

PERSONAL LIABILITY OF DIRECTOR FOR DISHONOR OF CHEQUES¹

Abstract

This paper tries to analyze the personal and vicarious liability fastened on Directors as enumerated in Section 141 of The Negotiable Instruments Act, 1882. These sections were brought about as an amendment to The Negotiable Instruments Act, 1882 in the year 1988 to bring about credibility in business transactions. The focus of this paper lies in trying to rectify a certain anomaly in Section 141 of The Negotiable Instruments Act, 1881 with respect to a procedural requirement of prosecution u/s 141, viz., whether to make a director personally liable; prosecuting the company is a sine qua non. As recent as August 2008, has the Supreme Court in a judgment remanded this matter to the CJI Bench for clarification. The jurisprudence of Courts throughout India has been taken into consideration for bringing out a holistic solution to this problem. Help of English and Australian Law has been taken in this regard. This paper suggests that an amendment be brought about in the Negotiable Instruments Act, 1882 and clarifications be added to make prosecution of the company a must for prosecuting the director.

1. Legislative History

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Section 138 to 141 (Chapter XVII) was introduced by an amendment to The Negotiable Instruments Act, 1882 in the form of *The Banking Public Financial Institutions and Negotiable Instrument Laws (Amendment) Act, 1988*. This amendment brought about a major change in the law relating to dishonor of cheques in India. Intention to cheat is now no longer a requirement in proving dishonor of cheques, whereas the only way prior to this amendment to prosecute an individual or body corporate for dishonor of cheque was by proving offence u/s 420 read with 415 of The Indian Penal Code, 1860; i.e., it could be proved only if intention of the drawer was proved to be dishonest and of cheating.² The object was to inculcate faith in the efficacy of Banking Operations and credibility in transacting business on negotiable instruments.³ Therefore, the paradigm shift in law from intention to presumption, and inspite of a lot of challenges ranging from Constitutionally validity⁴ to legislative competence⁵, it has been held valid.

The law relating to dishonor of cheques is enshrined in the Negotiable Instruments Act, 1881 (Act No. 26 of 1881). It is to be noted that a cheque is a Negotiable Instrument⁶ and Sections 138, 139, 140, 141 and 142 of the said Act are the relevant provisions of law relating to dishonor of cheques. Furthermore, as has been noted by the Hon'ble Supreme Court in terse words in the case of *Shri Ishar Alloy Steels Ltd. v. Jayaswals NECO Ltd.*⁷ there is a high degree of importance attached to the law

² S.N. Gupta, *Dishonor of Cheques Liability – Civil & Criminal*, (4th ed., Universal Law Publishing Co., New Delhi, 2001)

³ K.M. Sharma & S.P. Mago, *The Negotiable Instruments Act, 1881*, (3rd ed., Unique Law Publishers, Ahmedabad, 2003)

⁴ *R. Sankaralingam v. Union of India* [1996] Comp Cas 709 (Mad); *Rajinder Steels Ltd. Union of India* [2000] 100 Comp. Cas. 174 (Del), *Smt. Ramawati Sharma v. Union of India* [2001] 107 Comp. Cas. 215 (All) & *V.A. Noori v. Union of India* [1999] Comp. Cas. 38 (AP)

⁵ *B. Mohan Krishna v. Union of India* [1996] Comp. Cas. 487 (AP), *Mayuri Pulse Mills v. Union of India* [1996] Comp. Cas. 121 (Bom.)

⁶ Section 6, Negotiable Instruments Act, 1882

⁷ MANU/SC/0121/2001; at Para 5 the Court observed: *it has to be kept in mind that the law relating to Negotiable Instruments is the law of the commercial world which was enacted to facilitate the activities in trade and commerce making provision of giving sanctity to the instruments of credit which could be deemed to be convertible into money and easily passable from one person to another. In the*

relating to negotiable instruments and hence to need to enforce them strictly.

It has also brushed aside all other complaints On “Presumptions”, in the case of *Pankaj Mehra v. State of Maharashtra*⁸ has held that the court has to presume that the cheque was received for discharge of a legally enforceable debt until the drawer proves that it was not so. It is a legislative mandate that the court should proceed with this assumption unless the contrary is proved.⁹

By means of this project, the vicarious liability fastened on directors and other officers of a company, or the partners of firms, or an association of individuals, in respect of offences committed under Section 138 of The Negotiable Instruments Act, 1881 shall be dealt in detail in the oncoming parts of this project.

2. Liability of Directors

Section 141 of the Negotiable Instruments Act, 1881 relates to offences by companies under Section 138. In a nutshell, it postulates the following points:

- *Every person who was in charge of and responsible to, the company for the conduct of the business of the company at the time of commission of the offence, shall be deemed to be guilty of the offence and liable to be prosecuted. **Section 141(1)***
- *If a person is proceeded against, he shall not be liable to punishment if he proves that the offence was committed without his knowledge, or that he has exercised due diligence to prevent commission of such offence. **Proviso to Section 141(1)***
- *Any director, manager, secretary or other officer of the company shall also be*

absence of such instruments, the trade and commerce activities were likely to be adversely affected, as it was not practicable for the trading community to carry on with it the bulk of the currency in force. The introduction of negotiable instruments owes its origin to the bartering system prevalent in the primitive society. The negotiable instruments are, in fact, the instruments of credit being convertible on account of the legality of being negotiated and thus easily passable from one hand to another.

⁸ MANU/SC/0089/2000

⁹ <http://www.tribuneindia.com/2002/20020520/biz.htm#1>

*deemed to guilty if it is proved that the offence has been committed with consent, or negligence of such person. **Section 141(2)***

2.1 Scope of Section 141

2.1.1 Prosecution of a Company is must

The Hon'ble Supreme Court in the case of *Anil Hada v. Indian Acrylic Ltd.*¹⁰ has succinctly explained the scope of this provision. It was observed:

*10. Three categories of persons can be discerned from the said provision who are brought within the purview of the penal liability through the legal fiction envisaged in the section. **They are: (1) The company which committed the offence, (2) Everyone who was in charge of and was responsible for the business of the company, (3) any other person who is a director or a manager or a secretary or officer of the company, with whose connivance or due to whose neglect the company has committed the offence.***

*11. Normally an offence can be committed by human beings who are natural persons. Such offence can be tried according to the procedure established by law. **But there are offences, which could be attributed to juristic person also. If the drawer of a cheque happens to be a juristic person like a body corporate it can be prosecuted for the offence under Section 138 of the Act.** Now there is no scope for doubt regarding that aspect in view of the clear language employed in Section 141 of the Act. In the expanded ambit of the word "company" even firms or any other associations of persons are included and as a necessary adjunct thereof a partner of the firm is treated as director of that company.*

12. Thus when the drawer of the cheque who falls within the ambit of

¹⁰ MANU/SC/0736/1999

*Section 138 of the Act is a human being or a body corporate or even firm, prosecution proceedings can be initiated against such drawer. In this context the phrase "as well as" used in Sub-section (1) of Section 141 of the Act has some importance. The said phrase would embroil the persons mentioned in the first category within the tentacles of the offence on a par with the offending company. Similarly the words "shall also" in Sub-section (2) are **capable of bringing the third category persons additionally within the dragnet of the offence on an equal par. The effect of reading Section 141 is that when the company is the drawer of the cheque such company is the principal offender under Section 138 of the Act and the remaining persons are made offenders by virtue of the legal fiction created by the legislature as per the section. Hence the company should have committed the actual offence, and then alone the other two categories of persons can also become liable for the offence.***

Therefore, the view that emerges that first, the offence must have been made out u/s 138, if by body corporate, under section 141, and only if the Company is liable to be prosecuted, can the directors be held liable also. This view has also been upheld in the most recent judgment of the Supreme Court in the case of *Aneeta Hadav v. Godfather Travels and Tours Pvt. Ltd.*¹¹ wherein the court noted,

*I have no doubt whatsoever in our mind that prosecution of the company is a sine qua non for prosecution of the other persons who fall within the second and third categories of the candidates, viz., everyone who was in-charge and was responsible for the business of the company and any other person who was a director or managing director or secretary or officer of the company with whose connivance or due to whose neglect the company had committed the offence.*¹²

The Madras High Court in a catena of cases took the view that **unless the company**

¹¹ MANU/SC/2118/2008, at Para 32

¹² This case has a dissenting opinion also, and hence has been transferred to the CJI Bench for further analysis.

was made an accused, the person(s) who was in charge of and responsible to the company for the conduct of the business of the company could not be made an accused.¹³

In a complaint against the company it is to be alleged that the offence has been committed by its directors/managers with their consent or connivance or consent on their part.¹⁴ Thus, the rise is that company must be arrayed as an accused before accused can also be prosecuted. It is a requirement that a company be also made an accused in proceedings u/s 138.¹⁵

2.1.2 No requirement of prosecution of Company

However, a different view altogether was taken, i.e., this does not mean that the averment in the plaint should contain the name of the Company as an accused. However, as stated in *Anil Hada's*¹⁶ case, the onus is on the payee to establish that the company has actually committed the offence.¹⁷ Thus, it emerges that the law on who should be made liable is not uniform and is very much confusing.

However, the Madras High Court took a u-turn and said that this requirement is not sine qua non and prosecution can stand.¹⁸ The Kerala High Court on the other hand has taken a view that either company, or person(s) in charge, or both can be

¹³ *Krishnan Bai v. Arti Press* [1994] 80 Comp. Cas. 750, *S. Krishnamurthy v. B.S. Kesavan* [1994] 80 Comp. Cas. 755, *A. Jafferullah v. T. Stanes & Co.* [1994] 80 Comp. Cas. 759, *S. Vishwanathan v. United Phosphorus Ltd.* [1999] 97 Comp. Cas. 922 c.f. A. Ramaiya, *Guide to the Companies Act*, (Part I – Section 1 to Section 223, 15th ed., Wadhwa and Company, Nagpur, 2004)

¹⁴ *Harbhajan Singh Kalra, Director Orion Auto & Steel Industries (Pvt.) Ltd. v. State of Haryana* 1992 Bank J 692 c.f. S.N. Gupta, *Dishonor of Cheques Liability – Civil & Criminal*, (4th ed., Universal Law Publishing Co., New Delhi, 2001)

¹⁵ S.N. Gupta, *Dishonor of Cheques Liability – Civil & Criminal*, (4th ed., Universal Law Publishing Co., New Delhi, 2001)

¹⁶ Supra Note 8

¹⁷ *Taxmann's Guide to Negotiable Instruments act with special emphasis on Liability of Directors for Dishonor of Cheques*, (Taxmann Allied Services, New Delhi, 2003)

¹⁸ *Balakumaran Textiles Chennamal* [1994] 80 Comp. Cas. 905

prosecuted.¹⁹ The same view has been taken by the High Court at Calcutta.²⁰ In the case of *M. Venkateshwara Rao v. Medaratmetla*²¹ it was said, ***“There is no whisper in the said Section that unless and until the company, for and on behalf of which a person issued the cheque is made a party, the person should not be prosecuted.”***

One can also refer to Section 10 of The Essential Commodities Act, 1995 which is pari materia with Section 141 of the Negotiable Instruments Act.²² The Supreme Court judgment in the case of *Sheoratan Agarwal v. State of Madhya Pradesh*²³ wherein it was categorically stated that there is no requirement that the company must be prosecuted.

2.1.3 The correct view in my opinion is that the Company must be arrayed as an accused. This is because, of the wording employed in Section 141(2).

¹⁹ *M.O.H. Iqbal v. M. Uthaman* [1995] 82 Comp. Cas. 726, *Alex v. Vijayan* [1994] 81 Comp. Cas. 910

²⁰ *Sekhar Gupta v. Subhash Chandra Mondal* [1992] 73 Comp. Cas. 590

²¹ MANU/AP/0307/1992

²² 10 OFFENCES BY COMPANIES.

(1) If the person contravening an order made under Sec. 3 is a company, every person who, at the time the contravention was committed, was 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 contravention and shall be liable to be proceeded against and punished accordingly:

Provided that nothing contained in this sub-section shall render any such person liable to any punishment if he proves that the contravention took place without his knowledge or that he exercised all due diligence to prevent such contravention.

(2) Notwithstanding anything contained in sub-section (1), where an offence under this Act has been committed by a company and it is proved that the offence has been committed with the consent or connivance of, or is attributable to any neglect on the part of, any Director, Manager, Secretary or other officer of the company, such director, manager, secretary or other officer shall also be deemed to be guilty of that offence and shall be liable to be proceeded against and punished accordingly.

Explanation :

For the purposes of this section, -

(a) "company" means any body corporate, and includes a firm or other association of individuals; and

(b) "director" in relation to a firm means a partner in the firm.

²³ AIR 1984 SC 1824

It says

“... any offence under this Act has been committed by a company and it is proved that the offence has been committed with the consent or connivance of, or is attribute to, any neglect on the part of, any director, Manager, secretary, or other office of the company, such director, manager, secretary or other officer shall also be deemed to be guilty...”

The basic idea of this section is of Vicarious Liability²⁴; because it is a settled principal of law that directors are agents of a company²⁵ and in vicarious liability, it is evident that the principal be sued for damages, consequently, the agent can also be held liable. It is up to the party to sue the agent or not; however, for any breach of contract, the principal is held liable first. The Principal can then raise the defence that the agent acted outside the scope of his powers, in this case, ultravires the MOA²⁶ or AOA²⁷; however in any case, as the conclusion is, the company must be arrayed as an accused.

The company can allege that the cheque has not been drawn, made, accepted or endorsed by the company. This may be done by means of public documents of the company, or by the statement that the person was not authorized by the company to do so.²⁸ In such an event, the director shall be personally liable.

2.2 Extent of Burden of Proof – Section 141 and Proviso

²⁴ The words “*deemed to be*” as given in 141(2), also opined in the case of *S.M.S. Pharmaceuticals Ltd. v. Neeta Bhalla and Anr.* MANU/SC/0622/2005

²⁵ *Ray Cylinders & Containers Ltd. v. Hindustan General Industries Ltd.* (2001) 103 Comp Cas 161 (Del)

²⁶ Memorandum of Association; giving the object of the company formation, any act outside a company’s MOA is void and such person acting so is personally liable. Held in case of *Dr. Lakshmanaswami Mudaliar v. LIC AIR 1963 SC 1185*

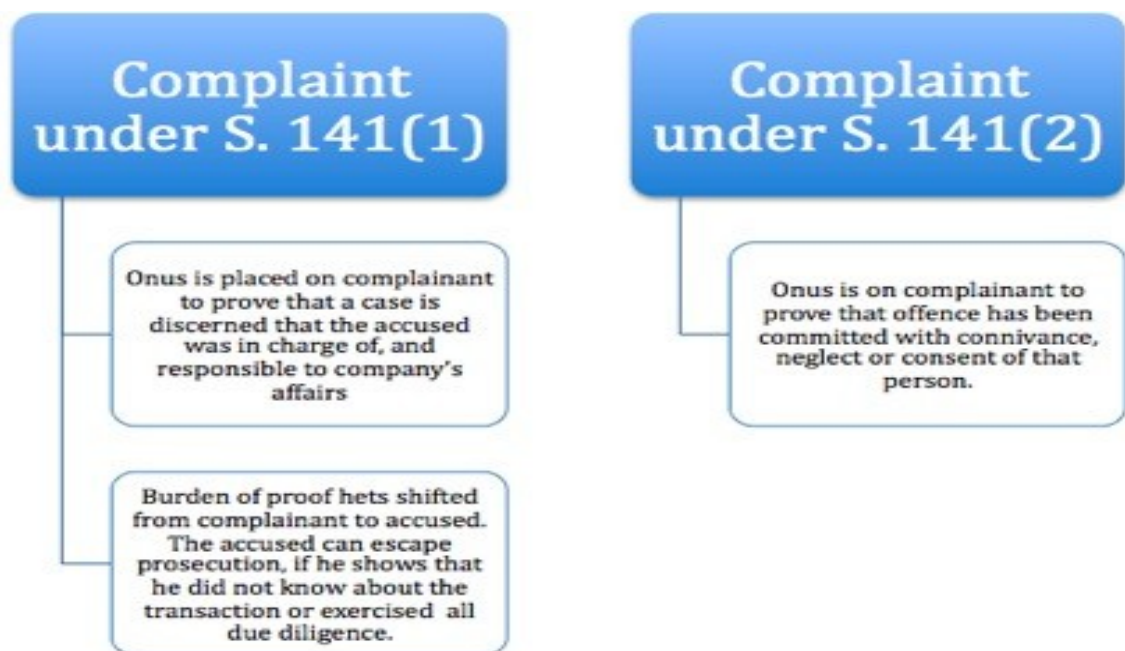
²⁷ Articles of Association, not a statutory requirement in case of Public Companies, and is a document governing relationships between shareholders and directors company.

²⁸ S.N. Gupta, *Dishonor of Cheques Liability – Civil & Criminal*, (4th ed., Universal Law Publishing Co., New Delhi, 2001)

To attract the provisions of Section 141 and to lodge a complaint on any of the premises mentioned in Section 138, all that the complainant has to discharge is the primary burden at the admission stage to show and allege that the person satisfies one of the ingredients mentioned in Section 138. In other words, while screening the complaint, the magistrate has to find whether the allegations made in the complaint *per se* justify the prosecution of the accused person(s).

Once the complainant has discharged the onus, the first proviso to Section 141(1) gives the accused the opportunity, if he so desires, to rebut this onus, by establishing that the offence was without his knowledge or he/she has exercised all due diligence to prevent the commission of the offence.

A chart may show the dynamic nature of this shifting this onus,



2.3 Whether Director can be made liable without any averment in the plaint?

It has been categorically held in a lot of cases that there must be a specific allegation in the complaint against the directors of the company for bouncing of cheques.²⁹ Furthermore, it is necessary that the director in question was in charge of the business of the company.³⁰

A director cannot be made liable without averment in the plaint that he was responsible to the company's affairs or that the offence was committed with his connivance, or consent, or be attributed to his neglect.³¹ The consent or connivance of the director must be pleaded and cannot be inferred.³²

In *Sabitha Ramamurthy and Anr. v. R.B.S. Channabasavaradhya*³³, the Supreme Court held that though a person was not personally liable for the offences committed by the company, however, he would only be liable vicariously for the acts of company in terms of Section 141 of the Act only if the requisite averments are made in the complaint petition.

Vicarious liability on the Director of the company part must be pleaded and proved and not inferred.³⁴ ***It is incumbent to plead that the accused was responsible to the Company for the conduct of the business of the Company in the complaint. The allegation in the complaint petition would not give rise to an inference that the Appellant was responsible for day-to-day affairs of the Company.***³⁵

A complaint was rejected on the ground that there was no specific allegation in the averments that the said director was managing the day-to-day affairs of the company,

²⁹ *Nucor Wires Ltd. v. HMT International Ltd.* [1998] Comp. Cas. 850 (Kar). There must be a clear and unambiguous allegations as to how all the partners were in charge of and responsible for the conduct of the business of the company.

³⁰ A. Ramaiya, *Guide to the Companies Act*, (Part I – Section 1 to Section 223, 15th ed., Wadhwa and Company, Nagpur, 2004)

³¹ *O.P. Mehra v. Mansi Finance (Chennai) Ltd.* MANU/TN/0561/2001

³² *Sunil Kumar Chhaperia v. Dakka Eshwaraiah and Anr.* MANU/AP/0875/2001

³³ MANU/SC/8486/2006

³⁴ *Suryalakshmi Cotton Mills Ltd. v. Rajvir Industries Ltd. and Ors.* MANU/SC/7050/2008

³⁵ Supra Note 9

or was responsible for the conduct of the company's business.³⁶

However, there is a dissenting opinion to the judicial opinions cited above. In the case of *Trichur Cotton Mills v. Devarasetty Cotton*³⁷, it was held that in case of Managing Director there is a presumption that he in-charge of the Company's affairs. **The absence of such allegations in the averment is not material.** The complaint was held to be maintainable.

2.4 Illustrations of Liability of Directors

- In the case of *Smt. M. Sivakhama v. Bharat Ginning & Oil Mill Factory*³⁸, it was held that director who is not authorised to operate the bank account of a company does not stand excluded from prosecution. The reason given by the Gujarat High Court was that the part of maintaining bank accounts of company is ancillary to the main business, and therefore, *non-inclusion of the name of the petitioner in the resolution*³⁹ does not mean that he has discharged his burden under Proviso to Section 141(1). It was held that the petitioner was not held to protection *prima facie* by virtue of Proviso to Section 141(1).
- *When Director who signed the cheque ceased to be director on date of presentation of cheque* – The case of *Rajan Kinnerkar v. Eric Cordeiro*⁴⁰ laid down that inspite of payee presenting the cheque at a later date, but within the

³⁶ A. Ramaiya, *Guide to the Companies Act*, (Part I – Section 1 to Section 223, 15th ed., Wadhwa and Company, Nagpur, 2004)

³⁷ [2003] 105 Comp. Cas. 165 (AP), A. Ramaiya, *Guide to the Companies Act*, (Part I – Section 1 to Section 223, 15th ed., Wadhwa and Company, Nagpur, 2004)

³⁸ [2001] 105 Comp. Cas. 925 (Guj.)

³⁹ The resolution which gave the names of directors having authority to operate bank account of the company.

⁴⁰ [1994] 80 Comp. Cas. 487 (Bom) *c.f.* *Taxmann's Guide to Negotiable Instruments act with special emphasis on Liability of Directors for Dishonor of Cheques*, (Taxmann Allied Services, New Delhi, 2003)

period of validity of cheque, and the person who issued a cheque on behalf of company ceased to be director, the Bombay High Court refused to quash proceedings and held that the ex-director would be liable. The only defence available to him was under Proviso to Section 141(1).

- *When accused was director when cheque was dishonored, but not when cheque was issued:* The High Court of Chennai quashed the complaint in the case of *K. Shanmugham v. Dr. Purushottam Lal*⁴¹ that it gave no cause of action to complainant when the accused was not a director in the first place.
- *Effect of winding up* – In the case of *Pankaj Mehra v. State of Maharashtra*⁴² and *Shivanand Gaurishankar Baswanti v. Laxmi Vishnu Textile Mills and Ors.*⁴³ it was stated in clear words that **after analyzing the scope and ambit of Section 441(2) & 536(2) of the Companies Act, 1956 and 138/141 of the NI Act, the directors cannot escape penal liability u/s 138 of The Negotiable Instruments Act, 1882 on the premise that a petition for winding up has been filed for winding up of the company and the same had been presented in the relevant time.**
- *Whether being a mere director is enough* – This question was answered in the case of *Smt. K. Janaki Manoharan and Anr. v. Gayatri Sugar Complex Limited and Anr.*⁴⁴ wherein the court held that merely being the director at the time when the offence was committed by the company, he cannot be automatically roped in. It has to be shown that he played some part in the commission of the offence.
- *Position of Nominee Directors whether immune* - Not really in the true sense even after the latest amendments to the NIA, say some of the legal experts who see a gap between the legislative intent and the actual amendments in the

⁴¹ [2002] 109 Comp. Cas. 289 *c.f. Taxmann's Guide to Negotiable Instruments act with special emphasis on Liability of Directors for Dishonor of Cheques*, (Taxmann Allied Services, New Delhi, 2003)

⁴² [2000] 100 Comp. Cas. 917 (SC)

⁴³ MANU/SC/3070/2008

⁴⁴ MANU/AP/0837/2000

legislation. Amendments were carried out to Section 141 of the NIA in 2002 to specify that a person nominated as a director of a company by virtue of his holding any office or employment in the Central or State Government or a financial corporation owned or controlled by the Central Government or the State Government would not be liable for prosecution for offences under Section 138 of NIA.

According to Mr. Lalit Bhasin, Advocate, Bhasin & Co, the wordings of "any director" existing in Section 141(2) of NIA is a clear pointer that even after the latest amendments to NIA, a nominee director is not totally immune from being proceeded against and punished (may also suffer imprisonment) under the NIA.

Meanwhile, the Department of Company Affairs (DCA) had approached the Law Ministry on the matter of providing "*full immunity*" to nominee directors through the amendments to the Companies Act. "We were told by the Law Ministry that the cover couldn't be provided through Companies Act. It has to be done only through further amendments to the NIA," a Finance Ministry official said.⁴⁵

3. International Jurisprudence

3.1 Australia

An agent must sign cheques drawn by a company or by a firm. If the cheque is dishonored, it then becomes attractive to attempt to sue the agent. The Cheques Act, 1986 contains sections relating to the liability of an agent, but these sections can

⁴⁵<http://www.thehindubusinessline.com/2003/08/30/stories/2003083001550200.htm>

appear contradictory at first glance. For this, we must look into Sections 31⁴⁶, 33⁴⁷ and 75⁴⁸ of The Cheques Act, 1986

The main problem arises when a corporate agent signs the cheque, but he or she does not add words as suggested by s 33(2). Section 33 does not apply, but does the person necessarily then fall within the terms of s 75? In other words, if the requirements of s 33(b) are not met, is there then a presumption that the person who signs is personally liable to the holder?

Bondina Limited v Rollaway Shower Blinds Limited⁴⁹: Cheques were issued in

⁴⁶ "(1) Subject to this section and section 75, a person is not liable as the drawer or an indorser of a cheque unless the person signs the cheque as the drawer or an indorser, as the case may be.

(2) Where a person signs a cheque in the person's business name or trade name or in a name other than the person's own name, the person is liable on the cheque as if the person had signed it in the person's own name."

⁴⁷ Section 33 of the Act deals with signature by an agent:

"(1) Where:

- (a) A person (in this subsection referred to as the signer) signs a cheque for or on behalf of a principal or in a representative capacity;
- (b) The signer adds words to the signature indicating that the signer signs for or on behalf of a principal or in a representative capacity; and
- (c) The person for or on whose behalf the signer signs the cheque is named, or otherwise indicated with reasonable certainty, in the cheque;

The signer is not personally liable on the cheque."

⁴⁸ "(1) Where a person signs a cheque, otherwise than as the drawer or an indorser, intending to become liable on the cheque, the provisions of this Act [with some exceptions] apply, mutatis mutandis, to the person as if the person were an indorser and the person's signature were an indorsement.

(2) A person who signs a cheque shall, for the purposes of subsection (1):

- (a) as regards a holder in due course - be conclusively presumed to have signed the cheque intending to become liable on the cheque; or
- (b) as regards a holder who is not a holder in due course - be presumed, unless the contrary is proved, to have signed the cheque intending to become liable on the cheque;

unless it is apparent, on the face of the cheque, that the person did not sign the cheque intending to become liable on the cheque."

favour of the plaintiff's to pay for goods supplied. The cheques were pre-printed forms, which contained the name and account number of the company. The cheques were signed by two directors with no qualifying words to indicate that they were not assuming personal liability. By giving the director unconditional leave to defend an action brought, inter alia, against him in his personal capacity in respect of two dishonored company cheques, the Court of Appeal denied this question. The court accepted the argument on behalf of the director that, when signing the cheques, he adopted the entire printed wording on it, including the company's name and account number, thereby showing that the cheque was drawn on the company's account and not by him personally.

The decision is of great practical importance.⁵⁰ The business community will welcome this decision. As the cheque contained the printed name and account number of the company, the payee could be under no doubt that the cheque was a company cheque. The draconian imposition of personal liability on a director, who signed a company cheque without indicating his representative capacity, has thus lost much of its sting.

In *Valamios v Demarco*⁵¹, the appellant had signed a number of cheques drawn in favour of the respondent. The cheques were, as is common, pre-printed forms. The name printed on the cheques was "E&C Valamiou t/as V&P Produce" and the bank in that name held the account. The signature of the appellant appeared on the printed line provided for the signature of the authorised signatory of the account. The appellant was a partner in the firm and was authorised to draw the cheques in question. The cheques were drawn in favour of a trade creditor for the purpose of paying for produce. Some 16 cheques with a total value of over \$200,000 were dishonored on presentment.

In the District Court, the plaintiff argued that the defendant had drawn the cheque or, alternatively, having signed it was liable on dishonor since the requirements of s

⁴⁹ [1986] 1 WLR 517

⁵⁰ NO PERSONAL LIABILITY OF DIRECTOR SIGNING PRINTED COMPANY CHEQUE FORM, J.B.L. 1986, Jan., 9-10

⁵¹ [2005] NSWCA 98

33(1)(b) had not been complied with. In other words, the pleadings took the view that meeting the requirements of s 33(1)(b) is necessary for an agent to avoid a presumption of personal liability when signing a cheque on behalf of the principal.

The District Court seemed to agree, holding that the defendant had not complied with s 33 and that he had not shown that “it is clear on the face of the cheque that he did not sign the cheque with the intention to become liable.” The Court also relied upon notices of dishonour that were sent by the drawee bank. These showed the defendant's name and that he was an account holder of the account in question. The defence relied on *Bondina Ltd v Rollaway Shower Blinds Ltd*.⁵² but the primary judge found that they were not “helpful on the facts of this case”.

In the Court of Appeal, it was finally agreed that the provisions of s 33(1)(b) were sufficient but not necessary to avoid personal liability. It was further accepted that the presumption of s 75(2)(b) could apply since the appellant had not proved to the contrary that he did not intend to become personally liable. The decision thus turned on the sole issue of whether the Appellant came within the proviso of s 75, that is, whether it is apparent, on the face of the cheques, that the appellant did not sign them intending to become liable. It was held stating, ***“Commercial common sense clearly requires a finding that, on the face of these cheques, it was apparent that the appellant, as the sole signatory thereon, did not intend to become personally liable thereon.”***

3.2 English Law

The Companies Act, 1985 provides for certain safeguards for personal liability of Directors. Section 349.⁵³ If a company fails to comply with this section it is liable to

⁵² Supra Note 48

⁵³ Section 349 of the Companies Act 1985 provides as follows:

- (1) Every company shall have its name mentioned in legible characters -
- (a) In all business letters and order forms of the company,

a fine, as is any officer of the company who issues or authorizes such documents in which the company's name is not mentioned.

In *Heldon v. Adelman*⁵⁴ a cheque was drawn on behalf of Company “L & R Agencies Ltd.” The Cheque omitted the “&” and it was held that the directors were personally liable when the cheque was dishonored.

4. Bibliography

- Books Used:
 - *Taxmann's Guide to Negotiable Instruments act with special emphasis on Liability of Directors for Dishonor of Cheques*, (Taxmann Allied Services, New Delhi, 2003)
 - A. Ramaiya, *Guide to the Companies Act*, (Part I – Section 1 to

(b) In all its notices and other official publications,

(ba) on all its websites,

(c) In all bills of exchange, promissory notes, endorsements, cheques and orders for money or goods purporting to be signed by or on behalf of the company, and

(d) In all its bills of parcels, invoices, receipts and letters of credit.

The remaining three subsections of section 349 deals with the liability of the company and its officers if subsection (1) is breached.

⁵⁴Michael Griffiths, Peter Loose, David Impey, *The Company Director: Powers, Duties and Liabilities*, (Jordans, 2008 ISBN 1846610893, 9781846610899) available at http://books.google.co.in/books?id=XhPugCq6pO0C&source=gbs_summary_s&cad=0

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2. *Rajinder Steels ltd. Union of India* [2000] 100 Comp. Cas. 174 (Del)
3. *Smt. Ramawati Sharma v. Union of India* [2001] 107 Comp. Cas. 215 (All)
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6. *Mayuri Pulse Mills v. Union of India* [1996] Comp. Cas. 121 (Bom)
7. *Shri Ishar Alloy Steels Ltd. v. Jayaswals NECO Ltd.* MANU/SC/0121/2001
8. *Pankaj Mehra v. State of Maharashtra* MANU/SC/0089/2000
9. *Anil Hada v. Indian Acrylic Ltd.* MANU/SC/0736/1999
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11. *Krishnan Bai v. Arti Press* [1994] 80 Comp. Cas. 750 (Mad)
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13. *Jafferullah v. T. Stanes & Co.* [1994] 80 Comp. Cas. 759 (Mad)
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15. *Harbhajan Singh Kalra, Director Orion Auto & Steel Industries (Pvt.) Ltd. v. State of Haryana* 1992 Bank J 692
16. *Balakumaran Textiles Chennamal* [1994] 80 Comp. Cas. 905 (Ker)
17. *M.O.H. Iqbal v. M. Uthaman* [1995] 82 Comp. Cas. 726
18. *Alex v. Vijayan* [1994] 81 Comp. Cas. 910 (Ker)
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20. *M. Venkateshwara Rao v. Medaratmetla* MANU/AP/0307/1992

21. *Sheoratan Agarwal v. State of Madhya Pradesh* AIR 1984 SC 1824
22. *S.M.S. Pharmaceuticals Ltd. v. Neeta Bhalla and Anr.*
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23. *Ray Cylinders & Containers Ltd. v. Hindustan General Industries Ltd.*
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24. *Dr. Lakshmanaswami Mudaliar v. LIC* AIR 1963 SC 1185
25. *Nucor Wires Ltd. v. HMT International Ltd.* [1998] Comp. Cas. 850
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26. *O.P. Mehra v. Mansi Finance (Chennai) Ltd.* MANU/TN/0561/2001
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33. *Shanmugham v. Dr. Purushottam Lal* [2002] 109 Comp. Cas. 289
34. *Pankaj Mehra v. State of Maharashtra* [2000] 100 Comp. Cas. 917
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