

# International Trade and Public Finance in Corporate World – An Overview

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## Abstract

The present paper looks at the salient features of negotiable instrument act and its role in the development of banking. The law relating to negotiable instruments is the law of commercial world legislated to facilitate the mercantile commercial activities, thereby making provision of giving sanctity to the instruments of credit which could be deemed to be convertible into money and easily exchangeable from one person to another as well as easily transferable from one banking institution to another. The above quoted statement made before the Bills of Exchange Act, 1882, brings out clearly the process of evolution of mercantile law which includes the law of negotiable instruments. The mercantile community found in such instruments an easy mode of payment of money by way of endorsement and delivery or by mere delivery of such instruments. With the expansion of trade and commerce, negotiable instruments have assumed international importance.

In the absence of such negotiable instruments, the trade and commerce activities, in the contemporary world, are likely to be adversely affected as it is impracticable, infeasible and unworkable for the trading community to carry with it the bulk of the currency in force. Negotiable instruments are in fact the instruments of credit being convertible, exchangeable and redeemable on account of legality of being negotiated and are easily passable from one hand to another, from one state to another, from one country to another. Out of the various kinds of negotiable instruments recognized by law, cheque is considered, by far, one of the most secure and reliable device of payment throughout the world, particularly in the sphere of commercial transactions one cannot imagine survival without this negotiable instrument. A negotiable instrument is in more than one sense a 'thing'. In deciphering what is meant by a 'thing' under law, we must on one hand avoid the metaphysical niceties about the conception of 'thing', and on the other, the peculiar conception of the word in England, as in the phrases, 'things in possession' and 'things in action'. In jurisprudence, a 'thing' necessarily denotes an object of rights. In that sense every instrument is a 'thing', in so far as the paper on which it is written is concerned. It is not only in that sense is a negotiable instrument a 'thing' also in the sense that it is a physical embodiment of rights. A person lawfully getting possession of such an instrument acquires title to it, and the same cannot be said of other instruments. Again, it represents money and possesses all the characteristics of money which it represents. For example, it is not tainted by any defect or fraud in the source from which it flows, so long as its acquisition is bonafide and for value.

*Keywords— negotiable instruments, India, jurisprudence, Negotiable, possession, instruments of credit.*

## Introduction

Negotiable Instrument Act, 1881 primarily incorporates the law regarding negotiable devices. The time period 'negotiable' means transferable and the time period 'instrument' means 'any written document making a proper in favour of some person. Thus by negotiable instrument we mean a written document by which a proper is given to an individual and which is transferable in accordance with provisions of Negotiable Instrument Act, 1881.

What is Negotiable Instrument?

In common parlance a negotiable instrument may be understood as a piece of paper which entitles to a sum of cash and which is transferable from one person to a different merely by supply or by endorsement and supply. The person to whom it's so transferred turns into entitled to the sum talked about therein and in addition to the precise to additional switch it. Though there's a basic precept that nobody can change into proprietor of any property until the one who bought the property to him is the true proprietor of the said property, but this rule is just not relevant within the case of Negotiable instrument. Now allow us to consult with the Act how the term Negotiable instrument is defined in the part.

### *Characteristics of a Negotiable Instrument*

The time period negotiability may be extended to different devices like Bill of Lading; Hundies, and so forth.

offered it satisfies the next characteristics-

(a) Free and innumerable Transfers:

- A Negotiable Instrument could also be transferred by - (i) Delivery, or (ii) by Endorsement and Delivery
- Negotiable Instruments may be transferred ad infinitum, i.e. transferred any variety of occasions till its satisfaction.

(b) Free from defects: The Holder in the end obtains the nice title to the instrument, however any defect in a earlier holder's title. A Holder in the end is one who receives the instrument-

- For Consideration,
- Before maturity, and
- Without any notice as to the defect in title of the Transferor.

(c) Holder to sue in his personal identify: The Holder in the end of a Negotiable Instrument can sue on the instrument in his personal identify.

(d) Presumptions: A Negotiable Instrument is topic to sure presumptions listed u/s 118 and 119 as to consideration, date, time of acceptance and switch, endorsements, and so forth.

### *Types of Negotiable Instrument*

Negotiable Instruments are of two sorts:

(i) Negotiable by statute - Section 13 of the Act, offers {that a} Negotiable Instrument embrace promissory notice, invoice of change and cheque, whether or not payable to bearer or order.

(ii) Negotiable by customized or utilization - Though the Act speaks of solely three sorts of Negotiable Instrument, however it doesn't take into account different kinds of devices from being handled as a negotiable instrument offered they possess the traits of a negotiable devices. Accordingly sure different devices take the character of negotiable devices by customized or utilization. Dividend warrant, round notes, bearer debentures are a few of them although they aren't particularly talked about within the Act.

### **Objective:**

Through this paper author likes to explore the cardinal features of negotiable instrument act in its various facets and also it's primacy in in making the banking sector grow faster

### **The penal provisions of Act**

The penal provisions contained in Sections 138 to 142 of the Act have been enacted to ensure that obligations undertaken by issuing cheques as a mode of deferred payment are honoured. Section 138 of the Act provides for circumstances under which a case for dishonour of cheques is filed.<sup>1</sup> The ingredients required for complying with Section 138 are as follows:

A cheque is a widely used method of payment and post-dated cheques are frequently used in various transactions in business life. Post-dated cheques are given to provide a certain accommodation to the drawer of the cheque. Therefore, it becomes necessary to ensure that the drawer of the cheque does not abuse the accommodation given to him. The Negotiable Instruments Act, 1881 ("Act") deals with negotiable instruments, such as promissory notes, bills of exchange, cheques etc. Chapter XVII containing Sections 138 to 142 was introduced with the aim of inculcating confidence in the efficacy of banking operations and giving credibility to negotiable instruments employed in business transactions. If a party issues a cheque as a mode of deferred payment and the payee of the cheque accepts the same on the faith that he will get his payment on due date, then he should not suffer on account of non-payment.

a person must have drawn a cheque for payment of money to another for the discharge of any debt or other liability;

that cheque has been presented to the bank within a period of three months;

that cheque is returned by the bank unpaid, either because insufficient of funds or that it exceeds the amount arranged to be paid from that account by an agreement made with the bank;

the payee makes a demand for the payment of the money by giving a notice in writing to the drawer within 15 days of the receipt of information by him from the bank regarding the return of the cheque as unpaid;

The drawer fails to make payment to the payee within 15 days of the receipt of the notice.

**Procedure that is followed in matters with regard to Section 138**

A legal notice is to be issued to the drawer within 15 days of dishonor of cheque by registered post with all relevant facts. The drawer is given a time of 15 days to make the payment, if the payment is made then the matter is served and the issue is settled. On the other hand if the payment is not made then the complainant is to file a criminal case process under Section 138 of the Act, against the drawer within 30 days from the date of expiry of 15 days specified the notice, with the concerned magistrate court within the jurisdiction.

The complainant or his authorized agent should appear in the witness box and provide relevant details for filing the case. If the court is satisfied and finds substance in the complainant, then summons will be issued to the accused to appear before the Court. If after being served with the summons the accused abstains himself from appearing then the court may issue a bailable warrant. Even after this if the drawer does not appear a non-bailable warrant may be issued. On appearance of the drawer/accused, he may furnish a bail bond to ensure his appearance during trial. After which the plea of accused is recorded. In case he pleads guilty, the court will post the matter for punishment. If the accused, denies the charges then he will be served with the copy of complaint. The Complainant may present his evidence by way of affidavit and produce all documents including the original in support of his complaint. The complainant will be cross examined by the accused or his counsel. The accused will be given an opportunity to lead his evidence. The accused will also be afforded an opportunity to submit his documents in support of his case, as well as witnesses in his support. Accused and his witnesses will be cross examined by the complainant. The last stage of the proceeding is that of the arguments after which the court will pass a judgment. If the accused is acquitted then the matter ends, but the complainant can go on further appeal in the High Court, similarly if the accused is convicted he can file an appeal in the Sessions Court. It must be noted that the offence under Section 138 of the Act, has been made compoundable.

**Recent Supreme Court rulings for speedy disposal:**

In 2017, Delhi High Court in *Dayawati v. Yogesh Kumar Gosain* took into account the question whether an offence under Section 138, which is a criminally compoundable case, could be settled by mediation.<sup>2</sup> The Court held that even though an express statutory provision enabling the criminal court to refer the complainant and accused persons to alternate dispute redressal mechanisms has not been specifically provided by the Legislature. The Code of Criminal Procedure ("Cr.P.C.") does permit and recognize settlement without stipulating or restricting the process by which it may be reached. Thus, there is no bar to utilizing the alternate dispute mechanisms including arbitration, mediation, conciliation (recognized under Section 89 of Civil Procedure Code, 19083) for the purposes of settling disputes which are the subject matter of offences covered under Section 320 of the Cr.P.C. It also stated the proceedings under Section 138 of the Act is distinct from other criminal cases and are really in the nature of a civil wrong which has been given criminal overtones.

In *Meters and Instruments (P) Ltd. v. Kanchan Mehta*, the Honourable Supreme Court after taking into consideration the object of introducing Section 138 and other provisions of Chapter XVII of the Act, observed as under<sup>4</sup>:

Offence under Section 138 of the Act is primarily a civil wrong. Burden of proof is on accused in view presumption under Section 139 but the standard of such proof is "preponderance of probabilities". The same has to be normally tried summarily as per provisions of summary trial under the Cr.P.C. but with such variation as may be appropriate to proceedings under Chapter XVII of the Act. Thus read, principle of Section 258 Cr.P.C.5 will apply and the Court can close the proceedings and discharge the accused on satisfaction that the cheque amount with assessed costs and interest is paid and if there is no reason to proceed with the punitive aspect.

The object of the provision being primarily compensatory, punitive element being mainly with the object of enforcing the compensatory element, compounding at the initial stage has to be encouraged but is not debarred at later stage subject to appropriate compensation as may be found acceptable to the parties or the Court.

Procedure for trial of cases under Chapter XVII of the Act has normally to be summary. The discretion of the Magistrate under second proviso to Section 143, to hold that it was undesirable to try the case summarily as sentence of more than one year may have to be passed, is to be exercised after considering the further fact that apart from the sentence of imprisonment, the Court has jurisdiction under Section 357(3) Cr.P.C.6 to award suitable compensation with default sentence under Section 64 IPC and with further powers of recovery under Section 431 Cr.P.C.7 With this approach, prison sentence of more than one year may not be required in all cases.

Since evidence of the complaint can be given on affidavit, subject to the Court summoning the person giving affidavit and examining him and the bank's slip being prima facie evidence of the dishonour of cheque, it is unnecessary for the Magistrate to record any further preliminary evidence. Such affidavit evidence can be read as evidence at all stages of trial or other proceedings. The manner of examination of the person giving affidavit can be as per Section 264 Cr.P.C.8 The scheme is to follow summary procedure except where exercise of power under second proviso to Section 143 becomes necessary, where sentence of one year may have to be awarded and compensation under Section 357(3) is considered inadequate, having regard to the amount of the cheque, the financial capacity and the conduct of the accused or any other circumstances."

#### **Recent amendment:**

The Negotiable Instruments (Amendment) Act, 2017 which came into effect from September 1, 2017 allows the Court trying an offence related to cheque bouncing, to direct the drawer to pay interim compensation not exceeding 20% of the cheque amount to the complainant within 60 days of the trial court's order to pay such compensation. This interim compensation may be paid either in a summary trial or a summons case where the drawer pleads not guilty to the accusation made in the complaint; or upon framing of charge in any other case. Furthermore, the Amendment also empowers the Appellate Court, hearing appeals against conviction under s. 138, to direct the appellant to deposit a minimum 20 % of the fine/compensation awarded, in addition to interim compensation.

**Few observations:**

The recent steps undertaken by the judiciary and the changes brought by the legislature are steps in the right direction. But there is a need to realise the commercial realities in India and further expedite the process of recovery to discourage delays caused by the accused, unnecessary adjournments and frivolous appeals. Courts in India are overburdened and lack basic infrastructure to deal with dishonoured cheque cases. It is vital that people have faith in the integrity and honesty of the system. However, reliability of cheques in commercial dealings has been eroded to a great extent. Dishonour of cheque causes financial loss, inconvenience and injury to the payee.

**Recommendations as under:**

The number of Magistrates exclusively meant for cheque bounce cases should be doubled. Special Courts can be set up to deal with such cases. The Government must provide for funds needed to meet the costs involved in increasing the number of Magistrates, their supporting staff and other infrastructure.

There should be no more than fifty matters before a judge on a particular day. Twenty-five in the morning session and twenty-five in the afternoon session.

In order to address the time concern, the following suggests the following:

Before the Court's time i.e. before 11 AM, the Court's Judicial clerk should sit for one hour, take roll call and entertain applications for adjournment by consent, adjourn the cases which appear to him require adjournment. In case where the Magistrate's judicial attention/time is required, can be put up with remark by the Judicial clerk and those cases should be kept at 11 AM for judicial scrutiny.

Judicial time from 11 AM should be exclusively devoted to taking down the evidence.

The above will save Court's time of almost 1 to 2 hours a day.

No court fees for victims of cheque-bounce cases as he is not making a fresh monetary claim.

Further, Section 139 of the Act<sup>9</sup> mandates that unless the contrary is proved, it is to be presumed that the holder of a cheque received the cheque of the nature referred to in Section 138, for the discharge, in whole or in part, of any debt or other liability. This presumption is rebuttable by the accused by leading cogent evidence that there was no debt or liability. Once such rebuttal evidence is adduced and accepted by the court the evidential burden shifts back to the complainant. In this regard, it has to be noted by the Courts that the accused is given an opportunity twice to prove his innocence, first when the bank informs him about insufficiency of funds, and the second time he can raise his defence at the time of notice served under Section 138 of the Act. If he fails to do so, then the Court should presume that he is guilty and start process forthwith. In case of false cases, heavy costs should be imposed on the complainant.

Since it is a quasi judicial proceeding, the intent is that the Court should take innovative approach and not succumb to technicalities. Technicalities should be found and turned down with firm hand.

Magistrates must take suo moto action and a four hearing procedure should be followed. If the accused does not show up at the first hearing, a non-bailable warrant must be issued. At the second hearing the accused must show cause and file a defence. At the third hearing cross examination should be conducted. At the fourth hearing arguments should take place after which a judgment must follow.

Credit is given on trust and good faith. It is in the interest of the justice system that these reforms are brought as expeditiously as possible to further ease the process of doing business in India. Section 138 of the Act should not be used by person who borrows money on credit to delay his commitment to pay and it is the duty of the Court to ensure that it is not made a party to such dilatory tactics.

### Conclusion

An invoice, promissory notice or cheque if each drawn and payable in India or drawn on an individual resident in India is claimed to be an inland invoice. A invoice which isn't an inland invoice is deemed to be a overseas invoice. Foreign invoice should be protested for dishonor if such protest is required by the regulation of the place the place it was drawn, this isn't case with Inland payments the place protest for nonpayment is elective as per part 104 of the Act. Demand and time devices An instrument is payable on demand when it's expressed to be so payable or when no time is specified on it. A cheque is all the time payable on demand. A notice or invoice if payable after a specified period or happening of a specified occasion which is definite, it's a time instrument. If a promissory notice or invoice of change bears the expression "at sight" and "on presentation" means on demand (part 21). The phrases "on demand" are usually found in a promissory note, where the words "at sight" are present in a invoice of change. Genuine, lodging and fictitious invoice When a invoice is drawn, accepted, or endorsed for consideration it's a real invoice. When it's drawn, accepted, or endorsed with out consideration it's lodging invoice. When drawer or payee or each are fictitious the invoice is known as fictitious invoice. If each drawer and payee of a invoice are fictitious person, the acceptor is liable to a holder in due Course, if the holder in the end can present that the signature of the supposed drawer and that of first payee are in the same handwriting. Clean and documentary invoice is when no documents regarding items are annexed to the invoice, it's clear invoice. When documents of title or different documents regarding items are attached, it's documentary invoice.

Ambiguous instrument is when an instrument due to defective drafting may be interpreted both as invoice or notice, it's an ambiguous instrument. It is for holder to determine how he desires the invoice to be handled. Ambiguity may come up when the amount is acknowledged in another way in phrases and figures. In such case the quantity acknowledged in phrases can be taken into account. An instrument incomplete in some respect is called inchoate instrument. When a person indicators and delivers to a different a clean or incomplete stamped paper, he authorizes the opposite person to make or full upon it a negotiable instrument for any amount not exceeding the amount lined by the stamp. The impact of such signing is that the particular person signing the instrument is liable upon such instrument within the capability wherein he signed it to holder in the end of the instrument. When an instrument is drawn conditionally or for a particular objective as a collateral safety and never for the aim of transferring property therein, it's referred to as Escrow instrument. The legal responsibility to pay in case of an Escrow instrument doesn't come up if the situations agreed upon are usually not fulfilled or the aim for which the instrument was delivered is just not achieved.

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