The Negotiable Instruments Act

Objective

- The Act was enacted with an object to define & amend then existing law relating to promissory notes, bills of exchange &cheques, yet other instruments which satisfy the conditions ofnegoatiablityby usage or custom of trade such as,hundis, share warrants, bearer debentures etc. also come under its preview.

- This act is based on the English Common Law related to promissory notes, bills of exchange &cheques. Although some provisions of the Act have become redundant due to passage of time, change in modes of doing business and use of modern technology in commerce, yet the basic principles of the act remain valid & the act amended from time to time has stood the test of time.

- Sec 4 – 25 deal with the key terms used in the act.
- Sec 26-45 describe the parties involved along with their rights & liabilities.
- Sec 46-60 deal with the intricacies involved in the act of negotiable
- Sec 61-87 discuss presentment for acceptance/payment & actions of dishonor
- The rest of the act deals with the rules of evidence, general presumptionsabtthenegoatiableinstrument besides special provision on crossedcheques.

Negotiable Instrument : Meaning

- A negotiable instrument is essentially an instrument of credit readily convertible into money and easily deliverable from one hand to another. The word 'negotiable' means passable by delivery & 'instrument' means a written document which creates a right infavourof some person. Thus the expression 'negotiable instrument' literally implies a written document transferable by delivery from one person to another. The unique advantage associated with a negotiable instrument is its easy negotiability.

Salient Features of A Negotiable Instrument

- 8 essential elements of negotiable instrument:
- Freely transferable
- Defect free title to the transferee
- Recovering
- Ceiling on number of transfers
- Payable to order
- Payable to bearer
- Payment
- Presumptions

Kinds of Negotiable Instruments

- Promissory Note
- Bills of Exchange
- Cheques
- Hundis

Promissory Note:

- **Section 4** of the Act defines:
- A Promissory Note is an instrument in writing containing an unconditional undertaking signed by the maker to pay a certain sum of money only to, or to the order of a certain person, or to the bearer of the instrument.

Essential of Promissory Note

- It must be in writing
- It must contain an express undertaking to pay
- The promise or undertaking to pay must be unconditional
- The promise must be for paying certain sum of money.
- It must be signed by the maker
- The maker must be a certain person
- The payee must be certain
- Payment must be in legal tender money of India
- It must be properly stamped
- It must contain number, place & date of signature

Bill of Exchange:

- **Section 5** of the Act defines:
- A bill of exchange is an instrument in writing containing an unconditional order, signed by the maker, directing a certain person to pay a certain sum of money only to, or to the order of, a certain person or to the bearer or to the bearer of the instrument

Essential of bill of exchange

- It must be in writing
- It must contain an express order directing a certain person to pay
- The order to pay must be unconditional
- There are parties to a bill of exchange- drawer, drawee & payee
- It must be signed by the drawer
- The drawer must be a certain person
- The drawee must be certain
- The payee must be certain
- The sum payable must be certain
- The order must be to pay the money only
- It must be duly stamped according to the Indian Stamp Act

Cheque:

- **Section 6** of the Act defines:
- A cheque is a bill of exchange drawn on a specified banker and not expressed to be payable otherwise than on demand.
- Or we can say a cheque is a bill of exchange which is payable on demand and which is drawn on a specified banker.

Essential ofCheque

- It must be in writing
- It should be drawn on banker
- It contains an unconditional order to pay
- Thechequemust have an order to pay a certain sum
- It should be signed by the drawer & should be dated
- It is payable on demand
- Validity
- It may be payable to the drawer himself
- Banker is liable only to the drawer
- It does not require acceptance & stamp

But the cheques have assumed great importance these days due to rapid industrialisation followed by the economic liberalisation or because of the increasing participation in the international commercial activities. Increasing use of the cheque called for strengthening the reliability of payment when made through cheque so that cheques could be used with more credibility and better reliance.

Two things were of great concern *viz.*, such provisions were required to be made that prove to be of deterrent effect to the others and in case of dishonouring of cheque, the amount is paid to the payee as early as possible together with interest and compensation.

In other words, the emphasis was on the speedy justice, exemplary and compensatory justice

Hundis

- Hundisis derived from Sanskrit word which means to collect.
- Hundisare popular among Indian merchants even today.
- They are mostly in vernacular language & are rules by the customary law of the region.

Types ofHundis

- DarshaniHundi
- MiadiHundi
- ShahjogHundi
- NumjogHundi
- DhanijogHundi
- JokhmiHundi
- JawabeeHundi
- ZikriHundi
- FirmanjogHundi

- DarshaniHundi– Ahundipayable at sight is calledDarshaniHundi. It is negotiable & is like a demand bill. It maybe sold at par or at premium or at discount. Adarshanihundishdbe presented for payment within a reasonable time of its receipt by the holder.
- MiadiHundi- Also known asMuddatiHundi. Thishundiisonewhich is payable after a specified period of time like time bill. Banks usually provide loans against security of suchhundis.

- ShahjogHundi- This is ahundimadepayabelonly to Shah(a respectable person of financial worth & substance in the market) in some respect it is similar to the crossedcheque.
- NamjogHundi– It is ahundipayable to the party named in thehundior his order.
- DhanijogHundi–Dhaniin vernacular language means owner. Thusdhanijoghundiis one which is made payable to the owner or a holder. It is like a bearerchequeand the holder of it becomes holder in due course.

- Jokhmi Hundi – The term Jokhim has been derived from the hindi word Jokhim meaning risk. Such a hundi is usually drawn against the goods shipped on a vessel & implies a certain risk involved in the shipment of goods. This hundi is infact a combination of bill of exchange & insurance policy & payable only when the goods arrive in safe & sound condition.

- JawabiHundi– Ahundiwhich is in the form of letter or recommendation to a banker for payment of a certain sum of money to a specified person is termed asjawabihundi.
- ZikriHundi– this is ahundiaccepted forhonourin writing on aZikrichit (letter of protection) without being protested.
- Firmanjoghundi– the termfirmanmeans order in local language. It is made payable to the order of payee.

Payment in due course Sec 10.

- A payment in due course simply means a payment in accordance with the apparent tenor of the instrument in good faith & without negligence of any person in possession thereof. A payment in due course as per the act operates as a valid discharge of a negotiable instrument against the holder. Therefore every person is supposed to make payment under negotiable instrument must make the paymentthereunderin due course in order to obtain a valid discharge against the holder.

From 1st April 1989
(1988 Amendment)

- If a person issues a cheque and it got dishonoured the person is said to have done **an offence**.
- Whatever be the reason for the dishonour weather for insufficiency of funds or whatever, the same does not matter.

1988 Amendment

towards achieving the goal ***on the speedy justice, exemplary and compensatory justice*** new provisions with enlightened jurisprudential foundation were engrafted and put on the statute book in the year 1988 in the form of institution of

Chapter XVII

to the Negotiable Instruments Act, 1881

Chapter XVII

The said chapter was incorporated for penalties in case of dishonour of cheques due to insufficiency of funds in the account of the drawer of the cheque or whatsoever (like stop payment etc.).

Object

These provisions were incorporated with a view to encourage the culture of use of cheques and enhancing the credibility of the instrument.

THE LARGER OBJECTIVE IS TO PROTECT THE INTEREST OF HONEST PEOPLE DEALING IN CHEQUES.

New sections in the Chapter XVII

- ***SECTION 138***:

this section defines the dishonour of cheque is an offence. The same also defines the main ingredients which have to be fulfilled to made it, an offence.

Five basic *ingredients of section 138* which shall have to be fulfilled for creating an offence for dishonour of a cheque

- chequeshould have been drawn by the drawer in payment of a legal liability to discharge the existing debt. Chequegiven by way of gift would not come under this provision.
- Thechequeshould be presented within the validity period i.e. within six months or three months as the case may be. Common sense demands that thechequeshould reach the drawer bank within the validity period.
- Return memo by the drawer bank to thedraweebank and subsequently by thedraweebank to thedraweereporting that thechequegot unpaid is must. Reasons fordishonouris not material at this stage.
- Giving notice to the drawer of thechequeby thedraweeor the holder of thechequein due course is must for making the said payment within fifteen days. The notice must be sent to drawer within 15 days(amended to 30 days by the 2002 amendment)of the receipt of the information from thedraweebank that thechequegotdishonoured.
- Thedrawer of thechequefails to make the paymentof the said amount of money to the payee or to the holder in due course within 15 days of the receipt of the said notice.

Moreover the section 138 also provides for the punishment fordishonourofcheque:

viz. imprisonment for a term which may extend to one year, or with fine which may extend to twice the amount of thecheque, or with both.

(the term of punishment extended totwo yearsvide 2002 amendment)

New sections in the Chapter XVII

- **SECTION 139**:

By this section it shall be presumed that the holder of a cheque received the cheque for the discharge of some liability or any debt.

New sections in the Chapter XVII

- **SECTION 140**:

This section says that defence in the prosecution under section 138 shall not be available to the drawer if the ingredients of 138 are completed.

New sections in the Chapter XVII

- **SECTION 141** :

This section defines that if an*offence done by any company*, the person/s shall be held liable who were in charge and responsible to the company, for the conduct of the business of the company, at the time the offence under section138 was committed.

1988 amendment

The**object**of the amendment was, “to enhance the acceptability ofchequesin settlement of liabilities by making the drawer liable for penalties in case of bouncing ofcheques”.

Supreme Court examined:

The provisions of sections 138 and 141 of the Act and noted that **mere dishonour of a cheque would not raise a cause of action unless the payee makes a demand in writing to the drawer of the cheque for the payment and drawer fails to make the payment of the said amount of money to the payee.**

Section 141:

The chapter XVII of the Act gained much importance among companies due to the section 141 because, this is the section, through which the persons shall be held liable for the conduct / offence committed under the Act by a company.

The section also gave a reason to think twice to the responsible person/s of a company who makes commitment for and on behalf of the company to pay someone through negotiable instrument/s.

2002 Amendment

Another amendment came into force from*06.02.2003*as

Negotiable Instruments (Amendment and Miscellaneous Provisions) Act, 2002

Through the said amendment:

Sections*6, 64, 81 and 89*have been amended due to entrance of the electronic technology in the Negotiable Instruments.

Section*138(a)*amended regarding the term of imprisonment increased to Two years from One year and through*138(b)*the period of giving notice of demand to the drawer increased from fifteen days to thirty days.

2002 Amendment

Section *142(b)* amended by the insertion of a proviso: “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.”

Note: Prior to this amendment there was no provision in the Act for the condonation of delay in preferring the complaint under section 138.

When can the banker refuse the payment of acheque

- When the customer has countermanded payment
- When the customer has died
- When the customer has become insolvent or insane
- When the customer has lost the instrument
- When the banker has come to know any defect in the title.
- When the account is closed.

When the banker may refuse tohonourthecheque

- When the cheque is postdated
- When the cheque is out of date
- When the funds in the customers account are insufficient
- When the funds in the customers account are not applicable to the payment of such cheque
- When the cheque is not properly presented
- When the cheque is ambiguous or doubtful validity.