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L.L.B Part- 1st

Subject- Banking Law

Paper- 8th

Date- 24/12/2020

Topic- What are the duties of Banker towards his customer? When Banker is in a position to disclose the customer's affairs.

Duties of Banker towards his customer

The relationship that arises between banker and customer, in conducting, various businesses involve certain obligations and rights on the banker as well as the customer.

1. Obligation to Pay Cheques

It is a statutory obligation of the bank, having sufficient funds of the customer to pay cheques duly drawn and presented. A bank will be forced to compensate the customer for any loss or damage caused by its default. The bank's liability for wrongful dishonor of cheque is of serious nature. The bank will be forced to pay exemplary damage to the customer. However, bank may refuse payment of a cheque for reasons such as

- i. Insufficient funds in the account
- ii. Cheque is not properly drawn
- iii. Cheque is stale (presented after stipulated date)
- iv. Cheque is crossed but presented for cash
- v. Cheque is received after receipt of notice of death, insolvency or lunacy of the drawer of the cheque.

So also, when instructions are received from the drawer to stop the payment of cheque or when attachment / garnishee order is received from a competent authority, payment can be refused. If the drawer's signature differs, bank can refuse payment and also when the amount of the cheque differs in words and figures.

2. Secrecy

It is one of the principal duties of the banker to maintain complete secrecy of the status of customer's account and failure to do so will make the bank to compensate the customer for any damage or loss suffered. However, a bank is justified in making disclosure, under the due process of law or under express or implied consent of the customer.

Disclosure in the bank's interest is permitted. So also it is an accepted custom among the bankers to disclose certain information to a fellow banker on written request. While disclosing information to others, only bare facts should be revealed and not any comments and conclusions on the matter. The disclosing bank should indicate to the other bank that in turn it should maintain secrecy.

3. Banker's Lien

Lien generally is the right of the creditor to retain possession of the goods and securities owned by the debtor until the debt is repaid. It however, does not vest the right to sell the goods. But the banker's lien has a wider connotation. It is an implied pledge.

The bank has the right to sell the subject matter in possession in the ordinary course of business as a banker, and adjust the unpaid debt. Lien may be a general or particular lien. General lien empowers the bank to retain all movables in its possession but particular lien gives the right to retain the goods or property connected with particular debt.

Banker's general lien is not applicable to safe custody articles, documents / money deposited for specific purpose and securities / valuables left through oversight.

4. Mandate

The account holder alone has the right to operate his account with the bank. No person other than the account holder can order the bank to debit the account. But the account holder can give mandate or a power of attorney to another person to operate his account.

A mandate is an authority given by the account holder in favour of a third person. This is issued by an account holder with a direction to his banker authorizing third person to operate the account. It is unstamped letter signed by the customer.

5. Power of Attorney

It is a document executed by the donor or principal in favour of donee or agent to act on behalf of the former as per authority given in the document. The following points must be taken into consideration by the banker while accepting power of attorney issued by the customer.

There are two types of power of attorney.

1. Special Power, and
2. General Power.

While the special power of attorney is given for a specific purpose, the other one covers many activities. Power to sign the cheque, stop payment, signing loan documents when given to Power of Attorney holder, the donor is ultimately liable to pay the loan amount. It is a stamped document. The original power of attorney should be perused and a copy should be obtained and filed with the Bank. The donor can withdraw or cancel the Power of Attorney at any time.

6. Circumstances Leading to Closure of Accounts

The relationship between the banker and the customer is established by mutual agreement open and operate the account. This relationship may be terminated at anytime by either party by closing the accounts. In fact, the banker-customer relationship imposes an implied obligation on

the banker not to close the account of the customer except in extraordinary case supported by indisputable reasons.

In other words, the banker should carefully examine the issue before closing the customer's account and unless there are justifiable reasons, it should not close the accounts of the customer.

7. Loans and Advances

As already said, the Bank deposits are used for lending or investment or both. In addition, bank handles purchase and sale of foreign currencies and also lends for import and export trade. The commercial banks lend money by way of overdrafts, demand loans, cash credit, or by way of purchase or discounting of bills of exchange or hundies, for the purpose of financing trade, commerce, industrial or any other business activity.

Lending by the banks is mostly against security such as goods, book debts, land and buildings, livestock, share, securities etc. When the advance is given against such security, it is termed as a secured advance and in cases where the advance is not backed by any security, it is classified as unsecured or clean advance.

When Banker is in a position to disclose the customer's affairs

A banker is under statutory obligation to disclose the information relating to his customer's account when the law specially requires him to do so. The provisions are:

(i) Under the Income- Tax Act, 1961. According to Section 131, the income tax authorities possess the same powers as are vested in a Court under the Code of Civil Procedure, 1908, for enforcing the attendance of any person including any officer of banking company or any officer thereof, to furnish information in relation to such points or matters, as in the opinion of the income-tax authorities will be useful for or relevant to any proceedings under the Act.

(ii) Under the Companies Act, 1956. When the Central Government appoints an Inspector or to investigate the affairs of any joint stock company under Section 235 or 237 of the Companies Act, 1956, it shall be the duty of all officers and other employees and agents (including the bankers) of the company to-

(iii) By order of the Court under the Banker's Books Evidence Act, 1891. When the court orders the banker to disclose information relating to a customer's account, the banker is bound to do so. In order to avoid the inconvenience likely to be caused to the bankers from attending the Courts and producing their account books as evidence, the Banker's Books Evidence Act, 1891, provides that certified copies of the entries in the banker's book are to be treated as sufficient evidence and production of the books in the Courts cannot be forced upon the bankers. (iv) Under the Reserve Bank of India Act, 1934. The Reserve Bank of India collects credit information from the banking companies and also furnishes consolidated credit information from the banking company. Every banking company is under a statutory obligation under Section 45-B of the Reserve Bank.

(v) Under the Banking Regulation Act, 1949. Under Section 26, every banking company is required to submit a return annually of all such accounts in India which have not been operated upon for 10 years. Banks are required to give particulars of the deposits standing to the credit of each such account.

(vi) Under the Gift Tax Act, 1958. Section 36 of the Gifts Tax Act, 1958, confers on the Gift Tax authorities powers similar to those conferred on Income- Tax authorities under Section 131 of the Income Tax Act.

(vii) Disclosure to Police. Under Section 94 (3) of the Criminal Procedure Code, the banker is not exempted from producing the account books before the police. The police officers conducting an investigation may also inspect the banker's books for the purpose of such investigations (section 5. Banker's Books Evidence Act).

(viii) Under the Foreign Exchange Management Act, 1999, under section 10. Banking companies dealing in foreign exchange business are designated as 'authorized persons' in foreign exchange. Section 36, 37 and 38 of this Act empowers the officer of the Directorate of Enforcement and the Reserve Bank to investigate any contravention under the Act.

(ix) Under the Industrial Development Bank of India Act, 1964. After the insertion of sub-section 1A in Section 29 of this Act in 1975, the Industrial Development Bank of India is authorized to collect from or furnish to the Central Government, the State Bank, any subsidiary bank, nationalized bank or other scheduled bank, State Co-operative Bank, State Financial Corporation credit .

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