

Bill No. 186 of 2015

THE NEGOTIABLE INSTRUMENTS (AMENDMENT) BILL, 2015

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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 be deemed to have come into force on the 15th day of June, 2015.

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

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

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

Explanation III.—For the purposes of this section, the expressions "asymmetric crypto system", "computer resource", "digital signature", "electronic form" and "electronic signature" shall have the same meanings respectively assigned to them in the Information Technology Act, 2000.!

5 21 of 2000.

Amendment of section 142.

3. In the principal Act, section 142 shall be numbered as sub-section (I) thereof and after sub-section (I) 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,—

(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

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

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Explanation.— For the purposes of clause (a), where a 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."

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Insertion of new section 142A.

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

"142A. (1) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 or any judgment, decree, order or direction 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 of 1974.

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(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) and such complaint is pending in that court, 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 delivered for collection or presented for payment within the territorial jurisdiction of that court.

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(3) If, on the date of the commencement of the Negotiable Instruments (Amendment) Act, 2015, more than one prosecution filed by the same payee or holder in due course, as the case may be, against the same drawer of cheques is pending 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 under sub-section (2) of section 142 before which the first case was filed and is pending, as if that sub-section had been in force at all material times."

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Repeal and savings.

5. (1) The Negotiable Instruments (Amendment) Ordinance, 2015, is hereby repealed.

Ord. 6 of 2015.

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(2) Notwithstanding such repeal, anything done or any action taken under the principal Act, as amended by the said Ordinance, shall be deemed to have been done or taken under the corresponding provisions of the principal Act, as amended by this Act.

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 (herein referred to as the said Act), a new Chapter XVII, comprising sections 138 to 142. 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 section 143 to 147 in the said Act aimed at speedy disposal of cases relating to the offence of dishonour of cheques 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 cases relating to offence of dishonour of cheques is restricted to the court within whose local jurisdiction such 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 in those cases where post the summoning and appearance of the alleged accused and the recording of evidence has commenced as envisaged in section 145(2) of the said Act, proceeding will 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 Central 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. In view of above, the Negotiable Instruments (Amendment) Bill, 2015 proposing a principle for determination of the place of jurisdiction for cases relating to dishonour of cheque under section 138 of the Negotiable Instruments Act, 1881 was introduced in Lok Sabha on 6th May, 2015 and considered and passed by it on 13th May, 2015. However, the said Bill could not be taken-up for consideration in Rajya Sabha, since the House was adjourned *sine die* on 13th May, 2015. As Parliament was not in session and immediate action was required to be taken by the Central Government, an Ordinance, namely, the Negotiable Instruments (Amendment) Ordinance, 2015 was promulgated by the President on 15th June, 2015.

6. Now, it is proposed to introduce the Negotiable Instruments (Amendment) Bill, 2015, to replace the Negotiable Instruments (Amendment) Ordinance, 2015 (Ord. 6 of 2015). The Negotiable Instruments (Amendment) Bill, 2015, *inter alia*, provides for the following namely:—

(i) cases relating to dishonor of cheques under section 138 of the said Act to be inquired and tried only by a court within whose local jurisdiction the branch of the bank, where the payee or the holder in due course maintains the account, is situated;

(ii) cases under section 138 pending in any court before the commencement of the proposed legislation to be transferred to the court in accordance with the new scheme of jurisdiction for such cases as proposed under sub-section (2) of section 142;

(iii) 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;

(iv) where, if more than one prosecution filed by the same payee or holder in due course against the same drawer of cheques is pending before different courts, upon the said fact having been brought to the notice of the court, the court shall transfer the case of the court having jurisdiction as per the new scheme of jurisdiction proposed under sub-section (2) of section 142; and

(v) amending *Explanation I* under section 6 of the said Act which relates 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 therefore, inserting a new *Explanation III* in the said section giving reference of the expressions contained in the Information Technology Act, 2000.

7. It is, therefore, proposed to provide for a place of jurisdiction, which is fair to both the parties (the complainant and the accused), so that a fair trial is ensured in cases filed for dishonor of cheques under section 138 of said Act, keeping in view the observations of the Supreme Court in the case of Dashrath Rupsingh Rathod. Further, the clarity on jurisdictional issue for trying the cases of dishonor of cheques would increase the credibility of the cheque as a financial instrument. This would help the trade and commerce in general and allow the lending institutions including banks to continue to extend financing without the apprehension of the loan default on account of dishonor of cheques.

8. The Bill seeks to achieve the above objects.

ANNEXURE

EXTRACT FROM THE NEGOTIABLE INSTRUMENTS ACT, 1881
(26 OF 1881)

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6. A "cheque" is a bill of exchange drawn on a specified banker and not expressed to be payable otherwise than on demand and it includes the electronic image of a truncated cheque and a cheque in the electronic form. "Cheque".

Explanation I.—For the purposes of this section, the expression—

(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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Explanation II.—For the purposes of this section, the expression "clearing house" means the clearing house managed by the Reserve Bank of India or a clearing house recognised as such by the Reserve Bank of India.

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further to amend the Negotiable Instruments Act, 1881.

(Shri Arun Jaitley, Minister of Finance)