

AS
[~~TO BE INTRODUCED IN THE SENATE~~]

A

BILL

further to amend the Negotiable Instruments Act, 1881

WHEREAS it is expedient further to amend the Negotiable Instruments Act, 1881 (XXVI of 1881) for the purposes hereinafter appearing;

It is hereby enacted as follows:-

1. Short title and commencement.— (1) This Act may be called the Negotiable Instruments (Amendment) Act, 2019.

(2) It shall come into force at once.

2. Insertion of new sections 131CA and 131CB, Act XXVI of 1881.— In the Negotiable Instruments Act, 1881 (XXVI of 1881), after section 131C the following new sections shall be inserted, namely:-

"131CA. Dishonor of cheque for insufficiency, etc., of funds in the accounts.— Where any cheque drawn by a person on an account maintained by him with a banker for payment of any amount of money to another person from out of that account for the discharge, in whole or in part, of any debt or other liability, is returned by the bank unpaid, either because of the amount of money standing to the credit of that account is insufficient to honor the cheque or that it exceeds the amount arranged to be paid from that account by an agreement made with that bank, such person shall be deemed to have committed an offence and shall without prejudice to any other provisions of this Act, be punished with imprisonment for a term which may extend to 3 to 10 years depending upon the amount of the cheque, or with fine which may extend to twice the amount of the cheque, or with both:

Provided that nothing contained in this section shall apply unless,—

- (a) the cheque has been presented to the bank within a period of six months from the date on which it is drawn or within the period of its validity, whichever is earlier;
- (b) the payee or the holder in due course of the cheque, as the case may be, makes a demand for the payment of the said amount of money by giving a notice, in writing, to the drawer of the cheque, within fifteen days of the receipt of information by him from the bank regarding the return of the cheque as unpaid; and

- (c) the drawer of such cheque fails to make the payment of the said amount of money to the payee or, as the case may be, to the holder in due course of the cheque, within fifteen days of the receipt of the said notice.

Explanation: For the purpose of this section, "debt or other liability" means a legally enforceable debt or other liability.

131CB. Payment of Interim Compensation to the complainant:

- (i) In case of a summary trial or a summons case, where the drawer pleads not guilty to the allegations made in the complaint, and
- (ii) In any other case, upon framing of the charges.

Quantum of Compensation.— The compensation amount shall not exceed 20 % of the amount of the Cheque.

On Acquittal.— In case where the drawer is acquitted then the payee may be directed to refund the entire amount of interim compensation along with the prevailing interest rate in the country, to the drawer.

Time Frame.— The interim compensation shall be paid within 60 days from the date of the order by the court which may be further extended by an additional period of 30 days, subject to the sufficient reasons being shown."

STATEMENT OF OBJECTS AND REASONS

Due to absence of some strict laws, cheque fraud, mainly comprising bounced and dishonoured cheques, is emerging as the fastest growing financial crime all over the country as well as in the federal capital with the city police stations registering around 100 such cases every month, reveals the data. The law and prosecution experts believe that the toothless prevailing laws encourage the individuals to commit cheque fraud. On the other side, the increasing crime puts an extra work load on the already overburdened police of the city. The experts were of the view that the criminals did not bother about the consequences of the fraud due to the less punishment for the crime.

2. According to the proposed amendments in this Bill if the cheque issuer fails to make a fresh payment within 30 days of receiving the notice, the payee has the right to file a criminal complaint under section 131CA of the Negotiable Instruments Act. However, the complaint should be registered in a magistrate's court within a month of the expiry of the notice period. It has been defined in section 131CA of the Negotiable Instruments Act, 1881, as any cheque drawn by a person in payment to another person, which is returned to the bank unpaid because there are insufficient funds in the account or the amount exceeds the prescribed limit.

3. This Amendment Bill would come across as a relief for the Payee of the Cheque, who has to spend a significant amount of time and energy in the court to recover the money due to him in a Cheque bounce case. Presently our trading community is facing so many issues relating to pendency of cheque dishonour cases. This is because of delay tactics of unscrupulous drawers of dishonoured cheques due to easy filing of appeals and obtaining stay on proceedings.

4. The Negotiable Instruments Act, 1881, was enacted to characterize and define the law relating to authoritative records like Promissory Notes, Bills of Exchange and Cheques. Over the years, certain amendments are required in it to deal with the changing times, keeping in view the common goal of rapid disposal of cases identifying with the offence of dishonour of cheques. However, the pendency ratio of cheque dishonour cases still remains a critical issue and adversely affects the cash flows of businesses particularly Small and Medium sized Enterprises ("**SMEs**").

5. It is observed that one of the main reasons that plagues the system, roots down to the malafide strategies of corrupt drawers of dishonoured cheques towards evading and abusing the process of law, eventually harming the innocent payees of the dishonor.

6. The insertion of new provisions in the NI Act aims at addressing the issue of undue delay in finality of cheque dishonor cases. It is believed that the amendment will strengthen the credibility of cheques and help trade and commerce in general. Through amendment 131CB an appeal by the drawer against conviction under section 131CB of the NI Act, the Appellate Court may order the appellant to deposit such sum which shall be a minimum of twenty percent of the fine or compensation awarded by the trial Court.

7. The Bill has been designed to achieve the above purpose.