (i) by submitting the same for collection through an account or (ii) payment of a cheque otherwise through an account, that is, when cheques are presented across the counter of any branch of drawee bank for payment, are covered under the Ordinance.

The amendment of 2015 inserted Section 142(2) in the Principal Act. The amendment reads as follows:

"(2) The offence under Section 138 shall be inquired into and tried only by a court within whose local jurisdiction –

(a) If the cheque is delivered for collection through an account, the branch of the bank where the payee or holder in due course, as the case may be, maintains the account, is situated; or

(b) If the cheque is presented for payment by the payee or holder in due course otherwise through his account, the branch of the drawee bank where the drawer maintains the account, is situate.

Explanation – For the purpose of clause (a), where the cheque is delivered for collection at any branch of the bank of the payee or holder in due course, then, the cheque shall be deemed to have been delivered to the branch of the bank in which the payee or holder in due course, as the case may be, maintains the account.”

Therefore, to summarise, firstly, when the cheque is delivered for collection through an account the complaint is to be filed before the Court where the branch of the bank is situated, where the payee or the holder in due course maintains his account and secondly when the cheque is presented for payment over the counter the complaint is to be filed before the Court where the drawer maintains his account.

In addition to the aforesaid amendment, Section 142A is also inserted which reads as follows:

“(1) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 or any judgment, decree, order or directions of any court, all cases arising out of section 138 which were pending in any court, whether filed before it, or transferred to it, before the commencement of the Negotiable Instruments (Amendment) Act, 2015, shall be transferred to the court having jurisdiction under sub-section (2) of section 142 as if that sub-section had been in force at all material times.

(2) Notwithstanding anything contained in sub-section (2) of section 142 or sub-section (1), where the payee or the holder in due course, as the case may be, has filed a complaint against the drawer of a cheque in the court having jurisdiction under sub-section (2) of section 142 or the case has been transferred to that court under sub-section (1), all subsequent complaints arising out of section 138 against the same drawer shall be filed before the same court irrespective of whether those cheques were presented for payment within the territorial jurisdiction of that court.

(3) If, on the date of commencement of the Negotiable Instruments (Amendment) Act, 2015, more than one prosecution filed by the same person against the same drawer of cheques is pending before different courts, upon the said fact having been brought to the notice of the court, such court shall transfer the case to the court having jurisdiction under sub-section 142(2) before which the first case was filed as if that sub-section had been in force at all material times.”

Sec. 142A can be summed up as :Firstly, all cases pending before any Court, whether filed before it or transferred to it pending before 15th June 2015 shall be transferred to the Court having jurisdiction as per Sec. 142 (2).Secondly, if a complaint is filed by the payee or the holder in due course against a drawer before the Court having jurisdiction u/s 142(2), all further complaints against that drawer shall be filed before the same Court where the first complaint is filed, irrespective of whether the cheque is presented or delivered for collection to the bank/ branch within the local limits of Court having jurisdiction where that bank/branch is situated. Lastly, if on

15th June 2015, there are more than one cases u/s 138 NI Act pending between the same parties in different Courts, then the cases should be transferred to the Court having jurisdiction u/s 142 (2) and all subsequent complaints between the same parties should be filed before the same Court. Therefore, in view of this amendment, all cases transferred pursuant to the judgment in the matter of Dashrath and all other pending cases would have to be transferred as per Sec. 142A

Latest Law

A three Judge Bench of the Hon'ble Supreme Court of India in the case of Dashrath Rupsingh Rathod vs. State of Maharashtra overruled its earlier two Judge Bench Judgment (K. Bhaskaran v. Sankaran Vaidhyan Balan) and held that a Complaint of dishonour of cheque can be filed only to the Court within whose local jurisdiction the cheque is dishonoured by the bank on which it is drawn. It also directed that the complaints u/s 138 NI Act should be returned to the complainant to be presented within 30 days from the date of such return before the Court having jurisdiction where the cheque is dishonoured by the bank on which it is drawn. Prior to pronouncement of the abovementioned judgment, a case under Section 138 could be initiated by the holder of the cheque at his place of business or residence. But, a bench of justices TS Thakur, Vikramjit Sen and C Nagappan ruled that the case has to be initiated at the place where the branch of the bank on which the cheque was drawn is located. The judgment is deemed to be applicable retrospectively; this means, lakhs of cases pending in various courts would witness a interstate transfer of cases filed u/s 138.

Reasons for passing the new law

The rationale behind this change is that, majority of payers being businessmen and traders were using extending credit recklessly and due to the leniency in the provision of Section 138, it was being misused in regards to the place of institution, as sometime the payer had no concern with the place where the cheque was issued and to unnecessarily harass the payee cause hardship of place of institution of case according to their convenience. To curb this practice this judgment aims to get to the root of the issue and resolve it by a strict approach so as to discourage the payer from misusing or carelessly issuing cheques. The hardship of traveling to the location of drawee bank is now on the payer.

The change in the existing law shifts the inconvenience and hardship on the payer because now he would have to travel to the place of the drawee bank where the cheque gets dishonored due to insufficiency of funds. Hence, guaranteeing more precaution by the payer at the time of issuing the cheque.

www.lawmantra.co.in

Brief summary of the bill-

- The proposed Bill seeks to modify the definition of a cheque in electronic form, and clarify the appropriate area of jurisdiction of courts, where cases of cheque bouncing can be filed.
- The proposed Bill clarifies the appropriate area of jurisdiction of courts, where cases of cheque bouncing can be filed. If the cheque is delivered for collection to the account of the payee, the jurisdiction lies in the area of the bank branch where the payee maintains an account, or if the payee presents a cheque to a bank in any other way, the jurisdiction lies in the area of the bank branch where the drawer maintains an account.

- If the payee has filed a complaint against the drawer in a court with the appropriate jurisdiction, all subsequent complaints against that person regarding cheque bouncing will be filed in the same court. This will be irrespective of whether the cheque was delivered for collection or presented at a bank within the territorial jurisdiction of that court.
- If more than one case is filed by the same payee against the same drawer before different courts, the case will be transferred to the court with the appropriate jurisdiction before which the first case was filed.
- All cases regarding cheque bouncing which are pending in any court, before this Bill comes into force, will be transferred to a court with appropriate jurisdiction.
- The Bill also amends the definition of 'cheque in the electronic form'. Under the Act, this was defined as a cheque containing the exact mirror image of a paper cheque and generated in a secure system using a digital signature. The definition has been amended to mean a cheque drawn in electronic medium using any computer resource, which is signed in a secure system with a digital signature and asymmetric crypto system (pair of a public key and private key to create a digital signature), or electronic system.
- The proposed bill also have amended the definitions of 'computer resource', 'digital signature', 'electronic system' and 'asymmetric crypto system' to be the same as those assigned to them in the Information Technology Act, 2000.

