

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

No.66/BM/2022

Dated: 26.12.2022

*Muslim Commercial Bank Ltd Vs M/s National Telecommunication Corporation
(NTC), Islamabad*

Subject: REPRESENTATION FILED BY MUSLIM COMMERCIAL BANK LTD AGAINST THE REVIEW ORDER OF THE LEARNED BANKING MOHTASIB DATED 24.01.2022 IN COMPLAINT NO. 2020-231

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

This representation has been filed by Muslim Commercial Bank Ltd (MCB) on 24.02.2022 against the Order-in-Review of the learned Banking Mohtasib dated 24.01.2022, whereby it has been held that:

“For the reasons mentioned above, I, under the powers vested in me under Section 82D of the BCO 1962 read with Section 9 & 13 of the Federal Ombudsmen Institutional Reforms Act No. XIV of 2013 allow the review petition and direct the Bank to make payment of agreed profit to NTC @ 5.40% from the period starting from 7th September 2018 to 10th October 2018 where threshold of Rs. 50 million was maintained in the account and report compliance within 15 days from the date of issue of this order.”

2. The learned Banking Mohtasib vide Order-in-Original dated 09.07.2020 observed as under:

“In view of the position explained by the Bank in detail, your complaint does not appear to justified. As such with the approval of Banking Mohtasib your case is closed.”

3. M/s National Telecommunication Corporation (the complainant) a Federal Government Agency has been maintaining collection accounts with different Banks for collection of revenue throughout Pakistan as well as for depositing remittances from foreign carriers. Accordingly, on mutual agreement, two Bank Accounts (one in USD and one in PKR) were opened with the MCB Stock Exchange Branch, Islamabad. As per terms and conditions of the agreement, profit was to be paid with minimum threshold of Rs.50 million. However, it was found that the Bank had not credited any profit to their account and the NTC had to bear an interest loss of Rs.311,975/-. Despite their continuous efforts, the matter was not resolved. Thus, they escalated their complaint with the learned Banking Mohtasib for redressal of their grievance.

4. The Bank's stance before the learned Banking Mohtasib was that the Bank had proposed a profit rate to NTC initially but subsequently on scrutiny of the necessary documents provided by the NTC, the Bank's Compliance Department observed that the subject client i.e. NTC was not eligible for a profitable account. The position was conveyed /apprised to the Management of the NTC by the Branch Manager and after obtaining signatures on Account Opening Form from the NTC Management, a non-profitable collection account was opened with their consent. The funds received were thus collected and credited in the said account and were regularly transferred to other Bank as per instructions of NTC Management. Furthermore, the statement of account was also being regularly provided to the NTC but no claim for profit was made prior to lodgment of this complaint.

5. Considering the respective stances, the learned Banking Mohtasib proceeded to pass the above mentioned order assailed the representation by the Bank.

6. The hearing of the case was fixed for 06.12.2022. Sardar Umar Aslam, Advocate, Mr. Gohar Amin Abbasi, Advocate, Mr. Salman Asif, Advocate and Mr. Talat Mahmood Akhtar have represented the MCB Ltd, whereas, Mr. Bashir Khan, Acting Chief Financial Officer and Mr. Muhammad Riaz, Corporate Secretary have appeared on behalf of the NTC.

7. The learned Banking Mohtasib thrashed the matter vide paras 10 to 12&13 of the order as follows:-
“10. The Bank had proposed payment of interest @ 5.4% p.a. on deposit. NTC with the said understanding opened the account in June 2018. NTC continued in trail of emails followed up with the Bank for payment of profit, against which MCB once informed NTC that the profit would be credited soon as the matter has been escalated with Bank's Head Office for profit calculation.

11. Although the Bank kept on insisting that CC (Cash collection) Account was clearly mentioned in the Account opening Form which was signed by the customer but failed to produce any evidence that they have educated the customer about salient features of CC account. Even Bank did not provided a copy of AOF (as acknowledgement) to NTC in violation of SBP directives.

12. It was obligatory on the part of Bank and as its fiduciary responsibility to clearly divulge the terms and conditions before opening an Account. In the instant case Bank failed to fulfill its responsibility, opened the account and advising NTC that profit shall be credited soon. However, after four months MCB refused to credit profit. In case if it was not possible for the Bank to open profit bearing account due to any legal obstacle then Bank should have clearly informed NTC & should not have opened account.

13. The stance of the NTC seems to be reasonable that why the account was opened by the Bank without first getting internal clearance from their concerned Department and why account was opened as non-profitable without consent of the NTC ignoring their earlier commitment for opening of profitable account. This appears to be crucial fact which was not earlier stated by the Bank in their reply.”

8. It is established on record that the Bank proposed/offered to the NTC an interest rate of 5.4% per annum (pa) on amount exceeding the thrashed of Rs.50 million on a collection account in June, 2018. Accordingly, the NTC opened PKR Account in June 2018. However, when the collection crossed the minimum thrashed of Rs.50 million in September, 2018, the NTC claimed the profit as per agreed terms and conditions on 1st October, 2018. Interestingly, the Manager (Operational) replied on the same day i.e. 1st October, 2018 as “**your profit will be credited soon as matter already escalated with Head Office for profit calculation.**” Although, the NTC followed up the matter regularly through emails as well as personal meetings but despite its earlier commitment of crediting profit soon, but after lapse of four (04) months, the Bank refused through email dated 31st October, 2018 payment of profit amount. However, reportedly, the NTC have interest bearing accounts in various other Banks including other Branches of the MCB. However, due to non-compliance by the Bank, the NTC closed its MCB Account on 8th January, 2020 and transferred entire funds to NTC daily profit account with the Bank of Punjab. Suffice it to observe that if the account was opened by the Bank without first getting the clearance from concerned Deptt and without the consent of the NTC violating their earlier commitment for opening of profitable account offering profit @5.4% p.a, the customer should not suffer. Apparently, it shows that firstly the Bank made commitment to give profit @5.4% p.a. subject to exceeding the thrashed of Rs.50 million, thus, instead of fulfilling its agreed commitment of crediting profit, the Bank undoubtedly dragged the matter for four months unnecessarily and finally resiled from its agreed commitment.

9. Suffice it to observe that while interpreting the contractual transaction/matter, the established law is to discover the intention of the parties behind it as to what persuaded the parties to enter into the agreement. The intention of the parties is well reflected from the correspondence and their meetings before the opening of the account. The Bank had offered profit at a particular rate as per expectation of the complainant and that was the persuading factor in reaching the contractual arrangements.

10. 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.

11. 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.

12. It is correct that initially the complaint was rejected, however, on review filed by the complainant and after giving proper opportunity of hearing to the parties, the matter was reconsidered from all angles and Order-in-Review was passed. Such power of review is available to the learned Banking Mohtasib vide Section 13 of the Federal Ombudsmen Institutional Reforms Act No.XIV of 2013. Thus, a reasoned and comprehensive order has been passed which calls for no interference. **In addition, the agency is directed to add profits accrued on the amount.**

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

-Sd/-
(Muhammad Saleem)
Director (Legal)

The President/ Chief Executive,
Muslim Commercial Bank Limited,
22nd Floor, MCB Tower, Head Office
at I.I. Chundrigar Road, Karachi

M/s. National Telecommunication
Corporation (NTC), Headquarters, G-5,
Islamabad.

Copy for information to:

- (1) Ms. Samreen Tanveer, PSO to Banking Mohtasib Pakistan, Banking Mohtasib Pakistan Secretariat, 5th Floor Shaheen Complex, M.R. Kiyani Road, Karachi.
- (2) Barrister Umer Aslam, Advocate Supreme Court of Pakistan, Sardar Muhammad Aslam Law Associates, Flats No. 1&2, 1st Floor, Block 13-F, Umer Centre, F-8 Markaz, Islamabad.
- (3) The Chief Financial Officer, M/s. National Telecommunication Corporation (NTC), Headquarters, G-5, Islamabad. 9245939
- (4) Master file.

-Sd/-
(Muhammad Saleem)
Director (Legal)