

FIDC

Finance Industry Development Council

(A body incorporated as a Self Regulatory Organisation for Registered NBFCs – AFCs)
101/103, Sunflower, 1st Floor, Rajawadi Road No.2, Ghatkopar (East), Mumbai – 400 077 (India)
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November 26, 2014

Sh. M.M. Dawla
Under Secretary to Govt of India
Deptt. of Financial Services
Ministry of Finance
Jeevan Deep Building
Sansad Marg
New Delhi – 110 001

Respected Sir,

Reg: **Supreme Court Judgement on Territorial Jurisdiction in Cases Under Section 138 of The Negotiable Instruments Act, 1881 – Need to Amend the Act**

As you are aware, the **Asset Financing NBFCs (NBFC-AFCs)** registered with Reserve Bank of India have joined hands and formed a Self Regulatory Organization (SRO) under the name of **Finance Industry Development Council (FIDC)**. The constitution of SRO emanated from deliberations with RBI in the past at various levels. NBFC-AFCs have been recognized for their role in credit delivery in remote corners of India and have carved a niche for themselves in the semi-rural and rural segments of the country. NBFC-AFCs are also playing a vital role in furthering the cause of Financial Inclusion and in credit dispensation to the poor states/credit starved areas for over 6 decades.

This has reference to your letter F.No. 10/13/2014 – BO. II dated 13th November, 2014 seeking our comments on the necessity of amending The Negotiable Instrument Act, 1881 and also the draft of the proposed amendment. In this context we would like to remind you that FIDC had submitted a detailed representation vide our letter dated October 28, 2014 on the far reaching impact of the above said judgement and the need for its review. A copy of the same is enclosed herewith for your kind reference and record.

Considering the impact created by Dasrath Rupsingh Rathod Vs. State of Maharashtra & Anr. on financial business on filing complaint cases under section 138 of Negotiable Instrument Act, 1881, incorporation of proviso of jurisdiction for filing 138 cases should be inserted by way of amendment.

THE NECESSITIES OF AMENDMENT ARE AS FOLLOWS:-

- 1) In the Negotiable Instrument Act, 1881(in short N.I. Act) there is as such no clear cut guideline for filing cases under section 138 of the said act on the issue of territorial jurisdiction.
- 2) In the present arena the concept of business i.e. debtors to follow creditors have been changed by creditors to follow the debtors hence, recovery of debts from the Lender will be a

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conundrum for creditor r, but as the procedure of 138 of N.I. Act is precise and efficacious so changes in law are required immediately.

3) The Hon'ble Supreme Court of India vide their order dated 1st August 2014 in the above said case have ruled that an offence under Section 138 of The Negotiable Instrument Act 1881 is committed the moment there is a dishonour of cheque. Further, citing paras 177, 178 and 179 of Code of Criminal Procedure 1973 the Honourable Supreme Court have ruled that the place where the crime is committed shall determine the jurisdiction of the concerned court. As such it is "the place where the dishonour of cheque occurs that will determine the jurisdiction for filing criminal case under Section 138."

The Hon'ble Supreme Court has gone by the traditional method of cheque clearance where the cheque (hard copy) physically travels from the bank branch where it is presented to the drawee bank branch. Therefore, the dishonour of a cheque in such cases happens at the place where the drawee bank branch is located. *Going by this procedure it has been interpreted that the place where the drawee bank branch is located, shall determine the jurisdiction for filing the criminal case under section 138 against the issuer/payer.*

Cheque Truncation System (CTS) - Removal of Restriction on Geographical Jurisdiction

However, the situation totally changes when we consider the modern day system of cheque clearance under the Cheque Truncation System (CTS) which has been enforced and made mandatory by Reserve Bank of India for all banks. CTS has been introduced to ensure speedy clearance of cheques, specially out station cheques and to minimize frauds.

As per the CTS procedure prescribed by RBI, the bank where a cheque is presented retains the physical cheque (hard copy) with it and sends a scanned image (electronic form) of the cheque to the clearing house using an electronic interface. The clearing house in turns sorts the scanned images so received and sends them to the drawee banks service branch, which may be locally located only, via an electronic interface. The service/designated branch of the drawee bank then access the payer / issuer account through the CBS and in case of funds being insufficient or any other valid reason dishonours the cheque. It clearly indicates that the cheque (physically or in electronic form) never travels to the drawee bank branch.

In this context we would like to draw your kind attention to the "FAQs on Cheque Truncaton System" as available on RBI website www.rbi.org.in. As per para 5 of the same it has been stated, "Incidentally, given the fact that images of cheque (and not the physical cheque) alone need to move in CTS, it is possible for the removal of the restriction of geographical jurisdiction normally associated with the paper cheque clearing. For reaping this benefit the concept of Grid-CTS has been envisaged at 3 locations in the country (Chennai, Mumbai and New Delhi). Under the grid clearing cheques drawn on centres included in the grid will be cleared as a part of local clearing.

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Further as per Para 4 it is stated,

The new approach envisioned as part of the national roll-out is the grid-based approach. Under this approach the entire cheque volume in the country cleared across numerous MICR Cheque Processing locations will be consolidated into the three grids as mentioned in (3) above.

Each grid will provide processing and clearing services to all the banks under its jurisdiction, Banks, branches and customers based at small / remote locations falling under the jurisdiction of a grid would be benefitted, irrespective of whether there exists at present a formal arrangement for cheque clearing or otherwise. The illustrative jurisdiction of the three grids are indicated below:

New Delhi Grid: National Capital Region of New Delhi, Haryana, Punjab, Uttar Pradesh, Uttarakhand, Bihar, Jharkhand and the Union Territory of Chandigarh. Banks

Mumbai Grid: Maharashtra, Goa, Gujarat, Madhya Pradesh and Chattisgarh.

Chennai Grid: Andhra Pradesh, Telangana, Karnataka, Kerala, Tamilnadu, Odisha, West Bengal, Assam and the Union Territory of Puducherry.

4) To simplify the cheque clearance process the Reserve Bank of India had introduced “At par” system which allows all the branches of the same bank to entertain cheque issued from any account of any branch. “At par” means wherever it is presented on the same bank it will get clear. Therefore in modern process of clearance, the respective branch where the account is situated is giving the confirmation to the concerned branch of the same bank where the cheque is deposited and accordingly the concerned branch is confirming the status of clearance.

But in the view of the present verdict the Payee/ Holder of the cheque has been restricted in filing cases under section 138 of the N. I Act from the jurisdiction where the respective branch having the account is situated, though the confirmation of dishonor of cheque is provided by the concerned branch where it is deposited for encashment.

5) As NBFC companies do not have the power which has been conferred under the provisions of Securitisation and reconstruction of Financial Assets & Enforcement of Security Interest Act, 2002, therefore for expeditious collection of debts the NBFC companies have to depend on the process of 138 of N.I. Act and after this accused centric jurisdictional barrier imposed by the recent verdict the cheque/negotiable instruments used for repayment of money will suffer its importance.

6) As the preamble of Section 138 of the said Act was made granting liberty to Lender to collect their debts easily, therefore no predicaments would be super imposed later on by debarring the Lender from easy collection of debts.

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JURAL IMPORTANCE FOR AMENDMENT OF NEGOTIABLE INSTRUMENT ACT, 1881:-

In the K. Bhaskaran v. Sankaran Vaidhyan Balan (1999) 7 SCC 510 the Hon'ble Supreme Court of India has explained 5 (five) kinds of jurisdiction which have widely given power to the payee to institute cases under section 138 of the said Act as per the place where part cause of action arises .. The said decision had been reconfirm by the Hon'ble Supreme Court in Nishant Agarwal Kailash Sharma reported in (2014) 1 SCC (Cri) 189.

We must not forget that earlier also Shri Ishar Alloy Steels Ltd. v. Jayaswals Neco Ltd. (2001) 3 SCC 609 headed by three Hon'ble Judges of Supreme Court and Later on Harman Electronics Pvt. Ltd. & Anr. Vs. National Panasonic India Pvt. Ltd. (2009) 1 SCC 720 had supported the basic quantum of jurisdiction as envisaged in K. Bhaskaran v. Sankaran Vaidhyan Balan (1999) 7 SCC 510.

The Dasrath Rupsingh Rathod Vs. State of Maharashtra & Anr. (2014) 9 SCC 129 has changed the total concept of territorial jurisdiction in filing cases under section 138 of the said Act.

Therefore, the jural value of our country must be established by incorporating jurisdictional point in the law itself by way of amending Negotiable Instrument Act, 1881.

The proposed amendment on jurisdictional point should be inserted in section 142 of the Negotiable Instrument Act, 1881 and the proposed amended which is to be inserted in section 142 of the Negotiable Instrument Act, 1881 are delineated with under line in italics, which are as follows:-

Cognizance of offences.-

Notwithstanding anything contained in the Code of Criminal Procedure, 1973 (2 of 1974)-

(a) no court shall take cognizance of any offence punishable under section 138 except upon a complaint, in writing, made by the payee or, as the case may be, the holder in due course of the cheque;

(b) such complaint is made within one month of the date on which the cause of action arises under clause (c) of the proviso to section 138;

[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;]

(c) no court inferior to that of a Metropolitan Magistrate or a Judicial Magistrate of the first class shall try any offence punishable under section 138.

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(d) jurisdiction for filing case under section 138 of Negotiable Instrument Act, 1881 any of the following court should be considered as the competent court to try an offence committed under section 138 of the Negotiable Instrument Act, 1881 :-

- i. Court having jurisdiction within which the Bank of the Drawer is situated where the cheque is dishonoured.**
- ii. Court having jurisdiction within which the Bank of the Payee/ holder is situated where the cheque is presented for encashment but returned with reason of dishonor.**
- iii. Court having jurisdiction within which the financial transaction was conducted between drawer and payee/ holder.**

SUGGESTIONS TO MAKE THE LAW MORE EFFECTIVE

1. Stringent penalty by asking the accused to deposit the bounced cheque amount with the court at the time of seeking bail (only then the opportunity to defend is given) which would be released to the party in whose favour judgment is passed - This would put pressure on the accused and the chances of out of court settlement/ settlement at earlier stages would increase.(in case the judgment holds good).
3. Separate courts/ tribunals (like of consumer courts) should be formed to adjudicate cases u/s 138 of NI Act. This would reduce the pressure from regular courts and also ensure speedy redressal. (in case the judgment holds good).
4. The complainant should be exempted to appear on every date and representation through lawyer is enough - The complainant should not be made to suffer by asking him to appear on every date. (in case the judgment holds good).
5. No Adjournment should be given except special reasons subject to imposition of heavy costs to discourage the accused to linger on the matter and harass the complainant.

We hope that our suggestions shall be considered favorably. We shall be obliged to provide any other information / clarification in this regard. Assuring you of our full co-operation always and thanking you in anticipation

Yours faithfully,
For **Finance Industry Development Council**



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