

Smt Nirmala Sitharaman
Hon'ble Minister of Finance
Government of India
North Block
New Delhi

Respected Madam,

The Clothing Manufacturers Association of India (CMAI), is the country largest (close to 4,000 manufacturers and 20,000 Retailers as our members) association representing the Domestic Garment Industry. It is also one of the oldest Association of the Industry, having been established in 1963.

From time to time during these 6 decades, CMAI has acted as the catalyst to convey the views, the problems, and the recommendations of the Industry to the Government, and has established a strong reputation of being a balanced, reasonable, and authentic voice of the Industry.

On behalf of the members of the Domestic Garment Industry of India, CMAI would like to express our utter shock and dismay at some recent Media Reports, which suggest that the Government is considering decriminalization of Dishonoring of Cheques under Sec. 138.

Madam, you are aware that one of the fall outs of the current COVID 19 Pandemic is the economic crisis that is likely to follow. An inevitable part of this crisis will be the inability of businessmen to stick to their financial commitments, which would include the honoring of Cheques issued by them.

Even in normal business circumstances, if there was one deterrent to dishonoring of Cheques, it was the possibility of the affected party issuing a notice under Sec. 138 of the Negotiable Instruments Act, and the fear of being charged for a criminal offence.

However, we are shocked and pained to read Media Reports that the Government is considering decriminalizing this Section, as this Section in its present form has always worked as the biggest support for our members and equally for our investors, creditors, traders and honest businessmen.

We strongly believe that with the decriminalization of dishonoring of Cheques, you will be opening the floodgates of rampant and blatant misuse of this misconduct, especially with payments to MSME Vendors. It will be one more nail in the coffin for several small businesses, who are today fighting to survive the massive impact of the Economic shutdown of the past few months, and the lasting effect it will have in the coming 12 months.

We would like you to understand that the small MSME members will be left helpless in the hands of unscrupulous businessmen, who will simply play around with the business health of the MSME Vendors – by luring them with the safety of a post-dated Cheque and then leaving them defenseless by dishonoring their Cheques.

.....2/-

THE CLOTHING MANUFACTURERS ASSOCIATION OF INDIA

901, Naman Midtown, 'A' Wing, Behind Kamgar Kala Kendra, Senapati Bapat Marg, Prabhadevi (West),
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We strongly protest against this uncalled for and entirely unnecessary step, and urge you to reconsider your decision and take into account the following:

1. This totally unjustifiable move will choke and strangle the business and investments especially in coming times of post Covid Pandemic, and the consequences will be beyond imagination.
2. The Garment industry works almost wholly on extended credit terms, ranging from 90 days to 180 days. These are normal and well accepted trade terms, and most of this credit is extended on the basis of ISSUANCE OF POST DATED CHEQUE/S payable after 90 to 180 days. The risk of selling goods on credit is possible only because of effective, efficacious and deterrent remedy provided under law by virtue of Section 138 of the Negotiable Instruments Act. The said provision acts as boon for our members. In the event of decriminalization of this Act, the entire sanctity of the transaction will be lost, and the entire chain of business would come to standstill.
3. This Act has stood the test of time and achieved the objects it has sought to achieve in bringing trust, confidence, faith and assurance that in case of failure to pay the dishonored Cheque amount the deterrent provisions of Section 138 will take its own course. The provisions of Section 138 instilled hope in our members, individuals and business community and helped to generate economic as well as business growth.
4. The proposed Decriminalization of Section 138 of the Negotiable Instruments Act is likely to encourage the mischievous offenders having criminal tendency to issue Cheques in commercial transactions casually without realizing or worrying about the consequences of dishonor of such Cheques.
5. In order to carry out the legislative object of the provisions of the Section 138, it is absolutely just proper and reasonable to give it more teeth, make it more stringent, further deterrent and scrap the proposed move to Decriminalization of Section 138 of the Negotiable Instruments Act and to set an example in the minds of such offenders to prove the commission of such offences in future.
6. This deterrent is all the more required in present times when financial stability will in any case be impacted, and misuse is likely to be rampant.
7. The proposed Decriminalization will cause enormous suffering and hardship on investors, traders and businessman at large who would lose hopes in the judicial and democratic system and which will eventually encourage them to resort to old modes of recovery. The proposed Decriminalization will erode public and investor confidence since the entire settled business and trade cycle which works on post-dated cheques will be totally hampered.
8. The current law itself protects the interest of honest and bona-fide Drawers /Defaulters at different stages which are as under :

.....3/-

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i] **Section 138(c)** in the Negotiable Instruments Act contemplates issuance of statutory notice before taking any action where the drawer or defaulter is called upon and has the opportunity to arrange the payment of the amount covered by the cheque. It is only when the drawer despite such a notice and the opportunity to make the payment within the time stipulated under the statute does not pay the amount that the dishonour would be considered a dishonour constituting an offence under Section 138 of Negotiable Instruments Act will come into play, hence punishable.

ii] Furthermore to protect the interest of honest and bona-fide drawers **Hon'ble Supreme Court has in 3 Judge Bench Judgement in the matter of C. C. Alavi Haji vs. Palapetty Muhammed, reported in (2007) 6 SCC 555 held as under:**

..... Any drawer who claims that he did not receive the notice sent by post, can, within 15 days of receipt of summons from the court in respect of the complaint under Section 138 of the Act, make payment of the cheque amount and submit to the Court that he had made payment within 15 days of receipt of summons (by receiving a copy of complaint with the summons) and, therefore, the complaint is liable to be rejected."

9. Thus the Drawer of Cheque always have been given a choice to make payment upon demand thereby avoiding being prosecuted.

10. **Many of our members already have civil decrees in their favour but are not able to execute the same in absence of any attachable and unencumbered property in the name of the defaulter. For years together the same are lying idle returned unexecuted on account of obvious reasons.**

Madam, we strongly feel that today is in fact the time to make the provisions of Sec. 138 even stronger, so as to deter mischievous businessmen from taking advantage of the current economic crisis – failing which, the smaller Manufacturers, members of the MSME Sector, will have hardly any recourse to such cheating by their customers, who will issue cheques and then dishonor them with impunity.

Instead of protecting our rights this will completely demolish our rights and we will be left without any efficacious remedy since provisions of Sec. 138 will be not as effective as it needs to be.

We would like to bring to your notice that efforts to defeat the objectives of Section 138 of the Negotiable Instruments Act by the proposed Decriminalization are vehemently opposed by the Industry, and it will certainly affect smooth and healthy commercial activities, ultimately affecting the economy of the country particularly post COVID19.

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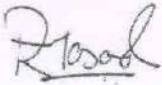
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The Clothing Manufacturers Association of India (CMAI), whose Membership largely consists of Small and Medium sized Manufacturers, strongly urge you not to implement such a move of decriminalizing the dishonoring of Cheques.

With Respectful Regards,

Yours Sincerely,

A handwritten signature in black ink, appearing to read 'Rajesh Masand', is written over a light blue circular stamp.

Rajesh Masand
Vice President

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