

FUND TRANSFER MECHANISM IN CYBER LAW*By***—S.M. HUSSAIN, Advocate****B.Sc., B.Ed., L.L.M., C.A., L.L.B., P.G., Dip., I.R.P.M. & I.T.
Hyderabad, A.P.*****I. Introduction***

i. The fund transfer in the Banking Industry was traditionally a paper based and through paper instruments like Cheques, Demand Drafts, Mail Transfer, Telegraphic Transfers and Pay Orders *etc.*, and were prone to the frauds despite issued under the Joint Signatures and all the forms are treated as security forms and kept under the safe custody of an Authorized Officer.

ii. No doubt the use of computer and communication technology in payment systems is relatively new phenomenon. Telegraphic Transfer of funds was the only popular mode of paperless fund transfer in payment system. A true e-payment system allows for the exchange of valuable consideration between individuals without the need for physical interface. Indeed a good example of an e-payment system in place for many years is a credit card which can be used to order goods and services over the telephone.

iii. An EFT, payment is effected communication of electronically transmitted message to his bank by a customer of a bank or a bank to another bank. The bank to which message is sent assumed an obligation to the beneficiary by creating the beneficiary's account with the amount directed to be paid. Unlike in the case of a paper based fund transfer, beneficiary's bank assumes a liability not on the strength of the funds paid to transmitting over a communication network without the use of paper based instruments/vouchers. This is an electronic clearing system which can accept credit card entries and transaction cards or debit cards, ATM cards and charge cards.

iv. The Electronic Funds Transfer are payment messages transmitted either through magnetic material such a magnetic tapes, disks or cassettes or through purely electronic media such as telephone, telex and electronic transmission between computers or between terminal and a terminal.

The speed is the first and foremost distinguishing character which distinguishes an EFT from any paper based system of payment. In a paper based transaction, the instructions and undertakings re-expressed in words and figures and any authenticated by a signature identifying a party giving the payment message. The message cannot be erased without his fact appearing on the face of the documents. The delivery of the payment message usually takes a significant period of time. The electronic payment system, the message of payment is expressed in a company code. The signature is replaced by an electronic key designed to authenticate the message. The message on tape, disk *etc.*, may in the absence of security measures be erased or transferred to other magnetic material without this fact being discoverable from an examination of the medium.

Thus the Information Technology is no longer a matter of choice. The question no longer is whether you would be computerized or not. Those who do not use IT will be out of business. The need of the hour is to use the modern means of communication. What is more important from the banking point of view is that the use of Information Technology could produce tremendous results, speed up processes and eventually reduce costs. Banking and Financial Services industry is changing rapidly and the

winners in the financial market place will be those that adopt new technology. Information Technology will be used not only as a channel to reach new and existing customers, but also to provide a structured framework for an efficient and profitable business.

The opening of the economy and competition have forced banks and financial institutions to try and cut operational costs and to manage more information to re-engineer their business process.

The online revolution : Online is the buzzword today touching all facets of an enterprise – not only the way transactions are made and processed but also the way messages are sent and received, data is managed and protected, systems are monitored and maintained and information is gathered, analyzed and put to use.

Internet Banking and e-commerce : These are the days of Internet banking and e-commerce activities, wherein IT has greatly influenced and entire banking and financial sector in a very big way. The Internet offers the potential for safe, convenient new ways to shop for financial services and conduct banking business, any day and any time.

Payment systems can be subject to a range of risks, including :

Credit Risk : the risk that a party within the system will be unable fully to meet its financial obligations within the system currently or at any time in the future.

Liquidity Risk : the risk that a party within the system will have insufficient funds to meet financial obligations within the system.

Legal Risk : the risk that a poor legal framework or legal uncertainties will cause or exacerbate credit or liquidity risks;

Operational Risk : the risk that operational factors such as technical malfunctions or

operational mistakes will cause or credit or liquidity risks.

The core principles for payment system :

- * The system should have a well-founded legal basis under all relevant jurisdictions.
- * The system's rules and procedures should enable participants to have a clear understanding to the system's impact on each of the financial risks they incur through participants in it.
- * The system should have clearly defined procedures for the management of credit risks and liquidity risks, which specify the respective responsibilities of the system operator and the participants.
- * The system should provide prompt final settlement on the day of value, preferably during the day or by the end of the day.
- * The system should provide a means of making payments which is practical for its users and efficient for the economy.
- * The system's governance arrangements should be effective, accountable and transparent too.

The following instruments used in respect of Funds Transfer in Banking Industry in Cyber Law

I. National Electronics Funds Transfer System (NEFT)

The NEFT facilitate and for an efficient, secure, economical, reliable and expeditious system of funds transfer between banks in the banking sector using structured Financial Messaging Solution (SFMS) backbone.

II. Real Time Gross Settlement – RTGS – It operates as 'a gross settlement system in which both processing and final

settlements of funds transfer instructions can take place continuously (*i.e.* in real time)'.

III. Online Banking

The range of services available through electronic banking is growing and is likely only to grow further. The trend towards both replacing paper documentation and encouraging online banking services can only increase in pace. The majority of transactions taking place currently through online or Internet banking are business-to-business (B2B)/customer-to-banks (C2B).

IV. Online payment services

Online payment services provide a compelling alternative to traditional payment methods. These services make paying online quicker and more secure than sending paper checks or cash, since they use electronic fund transfers to settle transactions.

V. Credit/Debit Cards :

The majority of online business-to-customer transactions are currently effected by credit or debit card payments. The consumer inputs his credit card details onto an online form, which is then transmitted to the Website offering goods and services over the Internet.

Main Factors Pros and Cons of Application of Cyber Law in Fund Transfer :

- (a) *Time* : The advantage is clearly felt when compared with slow and laborious methods of drafts, telegraphic transfers *etc.*, used in the traditional methods of transfer. The fund transfer are effected in a click of the mouse of a computer and it paves the way towards the growth in the traditional commerce as well as in e-commerce too.
- (b) *Accuracy* : It is more accurate as it is done on online through devices relating

to Internet when compared with the traditional methods of fund transfer on paper through telegraphic transfers *etc.*, where in the errors in coding and decoding while transmission of the message through telegram *etc.*, were used.

- (c) *Frauds* : In the past, frauds, were committed in Demand Drafts, Mail Transfers and telegraphic transfers in many ways. Say use of stolen forms, obtaining payment on the counterfeit drafts *etc.* No doubt, majority of the frauds are committed by the criminal with the connivance of the bank staff. A strong vigilance system has been introduced in banking industry and the methods adopted are (1) preventive (2) Detective and (3) Punitive. However due to the application of Cyber Law, the impact of frauds are comparatively less when compared with traditional methods of funds transfer in Banking Industry but the unexpected pitfalls in any system cannot be ruled out.
- (d) *Legal Risk* : In cases of traditional off time methods of Fund Transfer a well established and defined Acts like N.I. Act, Evidence Act, and Indian Contract Act, *etc.*, were very much in handy to the bankers and Judiciary. However the new medium, does not distinguish the behaviour of human being between good and evil, between National and International and between just and unjust.

Conclusion and Suggestions

1. *Technology relating to payment system in India* : The use of computer and communication technology in payment system is relatively new phenomenon and need stabilization in the country. Today, computer and Internet influence almost every aspect of life of the citizens and information and computers

are the driving force and there is hardly any activity which is not some way or the other dependent on Computers/Information Technology.

2. There is hardly any human activity that is not touched by Internet and its use only increase and never diminishes in future and also internet is increasingly being used for communication, commerce, advertising, banking, education, research and entertainment. Hence the cyber space has in fact become the most happening place today.

In India I.T. Act, 2000 has already been in force, progressively paving the way for e-commerce environment, environment and various instruments dealing with EFT. The adaptation by the citizens at large in the country offering chances for the use as well as misuse of the same is wide. In this contest the role of experts comes into being to curb misuse and encourage proper use of Information Technology if necessary by evolving various regulations including legislation also.

Suggestions :

- (i) the existing legal framework on most of the regulatory and consumer interest issues are inadequate in regard to evidence and investigation issues. As such a comprehensive legislation even though it is slow covering all aspects of the issues is necessary *i.e.* for computer misuse, protection of personal data *etc.*

- (ii) In case of the Inter bank settlement of funds service provided by Reserve Bank of India it needs an appropriate clearing and settlement system for minimizing the risks and ensuring efficiency.

- (iii) The settlement procedure should be self-insuring by eliminating overdrafts, time gap between the point of time at which the party's account is credited and the point of time of settlement between the banks should be minimized.

- (iv) No doubt EFT operations should ensure that the design of the system is in conformity with accepted technical standards, proper certification should be obtained to safety and security by the system provider.

- (v) ***Dispute Resolutions :*** The existing ombudsman scheme need to be strengthened by appointing a qualified ombudsman in resolution of Electronic Fund Transfer disputes. The customer should not be made to be engaged in multi-party litigations instead the sending bank alone should be made answerable and however the sending bank may seek redressal from the other participant at fault.

- (vi) A specific provision empowering the regulator to ensure standards in the system design and operations of the system should be evolved to fix liability for computer hardware or software failures.