

THE NEGOTIABLE INSTRUMENT (AMENDMENT) ACT, 2018 – AN OVERVIEW

The Negotiable Instrument Act, 1881 (“**the NI Act**”) came into being as an Act to define and amend the law relating to promissory note, bill of exchange and cheques. The NI Act has been amended time and again to ensure and enhance the trust in negotiable instruments.

Indian courts are riddled with the colossal problem of pending cases, with almost 20 per cent of the pending litigation pertains only to cheque dishonor disputes under section 138 of the Negotiable Instruments Act, 1881.

The Central Government through The Negotiable Instrument (Amendment) Act, 2018 has notified amendments to the NI Act by incorporating several new provisions. The insertion of such new provisions in the NI Act is a welcome step aimed at addressing the issue of undue delay, efficacy and efficiency in cases related to dishonor of cheques. This article focuses on two important amendments to the NI Act i.e. Section 143A and Section 148. These sections empower the courts to direct the drawer to provide interim compensation during the pendency of the criminal complaint and the criminal appeal.

SECTION 143A - POWER TO DIRECT INTERIM COMPENSATION

The insertion of Section 143A empowers the Court while trying an offence under Section 138 of the NI Act, to direct the drawer of the cheque to pay interim compensation to the complainant on two occasions:

- (a) in a summary trial or summon case, where the drawer pleads not guilty to the accusation made in the complaint and
- (b) in any other case, upon framing charges.



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The payment of interim measures ensures that the interest of the Complainant is protected in the interim period before the charges are proved against the Drawer. The intent behind this provision is to provide aid to the Complainant during the pendency of the proceedings under Section 138 of the NI Act. The quantum of such interim compensation would be upto 20% of the amount of the cheque. If the Drawer is found guilty under Section 138, the amount of interim compensation would be deductible from the final compensation payable to Complainant. Being equitable, the Section also does not prejudice the Drawer in case of his acquittal by the Court. In such a case, the Court shall order the Complainant to return the amount of interim compensation to the Drawer within a period of 60-90 days along with interest thereon.

Applicability of Section 143A– Retrospective or Prospective?

The Apex Court in the matter of *G.J. Raja Vs. Tejraj Surana*¹ faced with the question as to whether Section 143A of the NI Act is retrospective in operation and can be invoked in case where the offence punishable under Section 138 of the NI Act were committed much prior to the introduction of Section 143A. In the said case, it was held that the Section 143A has two dimensions. Firstly, the section creates a liability in as much as a Drawer of the cheque can be directed to pay up to 20% of the cheque amount to the complainant, without being found guilty in the eyes of law. Secondly, the Apex Court also observed that the said section makes available the machinery for recovery, as if the interim compensation were arrears of land revenue. Thus, it not only creates a new disability or an obligation but also exposes the accused to coercive methods of recovery of such interim compensation through the machinery of the State as if the interim compensation represented arrears of land revenue.

The Apex Court held that Section 143A of the NI Act must, therefore, be held to be prospective in nature and confined to cases where offence were committed after the introduction of Section 143A, in order to force an accused to pay such interim compensation.

SECTION 148 - POWER OF APPELLATE COURT TO ORDER PAYMENT PENDING APPEAL AGAINST CONVICTION.

Section 148 has been introduced in the NI Act, for cases where an appeal is filed against conviction of the drawer under Section 138 of NI Act. It provides that 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. Further, the same is to be in addition to the payment of interim compensation under Section 143A of the NI Act. This provision is

¹ 2019 SCC Online SC 989

again a welcome step and would give respite the Complainant even if appeal is preferred. This provision would certainly dissuade the drawers from attempting to thrive on prolixity. Under this Section the Court is free to determine the sum payable in the course of the appeal, considering the facts and circumstances of each case.

However, if the appellant is acquitted, then the Court shall direct the complainant to repay the amount to the appellant with interest. The procedure relating to repayment or interim compensation is similar to the procedure as laid down under Section 143 A of the Amended Act.

Applicability of Section 148 – Retrospective or Prospective?

The Supreme Court has clarified that the Section 148 of the Amendment Act, shall have a retrospective effect (applicable to the Complaints filed prior to 1st September 2018) in respect of appeal against the order of conviction and sentence for the offence under Section 138 of the NI Act.

While dealing with the case of ***Surinder Singh Deshwal @ Col. S.S. Deshwal & Ors.² Vs. Virender Gandhi*** where appeals were filed against a common judgment of the Punjab and Haryana High Court dated 10.09.2019 dismissing 28 petitions filed by the appellants under Section 482 of Cr.P.C, the Apex Court observed that the object and purpose of the enactment of Section 138 of the NI Act was being frustrated because of the delay tactics of drawers of dishonoured cheques by filing of appeals and obtaining stay on proceedings which led to the Parliament to amend Section 148 of the NI Act. It was further observed that the amendment in Section 148 does not take away and/or affect any vested right of appeal of the appellants. The Court held that if such a purposive interpretation is not adopted then the objective and purpose of the Section 148 would be frustrated.

WHY SECTION 143A IS PROSPECTIVE AND SECTION 148 IS RETROSPECTIVE?

The Supreme Court of India while deciding the G.J. Raja's³ has clarified as to why Section 143A is prospective in nature and Section 148 is retrospective in nature, despite of the fact that both the sections were introduced by the Amendment Act 20 of 2018 from 1st September 2018.

The Court noticed that Section 143A of the Amendment Act applies at the trial stage that is even before the pronouncement of guilt or order of conviction. Whereas, Section 148 of the NI Act applies at the appellate stage, where the accused is already found guilty of the

² (2019) 11 SCC 341

³ 2019 SCC Online SC 989

offence under Section 138 of the NI Act. The Court also pointed out that there is no provision in Section 148 of the NI Act which is similar to Sub-Section (5) of section 143A of the Act. However, as a matter of fact, no such provision akin to Sub-section (5) of Section 143A was required as Sections 421 and 357 of the Cr.P.C., which apply post-conviction, are adequate to take care of such requirements. In that sense said Section 148 depends upon the existing machinery and principles already in existence and does not create any fresh disability of the nature similar to that created by Section 143A of the NI Act.

CONCLUSION

The amendments to the NI Act are a great effort aimed at strengthening efficacy and expediency which will help in speedy disposal of cases and also discourage the frivolous and unnecessary litigation. Further, it upholds the interests of the complainant by providing interim compensation and ordering payment by the accused in case of appeal against conviction. The Amendment Act, certainly, a positive step enhancing the credibility of cheques and would give impetus to the trade and commerce.

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