

Remedy against Cheque Bouncing under the Negotiable Instrument Act

The Negotiable Instruments Act, 1881 (hereinafter referred to as the N.I. Act) lays down the legal framework for the use of negotiable instruments in India. The Act aims to, inter alia, simplify and streamline the transfer of negotiable instruments, making them a vital tool for business transactions. Its provisions cover a wide range of issues, including liability for dishonor of cheque, notice of dishonor and the rights and obligations of parties involved in the transaction.

Dishonor of cheque is a criminal offence that can result in imprisonment for up to two years or fine, or both. The N.I. Act governs the provisions related to the dishonored cheque mainly under section 138 and 139.

- The following are essential pre-requisites to follow before a complaint under section 138 of the Act is filed in the court of Metropolitan Magistrate or Judicial Magistrate of First class:
- the cheque should be drawn by a drawer (cheque issuer) in discharge of a liability or debt
- the cheque should be presented to the drawee bank and returned unpaid due to insufficient funds
- the cheque should be presented within the cheque's validity period, viz three months from the date on the Cheque.¹
- notice of dishonor should be served on the drawer by the drawee within thirty days of receiving the returned memo from the Bank to pay the amount within 15 days. If the drawer pays the amount within 15 days of receiving the notice, no offence is committed.²
- if the drawer fails to make the payment within 15 days of receiving the notice, the payee has the right to file a criminal complaint under Section 138 of the Negotiable Instruments Act within the next 30 days. In other words, if payment is not received, the complaint must be filed within 30 days after the 15th day of the notice period is over, excluding the 15th day.³

As per Section 142(2)(a) of Negotiable Instrument Act 1881 the jurisdiction to file compliant under Section 138 is within local jurisdiction of the court where the payee or holder maintains an account.⁴

If the court finds the drawer guilty, he / she may be punished with a fine that may be twice the amount of the cheque or imprisonment for up to two years, or both.

In *Shri Ishar Alloys Steel Ltd. v. Jayaswals NECO Ltd.*⁵, the Supreme Court held that non presentation of the cheque to the drawee bank within the period specified in the

¹ Ansh Chugh v. Pradeep Gupta [Crl. M. C. 2973/2018 and Crl. M. A. No. 10513/2018]; MANU/DE/0315/2020

² K. Bhaskaran vs. Sankaran Vaidhyan Balan and Ors. [Crl. A. No. 1015 of 1999] MANU/SC/0625/1999

³ Saketh India Limited. vs M/S. India Securities Limited [Cri. A. Nos. 288-289 of 1999, S.L.P. (Cri.) Nos. 262263 of 1998] MANU/SC/0151/1999

⁴ Yogesh Upadhyay vs. Atlanta Limited [Transfer Petition (Criminal) Nos. 526-527 of 2022] MANU/SC/0150/202

section would absolve the person issuing the cheque of his criminal liability under Section 138 N.I. Act.⁵

Further, section 139 of the N.I. Acts lays down a presumption that the holder of a cheque received the cheque of the nature referred to in section 138 for the discharge of any debt or any other liability (unless the contrary is proved). The presumption is rebuttable.

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⁵ Shri Ishar Alloy Steels Ltd. vs. Jayaswals NECO Ltd. Appeal (crl.) 219 of 2001, SLP (Crl.) 3854 of 2000 MANU/SC/0121/2001