

UNIT-4

Unpaid Seller

According to section 45(i) an unpaid seller is

- (i) Seller who has immediate right to take action for price of goods How ever haven't received whole price.
- (ii) when he received bills of exchange or promissory note or any negotiable instrument However when presented, got dishonoured.

* Unpaid Seller's right:-

Right against goods

when property in goods has passed to buyer.

(i) Seller's lien:-

Also known as possessory lien, that can be exercised by seller.

- 1) Where goods are sold without credit (cash sale).
- 2) Goods are sold for credit but term expired.
- 3) buyer is insolvent.

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* Lien can be Terminated :-

- (i) where goods are delivered to carrier without reserving right.
- (ii) when buyer/agent obtains possessions
- (iii) By waiver
- (iv) By estoppel

* Right of stoppage in transit :-

This right is exercised only when following condition are satisfied:

- (i) Seller must be unpaid
- (ii) He must have transfer goods to carrier
- (iii) Goods in transit buyer became insolvent
- (iv) Right as per act.

* When transit comes to an end :-

- (i) when buyer or his agent obtains delivery
- (ii) Buyer obtains delivery before arrival of goods.
- (iii) Carrier acknowledge buyer about holding goods.

- (iv) If carrier wrongfully refuses to deliver goods.
- (v) Goods are delivered to carrier hired by buyer.
- (vi) Goods delivered to ship chartered by buyer.

Sec 53: Effect of sub-sale or pledge by buyer

Right of lien, stoppage in transit shall not get affected by buyer selling or pledging unless assented to it.

→ However, Rights get affected once document of title transferred.

* Right of Resale :- Sec 54

- (i) If goods are perishable:-
Seller need not inform buyer about resale.
- (ii) If goods are non-perishable:-
Seller shall give notice to buyer about intension of resale. If seller fails to give notice then:

Loss of resale shall be borne by seller & profit needs to be transferred to buyer. However if notice is given.

loss will be borne by buyer & profit will be taken by seller.

(iii)

If property in goods are not passed to buyer:

all other rights remain same except one abolition right i.e.

• Right of withholding:

This is similar to lien & known as **Quasi Lien**.

* Rights to unpaid seller Against buyer:

1- **Suit for price [Section 55]**

Unpaid seller can sue buyer for not paying price of goods sold.

2- **Suit for damages for non acceptance [Section 56]**

where buyer wrongfully denies to accept goods. seller may sue him for damages.

3- **Repudiation of contract before due date [Section 60]**

Seller may sue buyer for damages of anticipatory breach.

4- Suit for interest:

Seller may sue buyer for interest due from goods price that are yet to be delivered.

* Right of buyer:

1. Damages for non Delivery
Suit for specific performance
Suit for breach of warranty
Suit for anticipatory breach
Suit for interest.

* Auction Sale

mode of selling property by inviting bidders publically

1. where goods are sold in lots:
→ Separate contracts are created.
2. Completion of the contract of sale:
→ Sale is complete when announces its completion by fall of hammer.
3. Right to bid may be reserved:
4. where sale not notified by seller:
→ It is unlawful for seller to bid himself or to employee any person.

5- Reserved Price:-

6- Pretended bidding:-

→ Sale is voidable at option of buyer

7- Change in tax rates:-

If increases before sale but after agreement to sale.

→ buyer shall pay higher tax.

• If Decreases: Buyer shall pay lower tax

"here tax means GST"