



CHEQUE BOUNCING BLUES – A WORD OF CAUTION!

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We are going to discuss a very fundamental issue relating to issuing post-dated cheques. Issuing post-dated cheques very simple and routine customary trade practice. Often, we come across cases of people issuing post-dated cheques without batting an eyelid. When a lender or vendor of goods and / or services demands a post-dated cheque from a business man or entity, the first thing to be understood is that from the point of view of the lender or vendor, it exhibits a cautious approach in doing business.

Fundamentally when a person issues a cheque, the lender or vendor gets an assurance that upon presentation of the cheque on or after the date stipulated therein (but before expiry of three months from the date of the cheque), there will be sufficient funds maintained in the bank account in which the cheque has been drawn and the cheque will be honoured.

If a cheque has been issued to a lender or vendor, and if on or after the date specified therein, when the cheque is presented, the account does not have sufficient balance to honour the cheque, the cheque is returned unpaid to the lender or vendor. If the cheque bounces, due to insufficiency of funds, there are going to be risks and legal complications. In such a case, a statutory right accrues to the payee (the recipient) under **Section 138 of the Negotiable Instruments Act, 1881 (NI Act)**, to demand immediate payment of the amount due failing which the payee is entitled to file a criminal complaint setting in motion a legal proceeding on the criminal side of law dragging the business entity and also the person who has signed and issued the cheque.

As per law, the payee is expected to issue a notice giving “15 days” time to the debtor to make good the payment. If the payment is not made, the payee is entitled to institute a criminal complaint in the manner provided under the NI Act.

There are plenty of cases, where people in business face financial difficulties genuinely and as a result of which they may find insufficiency of funds on the relevant date when the cheque is expected to be presented and consequently, if the cheque gets presented, it would obviously get dishonoured. A genuine person would notify the payee in advance that if there were to be some financial difficulty. However, despite such communications and requests, the payee may present the cheque and a cheque bounce case will commence.

Recently the Supreme Court, in its decision dated 08th January 2026 in Sumit Bansal Vs MGI Developer Promoters and Another [2026]190CLA322(SC) dealt with a cheque bounce case, where the amount specified in the cheque is Rs.66.5 Lakhs, whereas the aggregate actual payment received by the payee against several bounced cheques is Rs.97 Lakhs. Since the payee continued to hold the cheque, it was possible for the payee to present the cheque again and when the cheque bounced, a criminal complaint was launched.

On a plain reading, it appears to be a criminal case, instituted by the vendor of the goods or services even though he has received more than what is due. However, the Court had held that the fact that such payment has been made and such payment constitutes the amount payable under the cheque and that there is indeed no basis for sustaining the complaint are questions to be decided by the Court at the trial.



The Supreme Court held –

“However, we are of the view that the burden of proving whether there exists any debt or liability is something which must be discharged in trial. A bare perusal of section 139 of the NI Act would indicate that once a cheque is issued in discharge of liability and dishonoured, a presumption of liability in favour of the complainant arises. The accused person is then required to rebut the presumption by raising facts that either there was no debt or liability when the cheque was drawn, of the cheque was not drawn in discharge of liability, or notice was not served in time.

It goes without saying that when a full or part payment is made towards a debt represented by the cheque, whether prior to the presentation of the cheque or after the bouncing of the cheque, in one or more instalments, the issuer must at least maintain proper records (written correspondence / confirmation) to prove that the whole or a part of the payment has been made against the amount specified in the cheque and if such payments are made prior to the date of presentation of the cheque, there must be a written communication that the cheque shall not be presented. It is necessary to ensure that the cheque is received back, when the entire amount due has been paid. Even after making full payment, if the cheque continues to be in the hands of the payee, the payee might present the cheque and create difficulties.

Generally, speaking, the following are the important ingredients to be checked in a cheque bounce case as held by the Supreme Court in *Kusum Ingots and Alloys Limited v Pennar Peterson Securities Limited*, (2000) 100 Comp Cas 755 (SC)

On a reading of the provisions of Section 138 of NI Act it is clear that the ingredients which are to be satisfied for making out a case under the provision are:

- (i) a person must have drawn a cheque on an account maintained by him in a bank for payment of a certain amount of money to another person from out of that account for the discharge of any debt or other liability;
- (ii) that cheque has been presented to the bank within a period of six months (*now three months*) from the date on which it is drawn or within the period of its validity whichever is earlier;
- (iii) that cheque is returned by the bank unpaid, either because of the amount of money standing to the credit of the account is insufficient to honour the cheque or that it exceeds the amount arranged to be paid from that account by an agreement made with the bank;
- (iv) the payee or the holder in due course of the cheque makes a demand for the payment of the said amount of money by giving a notice in writing, to the drawer of the cheque, within 15 days of the receipt of information by him from the bank regarding the return of the cheque as unpaid;
- (v) the drawer of such cheque fails to make payment of the said amount of money to the payee or the holder in due course of the cheque within 15 days of the receipt of the said notice;

If the aforementioned ingredients are satisfied then the person who has drawn the cheque shall be deemed to have committed an offence. In the explanation to the Section clarification is made that the phrase "debt or other liability" means a legally enforceable debt or other liability.

Therefore, think twice before issuing post-dated cheques.
