

Info Capsule

MCA NOTIFIES COMPANIES (ACCEPTANCE OF DEPOSITS) AMENDMENT RULES, 2017¹

Ministry of Corporate Affairs notifies **Companies (Acceptance of Deposits) Amendment Rules, 2017** vide Notification No. G.S.R. 454(E) dated May 11, 2017. The notification provides for amendments in Rule 2(1) (c)(xviii) and Rule 5(1), of the Companies (Acceptance of Deposits) Rules, 2014, namely:-

- (a) In Rule 2, in sub-rule (1), in clause (c), in sub-clause (xviii), after the words “Domestic Venture Capital Funds” the words “, Infrastructure Investment Trusts” shall be inserted.
- (b) In Rule 5, in sub-rule (1), for the proviso, the following proviso shall be substituted, namely:—

“Provided that the companies may accept deposits without deposit insurance contract till the March 31, 2018 or till the availability of deposit insurance product, whichever is earlier”.

ONE TIME EXEMPTION GIVEN TO NGOS TO FILE MISSING ANNUAL RETURNS²

Government has given one final opportunity to all associations/organizations which have applied for renewal of their registration under the Foreign Contrubtion (Regulation) Act, 2010 (FCRA) but not uploaded their Annual Returns from Financial Year 2010-11 to 2014-15. All such NGOs can upload their missing Annual Returns along with the requisite documents within a period of 30 days, starting from May 15, 2017 to June 14, 2017. Further no compounding fee will be imposed on them for late filing of Annual Returns during this period.

This exemption is one time measure and available to those associations who upload their missing Annual Returns from FY 2010-11 to FY 2014-15 within this period. The renewal of registration under FCRA cannot be granted unless the Annual Returns are uploaded by the organization.

DISHONOUR OF CHEQUE: JURISDICTION FOR FILING THE COMPLIANT UNDER SECTION 138

Number of appeals were preferred before the Supreme Court for its decision on the question pertaining to courts’ territorial jurisdiction concerning criminal complaints filed under Section 138 of the Negotiable Instruments Act, 1881.

¹ Available at : http://www.mca.gov.in/Ministry/pdf/CompaniesAcceptanceofDeposits_12052017.pdf

² Available at : <http://pib.nic.in/newsite/erelease.aspx?relid=0>

Though, the facts and circumstances were diverged in each of those appeals preferred before the Supreme Court, however, the Question of Law involved in all those appeals was common.

The common question of law involved in those appeals was “what would be the place, situs or venue of judicial inquiry and trial of the offence of dishonour of cheque in view of Section 138 of the Negotiable Instruments Act, 1881 and Section 177 – 179 of the Code of Criminal Procedure, 1973.”

Recent Status – Dashrath Rupsingh Rathod v. State of Maharashtra³

The mystification over jurisdiction of courts in the dishonour of cheque cases has finally been resolved by the three judge bench of the Supreme Court in *Dashrath Rupsingh Rathod v. State of Maharashtra & Another* ("Dashrath").⁴ The Apex Court held that the complaints relating to dishonor of cheques must be filed only in the courts within whose territorial jurisdiction the drawee bank is situated. The judgment has taken a contrary view from the principle of territorial jurisdiction laid in *Bhaskaran v. Sankaran Vaidhyan Balan* ("Bhaskaran")

A three Judge Bench of the Supreme Court finally clarified that a Complaint of Dishonour of Cheque can be filed only to the Court within whose local jurisdiction the offence was committed, which means the place where the cheque is dishonored by the bank on which it is drawn. The Court further clarified that the Complainant is statutorily bound to comply with Section 177 etc. of the CrPC and therefore the place or situs where the Section 138 Complaint is to be filed is not of his choosing. The Supreme Court in this case overruled the two Judge Bench Judgment in *K. Bhaskaran v. Sankaran Vaidhyan Balan*⁵ wherein it was held that “the offence under Section 138 of the Act can be completed only with the concatenation of a number of acts. Following are the acts which are components of the said offence: (1) Drawing of the cheque, (2) Presentation of the cheque to the bank, (3) Returning the cheque unpaid by the drawee bank, (4) Giving notice in writing to the drawer of the cheque demanding payment of the cheque amount, (5) failure of the drawer to make payment within 15 days of the receipt of the notice”. If the five different acts were done in five different localities any one of the courts exercising jurisdiction in one of the five local areas can become the place of trial for the offence under Section 138 of the Act. In other words, the complainant can choose any one of those courts having jurisdiction over any one of the local areas within the territorial limits of which any one of those five acts was done.

The Court accepted the view of another two Judge Bench Judgment in *Harman Electronics Pvt. Ltd. v. National Panasonic India Pvt. Ltd.*⁶ “It is one thing to say that sending of a notice is one of the ingredients for maintaining the complaint but it is another thing to say that dishonour of a cheque by itself constitutes an offence. For the purpose of proving its case that the accused had committed an offence under Section 138 of the Negotiable Instruments Act, the ingredients thereof are required to be proved. What would constitute an offence is stated in the main provision. The proviso appended thereto, however, imposes certain further conditions which are required to be fulfilled before cognizance of the offence can be taken. If the ingredients for constitution of the offence laid down in the provisos (a), (b) and (c) appended to Section 138 of the Negotiable Instruments Act intended to be applied in favour of the accused, there cannot be any doubt that receipt of a notice would ultimately give rise to the cause of action for filing a complaint. As it is only on receipt of the notice the accused at his own peril may refuse to pay the amount. Clauses (b) and (c) of the proviso to Section 138 therefore must be read together.

³ Criminal Appeal No. 2287 of 2009

⁴ MANU/SC/0655/2014

⁵ (1999) 7 SCC 510

⁶ (2009) 1 SCC 720

Issuance of notice would not by itself give rise to a cause of action but communication of the notice would.”

Justice Thakur Summarized the Principles⁷ for confirming the jurisdiction in the cases of Dishonour of Cheques, as follows:

- (i) An offence under Section 138 of the Negotiable Instruments Act, 1881 is committed only at a time when a cheque drawn by the accused on an account being maintained by him in a bank for discharge of debt/liability is returned unpaid for insufficiency of funds or for the reason that the amount exceeds the arrangement made with the bank.
- (ii) Cognizance of any such offence is however forbidden under Section 142 of the Act except upon a complaint in writing made by the payee or holder of the cheque in due course within a period of one month from the date the cause of action accrues to such payee or holder under clause (c) of proviso to Section 138.
- (iii) The cause of action to file a complaint accrues to a complainant/payee/holder of a cheque in due course if -
 1. The dishonoured cheque is presented to the drawee bank within a period of six months from the date of its issue;
 2. If the complainant has demanded payment of cheque amount within thirty days of receipt of information by him from the bank regarding the dishonour of the cheque and;
 3. If the drawer has failed to pay the cheque amount within fifteen days of receipt of such notice.
- (iv) The facts constituting cause of action do not constitute the ingredients of the offence under Section 138 of the Act.
- (v) The proviso to Section 138 simply postpones/defers institution of criminal proceedings and taking of cognizance by the Court till such time cause of action in terms of clause (c) of proviso accrues to the complainant.
- (vi) Once the cause of action accrues to the complainant, the jurisdiction of the Court to try the case will be determined by reference to the place where the cheque is dishonored.
- (vii) The general rule stipulated under Section 177 of Cr.P.C applies to cases under Section 138 of the Negotiable Instruments Act.
- (viii) Prosecution in such cases can, therefore, be launched against the drawer of the cheque only before the Court within whose jurisdiction the dishonour takes place except in situations where the offence of dishonour of the cheque punishable under Section 138 is committed along with other offences in a single transaction within the meaning of Section 220(1) read with Section 184 of the Code of Criminal Procedure or is covered by the provisions of Section 182(1) read with Sections 184 and 220 thereof.

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⁷ Dashrath Rupsingh Rathod v State of Maharashtra & Anr, MANU/SC/0655/2014