

Alternate Modes Of Service For A Demand Notice Against A Dishonoured Cheque
written by Chandni Arora | September 8, 2020



Demand Notice For Dishonoured Cheques: All the Valid Modes of Service
While COVID-19 rages and ravages in the outdoors, there is also a great deal of turbulence indoors with the restricted functioning of courts, a necessary evil in such tumultuous times. However, to mitigate the adverse effects of the closure of courts, the Hon'ble Supreme Court of India vide order dated 23.03.2020 passed in *Suo Moto* (Civil) Writ Petition No. 3 of 2020 held that the period of limitation in all proceedings, irrespective of the limitation prescribed under the general law or special laws whether condonable or not shall stand extended with effect from 15.03.2020 till further orders passed by the Hon'ble Apex Court itself.

Since there were some lacunae in the order dated 23.03.2020, the *Suo Moto* Writ Petition was listed again several times and modifications were made. On 17.07.2020, the Hon'ble Supreme Court catapulted several steps forward with respect to the manner of service of notices including a statutory demand notice for the dishonour of cheque under Section 138 of the Negotiable Instruments Act, 1881. The Hon'ble Supreme Court allowed service through the modes of email, fax and commonly used instant messaging services (subject to service additionally through email when instant messaging services are utilized).

Demand notices under Section 138 till the present day always lay under a cloud of ambiguity with no clarity as to acceptability through email. Further, since the issuance of the same is a statutory prerequisite to the filing of a criminal complaint, legal professionals always prefer to walk the fail-safe path of service of a hard copy. Adding to that the lack of judicial precedent on service through electronic modes, there was not much scope for creativity.

Further, since service has to be effected through a notice issued within 30 days of dishonour of cheque, it led to many unscrupulous drawers of such dishonoured cheques to simply evade service through clever and conniving means for a short period of one month and they were free from the criminal liability associated with the Negotiable Instruments Act, 1881. While this issue of evasion of service has been addressed and discussed in plenty of judgments and certain safeguards granted, no concrete resolution came to the fore.

It is further worthwhile to discuss here that newer legislations such as the

Insolvency & Bankruptcy Code, 2016 wherein service of demand notice is also a statutory requirement, specify the various modes through which service can be affected. The same includes email as well even going to the extent that it is specified who the valid recipients of the email would be in order to deem completion of valid service. However, no amendments were made to the Negotiable Instruments Act, 1881 to include service through alternative modes.

Since the advent of modern technology and easy accessibility, it made no logical sense that service through electronic means would be rendered invalid even before the direction of the Hon'ble Apex Court. As there is a strict timeline for completion of the service of demand notice in the case of a dishonoured cheque, it also seems unreasonable that the intention of the legislators was to restrict the timeline further by half a day i.e. till the end of the working day of the nearest post office.

A 30-days timeline indicates that the aggrieved party should be granted an opportunity until the end of the 30th day by the clock to safeguard its rights and interests against the criminal breach by the accused.

While through a legal fiction, the dishonour of cheque has been fastened with criminal liability in effect, any interpretation which would restrict the service of notice to exclusively through a physical mode would render the remedy practically ineffective. In support of the above comes the Information Technology Act, 2000 which was enacted with the purpose of granting legal recognition to transactions carried out through electronic modes. It would not be remiss here to refer to Section 4 of the IT Act which reads as below: *Legal recognition of electronic records.—Where any law provides that information or any other matter shall be in writing or in the typewritten or printed form, then, notwithstanding anything contained in such law, such requirement shall be deemed to have been satisfied if such information or matter is—*

(a) rendered or made available in an electronic form; and

(b) accessible so as to be usable for a subsequent reference.

While the above section seemingly provides a blanket allowance to all written legal communications, the same is to be read in consonance with the First Schedule to the Act which specifies the documents or transactions to which the IT Act will not apply. The said Schedule clearly states that the Act does not apply to "A negotiable instrument (other than a cheque) as defined in section 13 of the Negotiable Instruments Act, 1881 (26 of 1881)". The above leads to the conclusion that the provisions of the IT Act would apply to cheques and hence legal action be initiated in respect of dishonour of cheque.

In light of the above-detailed facts and circumstances, it is amply clear that the intention of the legislature was never to restrict the service of demand notices for the dishonour of cheques to only physical modes. But due to the lack of an explicit amendment in the Negotiable Instruments Act, 1881 it has been a trend in the legal community to take the conservative route. Since Section 138 imputes criminal liability upon the issuer of the cheque for dishonour, in a cost-benefit analysis the fear of improper service leading to the dismissal of the criminal complaint rides high and hence, the provisions of the Information Technology Act, 2000 have not been taken advantage off. The decision of the Supreme Court is thus a gust of fresh air and a much-needed leap for cheque dishonour complaints to keep up with the

fast-changing times and will increase the effectiveness of the remedy thereby rendering greater justice.

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