

PRESIDENT'S SECRETARIAT (PUBLIC)
AIWAN-E-SADR

Rep.No.113/BM/2022
Date of Decision:31.01.2023

JS Bank Ltd Vs Hasnain Mehmood

Subject: REPRESENTATION FILED BY JS BANK LTD AGAINST THE ORDER OF THE LEARNED BANKING MOHTASIB DATED 21.04.2022 IN COMPLAINT NO. 2020-1054

Kindly refer to your representation on the above subject addressed to the President in the background mentioned below:-

This representation has been filed by JS Bank Ltd on 22.05.2022 against the order of the learned Banking Mohtasib dated 21.04.2022, whereby it has been held that:

“In view of above, I, under the Powers vested in me vide Section 82D of the BCO read with Section 9 of Federal Ombudsman Institutional Reform Act 2013, allow the complainant and direct the Bank to pay / credit the complainant's account with Rs. 675,770/- within 15 days from the date of issue of this order and report compliance.”

2. Mr. Hasnain Mehmood (the complainant) has been maintaining his account with the Bank's Bahadurabad Branch, Karachi and holding its Credit Card. Reportedly, when he received his Card's bill from the Bank on 4th May 2019, he found 14 unauthorised transactions billed to him. Therefore, he immediately contacted the Customer Support Centre of the Bank to inform the same. The Bank had blocked his Credit Card temporarily and asked him to file a written complaint which he did. However, the Bank in its response, after undertaking the investigation, informed him that the disputed transactions were not unauthorised on premise that he was a Travel Agent and those transactions were executed on airline and hotel bookings. Whereas, according to his own investigation, his name was used in case of one transaction for M/s Serene Air, which was utilized by Mr. Kamran Mehmood, whereas the bill was charged on his Card. However, the Bank informed him that since the Merchants were 3D Secure, therefore, evidences of the receipts were not available/provided by the Merchants. Allegedly, the Bank just wanted to decline the dispute by stating that SMSs alert were sent for each transaction, and he didn't inform the Bank about the unauthorised transactions upon execution. Furthermore, at the time of the transactions, he was travelling overseas (7th April till 29th April 2019, copy of the Passport provided) and therefore, he didn't receive any SMS alerts. Although, he did his best but the Bank failed to resolve his grievances. Thus, he escalated his complaint with the learned Banking Mohtasib for retrieval of his defrauded amount.

3. The Bank's stance before the learned Banking Mohtasib was that no fraudulent transaction was found against his Credit Card ("CC") account. As the complainant was running M/s Mona Travels Agency and was availing CC Facility since March 2019. The Fraud Risk Management Unit (FRMU) Report pointed out that disputed transactions were carried out from his Visa CC after appropriate verification at the Merchant. Further, SMS Logs were also retrieved and found that notifications for each transaction (including disputed ones) was sent to the customer's registered mobile phone. However, he did not raise the dispute at the time of transactions conducted from April 9 till April 23, 2019 but after 11 days. Additionally, his Card was used for Point of Sale (POS) and e-Commerce

Merchants (Khaadi, Food Panda etc) during the days when he was outside the country, which confirmed that he shared his Card with someone close in his family, thus, his CC credentials were compromised. Further, the disputed transactions were conducted under 3D Secure Mode. However, OTPs were not generated, since the Bank did not have this function operative and the Bank was Non-3D Secure compliant. The Bank did not have any Charge Back Rights as the Merchants were 3D Secure, and had declined the dispute since valid SMS against the disputed transactions were sent, and no dispute was raised by him, which was only raised after 11 days of the transactions execution date.

4. Considering the respective stances, the learned Banking Mohtasib proceeded to pass the above mentioned order which is assailed by the Bank.

5. The hearing of the case was fixed for 17.1.2023. Malik Siddique Awan, Advocate has represented the Bank, whereas, the complainant has not appeared despite notice. Needless to mention that Section 15 of the Federal Ombudsman Institutional Reforms Act, 2013 empowers the decision of a representation on the basis of available record without personal hearing of the parties.

6. The learned Banking Mohtasib thrashed the matter vide paras 7 to 11 of the order as follows:-

“7. During the days when disputed transactions were executed (between 9th April 2019 till 23rd April 2019, except one transaction on 3rd May, 2019), customer was not in Pakistan. As per Passport Copy he travelled from 7th Apr 2019 till 29th April 2019.

8. The Bank did not implement control mechanism of generation of OTP (Bank was non 3DS compliant) for the successful execution of the e-commerce transactions on 3DS merchant. In the absence of execution of transaction without OTP on 3DS compliant, merchant absolve the Bank's right to raise any charge back.

9. The Bank was found non compliant of instructions and circulars issued by the SBP which has not only exposed the Bank to fines and penalties but also exposed its customers (including the Complainant) to various risks and fraudulent activities. The instructions with which the Bank was found non compliant are:

a. PSD Circular No. 03 of 2015 dated October 21, 2015:-

- i. Clause 2.2.1(b) "In order to authenticate customers who use Internet Banking products and services, the Bank shall implement at least Two Factor Authentication (2FA) such as Passwords (1 factor) and One time tokens, Dongles etc (2nd factor)". (The Bank, in this case, has admitted that OTP function was not available in the Bank at the time disputed transactions were executed).*
- ii. Clause 3a "An explanation of liabilities, roles and responsibilities of bank as well as its customers for using Internet Banking products and services offered by the Bank".) The Bank did not spread awareness to its user that the Bank does not have function of OTP and risk associated with non availability of this function.*

b. PSD Circular No. 05 of 2016 dated June 10, 2016:-

i. Clause 4.2 (b) "CSPs shall implement authentication measures like Two/Three Factor authentication etc for Payment Card transactions to authenticate the identity of cardholders and to cater the non-repudiation risk". The circular defines (definition 14) Two Factor authentication as follows:

"A combination of two different factors of authentication among three known factor; something the user knows, something the user, has and something the user is"

ii. Clause 5(a) CSPs shall develop and implement a formal consumer awareness program regarding safe usage of Payment Card and New Payments Methods (NPM), while highlighting risks and frauds associated with them". The Bank did not spread awareness to its customer that the Bank is non 3DS compliant and function of OTP is not available which exposes the customers to certain associated risk.

10. The Bank's stance that, SMS alerts were sent to the Complainant post transaction, does not absolve them from non-compliance of SBP directives. SMS, only reflects information mechanism of transaction executed and not the control mechanism for avoiding unauthorized transactions. The Bank failed to provide any evidence that they have advised complainant the risk of transactions being successful without OTP and that JS Bank is not in compliance with SBP directives.

11. Thus in view of the above facts, the Bank has rendered itself non-compliant with the above mentioned circulars, as a result of which the complainant has sustained the loss."

These are findings arrived at on due consideration of the record and no cavil could be found with such an approach to the matter.

7. The contention of the petitioner Bank is that the learned Banking Mohtasib is precluded from exercising judicial powers in such like matters on the strength of the judgment in UBL vs Federation of Pakistan 2018 CLD 1152. Suffice it to observe that this matter is already subjudice before the Honourable Supreme Court of Pakistan in view of conflict of opinions about this issue, inter se, the various High Courts of the country and whatever will be the decision by the Apex Court, the same will hold the field. Be that as it may there is no restraining order of the Honourable Supreme Court of Pakistan for non-entertaining the complaints by the learned Banking Mohtasib who is thus dealing with such matters in accordance with the law.

8. The ambit and extent of jurisdiction of Banking Mohtasib is spelt out under Section 82A(3)(a)(e), Section 82B (4)(5) and Section 82F of the Banking Companies Ordinance, 1962. The cumulative reading and perusal of these provisions of law undoubtedly leads to the conclusion that the Banking Mohtasib is to inquire into the complaints about banking malpractices, maladministration, wrong doings, the fraudulent transactions, the corrupt and malafide practices by the Bank officials and pass appropriate orders on conclusion of inquiry. These powers of the Banking Mohtasib when considered in context with Sections 18 and 24 of the Federal Ombudsmen Institutional Reforms Act, 2013 further show that in matters falling within the jurisdiction of the Banking Mohtasib, the

jurisdiction of other courts or authorities is excluded; and the provisions of Act 2013 have the prevalence.

9. The Bank was given ample opportunity to controvert the claim of the complainant and the findings of the learned Banking Mohtasib, the Bank, however, failed to discharge the burden and statutory liability cast upon it under the law. Hence, no justification has been made to interfere with the order of the learned Banking Mohtasib. The Representation of the Bank is devoid of any merit and deserves to be rejected.

10. In view of above position, suffice it to observe that the Bank had miserably failed to implement the control mechanism of generating One Time Password (OTP) rendering itself as non-3D Secure for successful execution of e-Commerce Transactions on 3D Secure Merchants. According to Regulations, a non-3D Secure Bank cannot raise the Charge Back Rights with a 3D Secure Merchant. Thus, owing to the Bank's non-compliance of the Regulations, the complainant has to sustain loss. In such circumstances, the order of the learned Banking Mohtasib is based on valid reasoning which calls for no interference. Thus, the representation is liable to be rejected accordingly.

11. Accordingly, the Hon'ble President, as per his decision above, has been pleased to reject the representation of the Bank.

-Sd-
(Anwar-ul-Haq)
Director General (Legal)

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- (2) Master file.

-Sd-
(Anwar-ul-Haq)
Director General (Legal)