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***Supreme Court of India Clarifies
Retrospective Applicability of Amended
Section 148 of Negotiable Instruments
Act, 1881***

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Supreme Court of India Clarifies Retrospective Applicability of Amended Section 148 of Negotiable Instruments Act, 1881

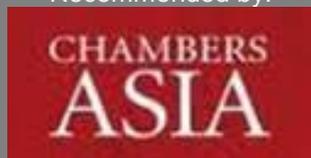
The Negotiable Instruments Act, 1881 (“**NI Act**”) was amended last year and two new provisions, section 143A and section 148, were inserted in the NI Act, which were necessitated to deal with the delay tactics of drawers of dishonoured cheques due to easy filing of appeals and obtaining stay on proceedings, leading to frustration in enforcement of section 138 of the NI Act. The amendments came into force with effect from September 1, 2018 vide the Negotiable Instruments (Amendment) Act, 2018 (“**NI Amendment Act**”).

In accordance with the new section 143A, the trial court may direct the drawer of the cheque to pay an interim compensation to the payee/complainant, which shall not exceed 20% of the cheque amount in dispute. Further, as per section 148, the appellate court may direct the drawer in an appeal against conviction under section 138 to deposit before the appellate court a part of the fine or compensation as award by the trial court, which shall be a minimum of 20% of the fine or compensation, within 60 days from the date of the order passed by the appellate court, or further within the period not exceeding 30 days as may be directed by the appellate court on showing sufficient cause by the drawer. The intent of the new provision was to discourage the drawer/accused from filing frivolous litigation and easing the hardship of the complainant due to continuous delay (you may refer our earlier newsletter for more details¹).

The Hon’ble Supreme Court of India in a recent judgement passed on May 29, 2019 in the matter of *Surinder Singh Deswal @ Col. S. S. Deswal and others Vs. Virender Gandhi*, clarified the retrospective applicability of the amended

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section 148 of the NI Act and confirmed that the new section 148 of the NI Act is applicable to cases where the criminal complaints under section 138 of the NI Act were filed prior to the NI Amendment Act.

Brief Facts:

In the said case, criminal complaints under section 138 of the NI Act were filed by the respondent against the present appellants. The learned trial court vide judgment and order dated October 30, 2018 convicted the appellants for the offence under section 138 of the NI Act and sentenced them to undergo imprisonment of two years and to pay cheque amount plus 1% as interest and litigation expense as fine.

Aggrieved and dissatisfied by the conviction order of the learned trial court, the appellants submitted an appeal before the first appellate court of the learned Additional Sessions Judge, Panchkula under Section 389 of the Code of Criminal Procedure, 1973 ("CrPC") for suspension of sentence and for releasing them on bail pending the appeal(s). However, the first appellate court while suspending the sentence and allowing the application under Section 389 of CrPC directed the appellants to deposit 25% of the amount of compensation/fine awarded by the learned trial court in accordance with the amended Section 148 of the NI Act.

Aggrieved by the order of the first appellate court to deposit 25% of the amount of compensation/fine awarded by the learned trial court, the appellants filed revision application(s) before the Hon'ble High Court of Punjab and Haryana contending that the amended section 148 of the NI Act shall not be applicable to the criminal proceedings already initiated prior to the NI Amendment Act being introduced. The Hon'ble High Court dismissed the revision application(s) and confirmed the order passed by the first appellate court.

Finally, the appellants being dissatisfied with the impugned order passed by the Hon'ble High Court approached the Hon'ble Supreme Court by way of present appeal.

Contentions:

The two main contentions put forward before the Hon'ble Supreme Court by way of instant appeal were:

1. The appellants contended that the Hon'ble High Court as well as the first appellate court have materially erred in directing the appellants to deposit 25% of the amount of compensation as per section 148 of the NI Act as the criminal proceedings were initiated and the complaints were

filed against the appellants for offence under section 138 of the NI Act prior to the amended section 148 came into force and therefore the direction under said section is not applicable.

2. The appellants contented that the first appellate court has interpreted the word “may” as “shall” in section 148 and proceeded on the basis that it is mandatory for the appellate court to direct deposit of minimum of 25% of the fine or compensation awarded by the trial court for suspension of sentence.

Findings of the Court:

The Hon’ble Supreme Court while adjudicating the instant appeal referred to the “Statement of Objects and Reasons” of the NI Amendment Act and as regards the first contention concerning applicability of the amended section 148, observed that because of the delay tactics of unscrupulous drawers of dishonoured cheques due to easy filing of appeals and obtaining stay on proceedings, the object and purpose of the enactment of section 138 of the NI Act was being frustrated and therefore the amended section 148 was brought by the Parliament. 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 and therefore, the contention on behalf of the appellants that amendment in section 148 cannot be applicable to complaints filed prior to the amended section 148 came into force was not accepted by the Hon’ble Supreme Court. The Court held that if such a purposive interpretation is not adopted then the objective and purpose of the amendment in section 148 would be frustrated.

In response to the second contention, the Hon’ble Supreme Court observed that even though the amended section 148 used the word “may” it is generally to be construed as a “rule” or “shall” and not as an exception for which the appellate court has to assign special reasons for directing for payment of deposit under section 148. In view of the foregoing, the Supreme Court held that amended Section 148 confers power upon the appellate court to pass an order pending appeal to direct the appellants to deposit the sum which shall not be less than 20% of the fine or compensation either on an application filed by the original complainant or even on the application filed by the appellant under section 389 of CrPC to suspend the sentence.

Conclusion:

The Hon'ble Supreme Court while deciding on the appeal has clearly highlighted the reasons for amendment of section 148 of the NI Act which is to eliminate the injustice caused to the payee of a dishonoured cheque who has spent considerable time and resource in court proceedings to realize the value of the cheque, due to the delayed tactics of unscrupulous drawer of the dishonoured cheque. Such delay tactics defeated the purpose of the NI Act and compromised the sanctity of the cheque transactions and hence the amendment in the section 148 was brought in by the Parliament. Therefore, considering the Statement of Objects and Reasons of the amendment in section 148, the Court has clarified that the said section shall be applicable in respect of the appeals against the order of conviction under section 138 of the NI Act, even in a case where the criminal complaints for the offence under section 138 were filed prior to the NI Amendment Act came into force and clarified the confusion over enforceability of the new provisions.

Endnotes:

[1]<http://www.mondaq.com/india/x/731846/Financial+Services/Cheque+Bouncing+Amendments+To+The+Negotiable+Instruments+Act+1881>

Feedback

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