



Ayana Legal

THE BUZZ

Vol 02-11

Monthly Newsletter By Team Ayana Legal

Cheque Bounce Complaint

For an offence under Section 138 to be attracted the payee has to make a demand for the payment of money by giving a written notice, within one month of the dishonour, to the drawer of the cheque. A period of 15 days is given to make the payment from the date of receipt of the notice. If the drawer of the cheque fails to make the payment within the 15 day period, then a complaint can be filed by the payee within one month to the Court. The Court shall not be one inferior to the Metropolitan Magistrate or a Judicial Magistrate of the first class.

The punishment for dishonour of cheque is imprisonment for a term which may be extended to two years, or with fine which may extend to twice the amount of the cheque, or with both.

DIRECTORS' LIABILITY UNDER THE NEGOTIABLE INSTRUMENTS ACT

Under the Negotiable Instruments Act, 1881 Section 138 states that when a cheque has been dishonoured for insufficiency of funds in the account then the person drawing such cheque will have committed an offence.

Section 141 of the Negotiable Instruments Act states that if a company has committed an offence under Section 138 then “every person who was at the time when the offence was committed in charge of, and was responsible to, the company for the conduct of the business of the company, as well as the company, shall be deemed to be guilty of the offence and shall be liable to be proceeded against and punished accordingly..”

Important Case Laws

Aneeta Hada v. Godfather Travels & Tours (P) Ltd., (2012) 5 SCC 661

It was held that the conditions under Section 141 have to be strictly complied with. It was stated that “the words “as well as the company” appearing in the section make it absolutely unmistakably clear that when the company can be prosecuted, then only the persons mentioned in the other categories could be vicariously liable for the offence subject to the averments in the petition and proof thereof.” Thus, holding that it was mandatory to implead the company as an accused in such cases.

Bail in a cheque bounce case is a matter of right of the accused. The court may order security to the satisfaction of the magistrate to be given. If the Accused fails to appear before the court on the date fixed for appearance, the court will issue non-bailable warrant.

In the case of:

Krishna Texport & Capital Markets Ltd. v. Ila A. Agrawal & Ors, (2015) 8 SCC 28

the Supreme Court has clarified reading Section 138 and 141 together that it is unnecessary to issue notices to all the directors (whose names the payee may be unaware of) and it would suffice if notice was sent to the Company itself.

Thank You

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S.M.S. Pharmaceuticals Ltd. v. Neeta Bhalla, (2005) 8 SCC 89

It was held that the liability under Section 141 “arises from being in charge of and responsible for the conduct of business of the company at the relevant time when the offence was committed and not on the basis of merely holding a designation or office in a company. Conversely, a person not holding any office or designation in a company may be liable if he satisfies the main requirement of being in charge of and responsible for the conduct of business of a company at the relevant time. Liability depends on the role one plays in the affairs of a company and not on designation or status.”

It was further stated that “it is necessary to specifically aver in a complaint under Section 141 that at the time the offence was committed, the person accused was in charge of, and responsible for the conduct of business of the company. This averment is an essential requirement of Section 141 and has to be made in a complaint. Without this averment being made in a complaint, the requirements of Section 141 cannot be said to be satisfied.”

K.K. Ahuja v. V.K. Vora, (2009) 10 SCC 48

The Supreme Court has held that the prefix “Managing” to the word “Director” makes it clear that the Director was in charge of and responsible to the company, for the conduct of the business of the company. Hence, it is not necessary to make a specific averment in the complaint showing the same.

Sunita Palita v. Panchami Stone Quarry, (2022) 10 SCC 152

It was held that non-executive directors are not in charge of and responsible for the conduct of the business. Hence, all directors cannot be impleaded under Section 141. The liability depends on the role played in the Com