

THE NEGOTIABLE INSTRUMENTS (AMENDMENT AND MISCELLANEOUS PROVISIONS)

BILL, 2002

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further to amend the Negotiable Instruments Act, 1881, the Bankers' Books Evidence Act, 1891 and the Information Technology Act, 2000.

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

CHAPTER I

PRELIMINARY

1. Short title and commencement - (1) This Act may be called the Negotiable Instruments (Amendment and Miscellaneous Provisions) Act, 2002.

(2) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint and different dates may be appointed for different provisions of this Act.

CHAPTER II

AMENDMENTS TO THE NEGOTIABLE INSTRUMENTS ACT, 1881

2. Substitution of new section for section 6 - For section 6 of the Negotiable Instruments Act, 1881 (26 of 1881) (hereinafter referred to as the principal Act), the following section shall be substituted, namely:—

‘6. “Cheque” - 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.

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;

(b) “a truncated cheque” means a cheque which is truncated during the course of a clearing cycle, either by the clearing house or by the bank whether paying or receiving payment, immediately on generation of an electronic image for transmission, substituting the further physical movement of the cheque in writing.

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’.

3. Amendment of section 64 - Section 64 of the principal Act shall be re-numbered as sub-section (1) thereof, and after sub-section (1) as so re-numbered, the following sub-section shall be inserted, namely:—

“(2) Notwithstanding anything contained in section 6, where an electronic image of a truncated cheque is presented for payment, the drawee bank is entitled to demand any further information regarding the truncated cheque from the bank holding the truncated cheque in case of any reasonable suspicion about the genuineness of the apparent tenor of instrument, and if the suspicion is that of any fraud, forgery, tampering or destruction of the instrument, it is entitled to further demand the presentment of the truncated cheque itself for verification:

Provided that the truncated cheque so demanded by the drawee bank shall be retained by it, if the payment is made accordingly”.

4. Amendment of section 81 - Section 81 of the principal Act shall be re-numbered as sub-section (1) thereof, and after sub-section (1) as so re-numbered, the following sub-sections shall be inserted, namely:—

“(2) Where the cheque is an electronic image of a truncated cheque, even after the payment the banker who received the payment shall be entitled to retain the truncated cheque.

(3) A certificate issued on the foot of the printout of the electronic image of a truncated cheque by the banker who paid the instrument, shall be *prima facie* proof of such payment”.

5. Amendment of section 89 - Section 89 of the principal Act shall be re-numbered as sub-section (1) thereof, and after sub-section (1) as so re-numbered, the following sub-sections shall be inserted, namely:—

“(2) Where the cheque is an electronic image of a truncated cheque, any difference in apparent tenor of such electronic image and the truncated cheque shall be a material alteration and it shall be the duty of the bank or the clearing house, as the case may be, to ensure the exactness of the apparent tenor of electronic image of the truncated cheque while truncating and transmitting the image.

(3) Any bank or a clearing house which receives a transmitted electronic image of a truncated cheque, shall verify from the party who transmitted the image to it, that the image so transmitted to it and received by it, is exactly the same”.

6. Amendment of section 131 - In section 131 of the principal Act, *Explanation* shall be re-numbered as *Explanation I* thereof, and after *Explanation I* as so re-numbered, the following *Explanation* shall be inserted, namely:—

“*Explanation II*—It shall be the duty of the banker who receives payment based on an electronic image of a truncated cheque held with him, to verify the *prima facie* genuineness of the cheque to be truncated and any fraud, forgery or tampering apparent on the face of the instrument that can be verified with due diligence and ordinary care”.

7. Amendment of section 138 - In section 138 of the principal Act, :—

(a) for the words “a term which may be extended to one year”, the words “a term which may be extended to two years” shall be substituted;

(b) in the proviso, in clause (b), for the words “within fifteen days”, the words “within thirty days” shall be substituted.

8. Amendment of section 141 - In section 141 of the principal Act, in sub-section (1), after the proviso, the following proviso shall be inserted, namely:—

“Provided further that where a person is nominated as a Director of a company by virtue of his holding any office or employment in the Central Government or State Government or a

financial corporation owned or controlled by the Central Government or the State Government, as the case may be, he shall not be liable for prosecution under this Chapter”.

9. Amendment of section 142 - In section 142 of the principal Act, after clause (b), the following proviso shall be inserted, namely:—

“Provided that the cognizance of a complaint may be taken by the Court after the prescribed period, if the complainant satisfies the Court that he had sufficient cause for not making a complaint within such period”.

10. Insertion of new sections after section 142 - After section 142 of the principal Act, the following sections shall be inserted, namely:—

“143. Power of Court to try cases summarily - (1) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974), all offences under this Chapter shall be tried by a Judicial Magistrate of the first class or by a Metropolitan Magistrate and the provisions of sections 262 to 265 (both inclusive) of the said Code shall, as far as may be, apply to such trials:

Provided that in the case of any conviction in a summary trial under this section, it shall be lawful for the Magistrate to pass a sentence of imprisonment for a term not exceeding one year and an amount of fine exceeding five thousand rupees:

Provided further that when at the commencement of, or in the course of, a summary trial under this section, it appears to the Magistrate that the nature of the case is such that a sentence of imprisonment for a term exceeding one year may have to be passed or that it is, for any other reason, undesirable to try the case summarily, the Magistrate shall after hearing the parties, record an order to that effect and thereafter recall any witness who may have been examined and proceed to hear or rehear the case in the manner provided by the said Code.

(2) The trial of a case under this section shall, so far as practicable, consistently with the interests of justice, be continued from day to day until its conclusion, unless the Court finds the adjournment of the trial beyond the following day to be necessary for reasons to be recorded in writing.

(3) Every trial under this section shall be conducted as expeditiously as possible and an endeavour shall be made to conclude the trial within six months from the date of filing of the complaint.

144. Mode of service of summons - (1) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974), and for the purposes of this Chapter, a Magistrate issuing a summons to an accused or a witness may direct a copy of summons to be served at the place where such accused or witness ordinarily resides or carries on business or personally works for gain, by speed post or by such courier services as are approved by a Court of Session.

(2) Where an acknowledgement purporting to be signed by the accused or the witness or an endorsement purported to be made by any person authorised by the postal department or the courier services that the accused or the witness refused to take delivery of summons has been received, the Court issuing the summons may declare that the summons has been duly served.

145. Evidence on affidavit - (1) Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974), the evidence of the complainant may be given by him on affidavit and may, subject to all just exceptions be read in evidence in any enquiry, trial or other proceeding under the said Code.

(2) The Court may, if it thinks fit, and shall, on the application of the prosecution or the accused, summon and examine any person giving evidence on affidavit as to the facts contained therein.

146. Bank's slip *prima facie* evidence of certain facts - The Court shall, in respect of every proceeding under this Chapter, on production of bank's slip or memo having thereon the official mark denoting that the cheque has been dishonoured, presume the fact of dishonour of such cheque, unless and until such fact is disproved.

147. Offences to be compoundable - Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974), every offence punishable under this Act shall be compoundable.

CHAPTER III

AMENDMENT TO THE BANKERS' BOOKS EVIDENCE ACT, 1891

11. Amendment of section 2.-In section 2 of the Bankers' Books Evidence Act, 1891 (18 of 1891):—

(a) for clause (3), the following clause shall be substituted, namely:—

‘(3) “bankers’ books” include ledgers, day-books, cash-books, account-books and all other records used in the ordinary business of the bank, whether these records are kept in written form or stored in a micro film, magnetic tape or in any other form of mechanical or electronic data retrieval mechanism, either onsite or at any offsite location including a back-up or disaster recovery site of both’.

(b) in clause (8), after sub-clause (b), the following sub-clause shall be inserted, namely:—

“(c) a printout of any entry in the books of a bank stored in a micro film, magnetic tape or in any other form of mechanical or electronic data retrieval mechanism obtained by a mechanical or other process which in itself ensures the accuracy of such printout as a copy of such entry and such printout contains the certificate in accordance with the provisions of section 2A.”

CHAPTER IV

AMENDMENTS TO THE INFORMATION TECHNOLOGY ACT, 2000

12. Amendment of section 1 - In the Information Technology Act, 2000 (21 of 2000) (hereinafter referred to as the principal Act), in section 1, in sub-section (4), for clause (a), the following clause shall be substituted, namely:—

“(a) a negotiable instrument (other than a cheque) as defined in section 13 of the Negotiable Instruments Act, 1881 (26 of 1881)”

13. Insertion of a new section 81A.-After section 81 of the principal Act, the following section shall be inserted, namely:—

‘81A. Application of the Act to electronic cheque and truncated cheque - (1) The provisions of this Act, for the time being in force, shall apply to, or in relation to, electronic cheques and the truncated cheques subject to such modifications and amendments as may

be necessary for carrying out the purposes of the Negotiable Instruments Act, 1881 (26 of 1881) by the Central Government, in consultation with the Reserve Bank of India, by notification in the Official Gazette.

(2) Every notification made by the Central Government under sub-section (1) shall be laid, as soon as may be after it is made, before each House of Parliament, while it is in session, for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in making any modification in the notification or both Houses agree that the notification should not be made, the notification shall thereafter have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that notification.

Explanation - For the purposes of this Act, the expressions “electronic cheque” and “truncated cheque” shall have the same meaning as assigned to them in section 6 of the Negotiable Instruments Act, 1881 (26 of 1881).’.

STATEMENT OF OBJECTS AND REASONS

The Negotiable Instruments Act, 1881 was amended by the Banking, Public Financial Institutions and Negotiable Instruments Laws (Amendment) Act, 1988 wherein a new Chapter XVII was incorporated for penalties in case of dishonour of cheques due to insufficiency of funds in the account of the drawer of the cheque. These provisions were incorporated with a view to encourage the culture of use of cheques and enhancing the credibility of the instrument. The existing provisions in the Negotiable Instruments Act, 1881, namely, sections 138 to 142 in Chapter XVII have been found deficient in dealing with dishonour of cheques. Not only the punishment provided in the Act has proved to be inadequate, the procedure prescribed for the Courts to deal with such matters has been found to be cumbersome. The Courts are unable to dispose of such cases expeditiously in a time bound manner in view of the procedure contained in the Act.

2. A large number of cases are reported to be pending under sections 138 to 142 of the Negotiable Instruments Act in various courts in the country. Keeping in view the large number of complaints under the said Act pending in various courts, a Working Group was constituted to review section 138 of the Negotiable Instruments Act, 1881 and make recommendations as to what changes were needed to effectively achieve the purpose of that section.

3. The recommendations of the Working Group along with other representations from various institutions and organisations were examined by the Government in consultation with the Reserve Bank of India and other legal experts, and a Bill, namely, the Negotiable Instruments (Amendment) Bill, 2001 was introduced in the Lok Sabha on 24th July, 2001. The Bill was referred to Standing Committee on Finance which made certain recommendations in its report submitted to Lok Sabha in November, 2001.

4. Keeping in view the recommendations of the Standing Committee on Finance and other representations, it has been decided to bring out, *inter alia*, the following amendments in the Negotiable Instruments Act, 1881, namely:—

- (i) to increase the punishment as prescribed under the Act from one year to two years;
- (ii) to increase the period for issue of notice by the payee to the drawer from 15 days to 30 days;
- (iii) to provide discretion to the Court to waive the period of one month, which has been prescribed for taking cognizance of the case under the Act;

(iv) to prescribe procedure for dispensing with preliminary evidence of the complainant;

(v) to prescribe procedure for servicing of summons to the accused or witness by the Court through speed post or empanelled private couriers;

(vi) to provide for summary trial of the cases under the Act with a view to speeding up disposal of cases;

(vii) to make the offences under the Act compoundable;

(viii) to exempt those directors from prosecution under section 141 of the Act who are nominated as directors of a company by virtue of their holding any office or employment in the Central Government or State Government or a financial corporation owned or controlled by the Central Government, or the State Government, as the case may be;

(ix) to provide that the Magistrate trying an offence shall have power to pass sentence of imprisonment for a term exceeding one year and amount of fine exceeding five thousand rupees;

(x) to make the Information Technology Act, 2000 applicable to the Negotiable Instruments Act, 1881 in relation to electronic cheques and truncated cheques subject to such modifications and amendments as the Central Government, in consultation with the Reserve Bank of India, considers necessary for carrying out the purposes of the Act, by notification in the Official Gazette; and

(xi) to amend definitions of "bankers' books" and "certified copy" given in the Bankers' Books Evidence Act, 1891.

5. The proposed amendments in the Act are aimed at early disposal of cases relating to dishonour of cheques, enhancing punishment for offenders, introducing electronic image of a truncated cheque and a cheque in the electronic form as well as exempting an official nominee director from prosecution under the Negotiable Instruments Act, 1881.

6. The Bill seeks to achieve the above objects.

NEW DELHI;
The 9th July, 2002.

JASWANT SINGH.