

**PRESIDENT'S SECRETARIAT (PUBLIC)**  
**AIWAN-E-SADR**  
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**Rep.No.131/BM/2022**  
**Date of Decision:25.01.2023**

*Allied Bank Ltd VS Ms. Bushra Parveen*

**Subject: REPRESENTATION FILED BY ALLIED BANK LTD AGAINST THE ORDER OF THE LEARNED BANKING MOHTASIB DATED 17.06.2022 IN COMPLAINT NO. 2020-295**

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

This representation has been filed by Allied Bank Ltd (ABL) on 07.07.2022 against the order of the learned Banking Mohtasib dated 17.06.2022, whereby it has been held that:

*“For the foregoing observations, I, under the powers vested in me vide Section 82D of BCO 1962 read with Section 9 of the Federal Ombudsmen Institutional Act No. XIV of 2013, hereby direct the Bank to make good the loss of the customer by crediting her account with a sum of Rs. 895,500/- forthwith and report compliance within 30 days from the date of issue of this order.”*

2. Ms. Bushra Parveen (the complainant) a school teacher has been maintaining a salary account with the Bank's Babar Market Landhi No.3 Branch, Karachi. Reportedly, she received a call from an unknown person on her residential landline phone on Feb 17, 2020. The caller impersonated himself as an official of the Bank and advised her to immediately comply with Bio-metric requirement of the Bank otherwise his ATM Card would be blocked. However, during the call, he sought her account and mobile phone details, which she admittedly shared assuming the call was from the Bank. Subsequently, she received number of calls on her mobile phone from ABL's Helpline # 002111225225. Later on, she had visited the Bank on Feb 18, 2020 for executing her Biometric verification which was done without any enquiry although her Biometric had already been done at the time of account opening. Whereas, on Feb 19, 2020, she again received a call and the caller advised her to get her Biometric verification done. On contacting her parent Branch, she was informed that the call was not made from the Bank and on checking her account, it was found that an aggregate sum of Rs.895,500/- had already been transferred fraudulently from her account on 18<sup>th</sup> and 19<sup>th</sup> Feb, 2020 respectively. Although, she lodged complaint with the Bank but it was declined as “customer liability”. Thus, she escalated her complaint with the learned Banking Mohtasib for refunding of her defrauded amount.

3. The Bank's stance before the learned Banking Mohtasib was that the complainant's Internet Banking ID was created on February 17, 2020 after Bio-metric verification on February 18, 2020, whereas the disputed transactions were conducted on Feb 18 & 19, 2020 and Rs.895,500/- were transferred from her account to the accounts of different Banks i.e. Rs.498,000/- to ABL, Rs.249,000/- to BoP and Rs.148,500/- to Meezan Bank respectively. Further averred that the funds amounting to Rs.498,000/- were transferred to beneficiary account maintained with the ABL's Jinnah Garden Branch, Islamabad which had been withdrawn before receipt of incident

report. The case had also been reported to the F1A Cyber Crime and PTA for necessary action. Whereas, One Time Passwords (OTPs) against the Internet Banking Setup, Beneficiary Registration and Internet Banking Fund Transfers (IBFT) were generated and sent to her registered mobile number.

4. **Meezan Bank (MBL)'s Stance**

The MBL responded that the funds had already been withdrawn from the beneficiary account before receipt of intimation of the incident. The Bank placed debit block on the account and no contact could be established with the beneficiary account holder.

5. **Bank of Punjab's (BOP) Stance**

The BOP informed that the funds received in the BOP's account had already been withdrawn through a cash cheque on Feb 18, 2020 before receipt of the intimation from the ABL. Moreover, the account was maintained with its Bahawalpur Cantonment Branch but no contact could be made with the beneficiary to establish the legitimacy of the transaction.

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

7. The hearing of the case was fixed for 17.01.2023. Mr. Usman Khan, Associate Manager FRMU has represented the ABL, whereas, the complainant has not appeared despite notice. Needless to mention that Section 15 of the Federal Ombudsmen Institutional Reforms Act, 2013 empowers the decision of a representation on the basis of available record without personal hearing of the parties.

8. The learned Banking Mohtasib thrashed the matter vide Paras 14 to 22 of the order as follows:-

*"14. The complainant is a school teacher, appears to have no idea about digital banking, and has been deceived by the fraudster who called her claiming to be ABL Official, and obtained her personal and account credentials, and she shared OTPs without knowing the consequence, when she subsequently received spoofing call (showing UAN # 0021111225225) on her mobile phone.*

*15. ABL in their submission post hearing, has confirmed that the Complainant's Internet Banking ID was created on February 17, 2020 at 8.14 PM and in support also submitted IT log for the same whereas the bio-metric of the complainant was undertaken by the Bank on February 18, 2020, which is a clear violation of SBP PSD Circular No. 09 dated November 28, 2018, clause iv, which mandate the Bank to activate the Internet Banking / Mobile Banking Facility only after bio-metric verification.*

*16. In addition; although the concerned branch of ABL has obtained MYABL Personal Internet / Mobile Banking Activation / Re-activation Request Form dated Feb 18, 2020 and which has the signature of the Complainant. However, during the hearing, ABL Official admitted that neither it was inquired from the Complainant as to why she was seeking bio-metric verification nor she was educated regarding possible threats and vulnerabilities associated with online banking service prior to registration and undertaking bio-metric verification or when provision of such facility is granted, in violation of SBP PSD Circular No. 09 of 2018 dated November 28, 2018.*

17. ABL's stance that this being a matter of Internet fraud, the Bank is not responsible for the loss of customer's money owing to compromised credentials by customer herself and fraud has been committed with her is not tenable, and that there was no lapse or system glitch on the part of the Bank. While saying so, the Bank seems to be doing nothing to protect the interest of its depositor which is their prime fiduciary responsibility.

18. The Complainant had visited her parent branch on February 19, 2020 with regards to the spoofing call (showing UAN # 0021111225225) and came to know as informed by the branch staff that funds through internet banking have been transferred from her account to various banks, to which she confirmed that these transactions were not initiated by her nor is she aware about using internet-banking. But still, ABL had intimated Meezan and BOP on February 20, 2020 (12.20 PM & 12.19 PM respectively) after considerable time, advising the member banks to block funds.

19. Examination of the record submitted by ABL and the Complainant; it is observed that the Complainant had not conducted any ADCs transaction (IB/EFT/e-Commerce) in the past. The Complainant is a government school teacher who had no knowledge about the present days' banking internet and mobile banking products and their usage.

20. ABL has not established any nexus or business relationship between the Complainant and the beneficiaries, who were based in Islamabad and Bahawalpur, whereas the Complainant is a school teacher based at Karachi. No record has been submitted by ABL or the member banks to establish considerations or reason against which the payments were affected, ABL in their submission has stated ABL beneficiary account holder has stated that the funds he had received were against a loan, which was not even challenged and further details sought from the beneficiary, and subsequently the account holder had gone out of contact. The pattern of funds transfers looks suspicious, and gives a strong indication of fraud.

21. The Bank was found negligent and non-compliant with SBP rules and regulations and PS & EFT Act 2007 as under:

- a. Non-complaint to clause iv of SBP PSD Circular No. 09 dated November 28, 2018.
- b. Bank could not produce any specific advisory on Complainant's registered mobile number. Further, Bank also failed to produce any evidence that they have divulged the pros and cons of "funds transfer" as stipulated in section 30 of PS & EFT Act-2007.
- c. Non-compliant to Para (3) of SBP of PSD Circular No. 3 dated 21-10-2015 with reference to customer's awareness.
- d. Bank has not produced any evidence of communicating various ADC limits in compliance of PSD Circular No.3 dated 09-05-2018 Para 10(1) (a) as under:

**I. Before activating EFT on any channel/instrument, AFIs shall disclose the following in writing to its consumers in English and Urdu languages;**

**a) EFT limits on payment instruments as well as on ADCs.**

*22. The strange and evasive stance of ABL that this being a matter of Internet fraud, the Bank is not responsible for the loss of its customer's money owing to compromised credentials by customer herself is just shrugging off Bank's fiduciary responsibilities to an innocent account holder. The primary responsibility of a Bank is to protect the interest of depositors especially of small depositors. The Bank must have educated the account holder about Internet Banking / EFT product in terms of above Rules and Regulations before allowing / opening of EFT channel, and only after the bio-metric of the Complainant was under with proper education of the Complainant. The Bank also failed to establish legitimacy of disputed transactions as stipulated in Section 41 of PS & EFT Act 2007."*

These are conclusions arrived at on due consideration of the record and there is no cavil with such approach to the matter.

9. 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.

10. 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.

11. 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.

12. It is proved unequivocally that the funds were transferred fraudulently from the ABL to the established accounts operated/maintained with the ABL, BOP and MBL. Regrettably, the beneficiary accountholders withdrew the disputed amount through even cheques but despite receipt of intimation of fraudulent activity, none of the beneficiary Banks has made any effort to contact its beneficiary accountholder for conducting investigation and recovering the defrauded money. The callous and in-different attitude on the part of beneficiary Banks is uncalled for, unwarranted and deliberate although they possessed requisite information of their accountholders

for holding them accountable being collaborators in such frauds. **In such circumstances, it may be appropriate to direct the State Bank of Pakistan to initiate stern legal action against the management of these Banks and they may be held responsible for their non-serious attitude and initiation of stringent actions would sensitize the managements of the Banks to be careful in future. The SBP may also issue necessary instructions in this regard to all Banks and other financial institutions for strict future compliance.**

13. 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)**

The Governor,  
State Bank of Pakistan, I.I. Chundrigar Road,  
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The President/Chief Executive,  
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Copy for information to:

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- (2) Agha Muhammad Usman Khan, Assistant Manager, FRMU, ABL North Region, 2<sup>nd</sup> floor, Chandani Chowke Rawalpindi (Mobile No.03335507758, 0311.5473468)
- (3) Master file.

-Sd-  
**(Anwar-ul-Haq)**  
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