

Bill No. 151 of 2015

THE NEGOTIABLE INSTRUMENTS (AMENDMENT) BILL, 2015

A

BILL

further to amend the Negotiable Instruments Act, 1881.

BE it enacted by Parliament in the Sixty-sixth Year of the Republic of India as follows:—

1. (1) This Act may be called the Negotiable Instruments (Amendment) Act, 2015.

Short title
and
commencement.

(2) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint:

5 Provided that different dates may be appointed for different provisions of this Act and any reference in any such provision to the commencement of this Act shall be construed as a reference to the coming into force of that provision.

26 of 1881.

2. In the Negotiable Instruments Act, 1881 (hereinafter referred to as the principal Act), in section 6,—

Amendment
of section 6.

(i) in the *Explanation I*, for clause (a), the following clause shall be substituted, namely:—

“(a) “a cheque in the electronic form” means a cheque drawn in electronic medium by using any computer resource and signed in a secure system with digital signature (with or without biometrics signature) and asymmetric crypto system or electronic signature, as the case may be;”;

(ii) after *Explanation II*, the following *Explanation* shall be inserted, namely:—

“*Explanation III*.—The expressions used in this section shall have the same meanings as assigned to those expressions in the Information Technology Act, 2000.”.

Amendment of
section 142.

3. In the principal Act, section 142 shall be numbered as sub-section (1) thereof and after sub-section (1) as so numbered, the following sub-section shall be inserted, namely:—

“(2) The offence under section 138 shall be inquired into and tried only by a court within whose local jurisdiction the bank branch of the payee, where the payee presents the cheque for payment, is situated.”.

Insertion of
new section
142A.

4. In the principal Act, after section 142, the following section shall be inserted, namely:—

Validation for
transfer of
pending cases.

“142A. (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 the 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 (2) of section 142 before which the first case was filed as if that sub-section had been in force at all material times.”.

STATEMENT OF OBJECTS AND REASONS

The Negotiable Instruments Act, 1881 was enacted to define and amend the law relating to Promissory Notes, Bills of Exchange and Cheques. The Banking, Public Financial Institutions and Negotiable Instruments Laws (Amendment) Act, 1988 inserted in the Negotiable Instruments Act, 1881 (hereinafter called the said Act), a new Chapter XVII, comprising sections 138 to 142 with effect from 1st April, 1989. Section 138 of the said Act provides for penalties in case of dishonour of cheques due to insufficiency of funds in the account of the drawer of the cheque.

2. As sections 138 to 142 of the said Act were found deficient in dealing with dishonour of cheques, the Negotiable Instruments (Amendment and Miscellaneous Provisions) Act, 2002, *inter alia*, amended sections 138, 141 and 142 and inserted new sections 143 to 147 in the said Act aimed at speedy disposal of cases relating to dishonour of cheque through their summary trial as well as making them compoundable. Punishment provided under section 138 too was enhanced from one year to two years. These legislative reforms are aimed at encouraging the usage of cheque and enhancing the credibility of the instrument so that the normal business transactions and settlement of liabilities could be ensured.

3. The Supreme Court, in its judgment dated 1st August, 2014, in the case of Dashrath Rupsingh Rathod versus State of Maharashtra and another (Criminal Appeal No. 2287 of 2009), held that the territorial jurisdiction for dishonour of cheques is restricted to the court within whose local jurisdiction the offence was committed, which in the present context is where the cheque is dishonoured by the bank on which it is drawn. The Supreme Court has directed that only those cases where, post the summoning and appearance of the alleged accused, the recording of evidence has commenced as envisaged in section 145(2) of the Negotiable Instruments Act, 1881, will proceeding continue at that place. All other complaints (including those where the accused/respondent has not been properly served) shall be returned to the complainant for filing in the proper court, in consonance with exposition of the law, as determined by the Supreme Court.

4. Pursuant to the judgment of the Supreme Court, representations have been made to the Government by various stakeholders, including industry associations and financial institutions, expressing concerns about the wide impact this judgment would have on the business interests as it will offer undue protection to defaulters at the expense of the aggrieved complainant; will give a complete go-by to the practice /concept of 'Payable at Par cheques' and would ignore the current realities of cheque clearing with the introduction of CTS (Cheque Truncation System) where cheque clearance happens only through scanned image in electronic form and cheques are not physically required to be presented to the issuing branch (drawee bank branch) but are settled between the service branches of the drawee and payee banks; will give rise to multiplicity of cases covering several cheques drawn on bank(s) at different places; and adhering to it is impracticable for a single window agency with customers spread all over India.

5. To address the difficulties faced by the payee or the lender of the money in filing the case under section 138 of the said Act, because of which, large number of cases are stuck, the jurisdiction for offence under section 138 has been clearly defined. The Negotiable Instruments (Amendment) Bill, 2015 provides for the following, namely:—

- (i) filing of cases only by a court within whose local jurisdiction the bank branch of the payee, where the payee presents the cheque for payment, is situated;

(ii) stipulating that 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 of the said Act 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;

(iii) stipulating that if more than one prosecution is filed against the same drawer of cheques before different courts, upon the said 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; and

(iv) amending *Explanation I* under section 6 of the said Act relating to the meaning of expression "a cheque in the electronic form", as the said meaning is found to be deficient because it presumes drawing of a physical cheque, which is not the objective in preparing "a cheque in the electronic form" and inserting a new *Explanation III* in the said section giving reference of the expressions contained in the Information Technology Act, 2000.

6. It is expected that the proposed amendments to the Negotiable Instruments Act, 1881 would help in ensuring that a fair trial of cases under section 138 of the said Act is conducted keeping in view the interests of the complainant by clarifying the territorial jurisdiction for trying the cases for dishonour of cheques.

7. The Bill seeks to achieve the above objects.

NEW DELHI;

The 28th April, 2015

ARUN JAITLEY

ANNEXURE

EXTRACT FROM THE NEGOTIABLE INSTRUMENTS

Act, 1881

(26 OF 1881)

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6. * * * * * "cheque".

Explanation 1.—For the purposes of this section, the expressions—

(a) "a cheque in the electronic form" means a cheque which contains the exact mirror image of a paper cheque, and is generated, written and signed in a secure system ensuring the minimum safety standards with the use of digital signature (with or without biometrics signature) and asymmetric crypto system;

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