

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

No.78/BM/2022

Dated:26.12.2022

United Bank Ltd Vs Mrs. Nadira Tabassum

Subject: REPRESENTATION FILED BY UNITED BANK LTD AGAINST THE ORDER OF THE LEARNED BANKING MOHTASIB DATED 01.03.2022 IN COMPLAINT NO. 2021-10831

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

This representation has been filed by United Bank Ltd (UBL) on 29.03.2022 against the order of the learned Banking Mohtasib dated 01.03.2022, whereby it has been held that:

"In view of above, I, under the powers vested in me vide Section 82D of BCO 1962 read with Section 9 of Federal Ombudsman Institutional Reform Act 2013, allow the complaint and direct UBL to credit the complainant's account with a sum of Rs.200,000/- alongwith charges if any, forthwith and report compliance within 30 days of receipt of this order."

2. Mrs. Nadira Tabassum (the complainant) has been maintaining a current account with the UBL's DA Ground Branch, Peoples Colony, Faisalabad. Reportedly, she used her ATM Card on 25-07-2021 (Sunday) at the UBL Madina Town Branch, Faisalabad to conduct an ATM transaction but neither cash was dispensed nor her ATM Card was ejected by the Machine. Although, she repeatedly pressed the "cancel" key and waited in the ATM Vestibule for a considerable time but the Card was not ejected. So, she left the ATM Vestibule and thereafter she received two SMS alerts indicating that her account had been debited by Rs.200,000/- through two ATM cash withdrawals. Although, she lodged a complaint on the Bank's Helpline on the same day i.e. 25-07-2021 followed by submitting "Dispute Resolution Form" into the Branch the next day i.e. 26-07-2021 but without any result. 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 disputed transactions were having Code No. 051 (Chip Mode) with correct application of PIN Code which authenticated and affirmed that genuine ATM Card was used. Further, she had shared her ATM PIN with perpetrator who deceptively took away her Card from the UBL Madina Town Branch, Faisalabad, Terminal ID (TID No. 1365) on 25-07-2021 and conducted disputed transactions. As per Rules, burden for secrecy of the PIN lied at the complainant's end and the Bank was not at fault and her Card was blocked by the Bank's Contact Centre on 25-07-2021. Further, her Card was not captured and there was no financial / non-financial transaction at initial point i.e. at the UBL Madina Town Branch, Faisalabad on 25-07-2021. Hence, the Machine did not produce any Electronic Journal (EJ). However, a person reflecting in CCTV Footage of their Jaranwala Branch, where disputed transactions were carried out, was not identifiable as he had covered his head with a towel. The complainant's per day ATM Cash Withdrawal Limit was Rs.200,000/-.

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

5. The hearing of the case was fixed for 13.12.2022. Mr. Zeeshan Aslam, Investigation Officer and Mr. Sawwan Ahmed, BOM have represented the Bank, whereas, Mr. Tanveer Qaisar has appeared on behalf of the complainant.

6. The learned Banking Mohtasib thrashed the matter vide paras 10,12 to 14 of the order as follows:-

"10. UBL instead of providing CCTV recording submitted still pictures of CCTV footage of UBL Madina Town Branch, Faisalabad (paras No. 2 and 6 above) which showed that similar activity (para No. 9 above) has been used in this case. CCTV recording. of UBL Madina Town Branch, Faisalabad was not provided by them despite follow up. However, limited still pictures of CCTV were shared which show that at least a lady and two persons, one wearing surgical mask and other with head covered by a cloth / towel were present in ATM Vestibule of UBL Madina Town Branch, Faisalabad. Had UBL provided complete CCTV recording it would have given clear picture as to what happened in the ATM Vestibule on the day of incident. Where EJ

is not available or where primary evidence is not sufficient or conclusive, SBP has given directives vide PSD Circular No. 1 dated 6th April, 2006 and CPD Circular No.1 dated 29th February, 2016 and PSD Circular No. 5 dated 10th June, 2016 to settle the complaint on the basis of secondary evidence. The aforesaid directives of SBP read as under:

a) PSD 1 / 2006 (Para No. 8)

"It is recommended that banks install external camera/cameras in ATM cabins/rooms within three months from the date of issue of this circular to have secondary evidence against cash claim to satisfy customer. The location should be adjusted in a way that PIN could not be captured."

b) PSD 5 / 2016 (Para No. 5(d))

CSPs shall maintain complete visual records of all ATM transactions for a period of one year."

c) CPD 1/2016 (Para No. 1.12)

"Record keeping: For record keeping relating to complaints, banks are required to follow instructions contained in Prudential Regulations. Where CCTV footage is considered part of circumstantial evidence, it must be retained at least for two months. For complaints escalated to Courts, all the related evidences should, be retained till the final decision."

12. UBL could not produce CCTV footage for different activity during customer usage of ATM due to weak controls and operational and maintenance issues. SBP vide PSD Circular No.2 dated 7th September, 2007 has given following directives:

"6. ATMs and/or parts thereof should be replaced after reasonable useful life as per international standards and practices to ensure Uninterrupted delivery of services."

"9. Comprehensive SLA should be signed with vendors to ensure proper maintenance of ATMs and its network."

13. UBL has fixed complainant's cash withdrawal limit of Rs.200,000/- through ATM Card per day which does not correspond to normal turnover in her account as appears in limited statement of account provided by UBL and does not entail such a large limit per day. In AOF which is the basic relationship document in between customer and Bank, expected aggregate credit and debit (per month) has been declared as Rs.53,000/- which also does not warrant such a hefty limit of Rs.200,000/- per day. Further, UBL did not come up with any evidence that enhanced limit was communicated to Complainant and their response (para 8 (e) above) is vague and general in nature. SBP has issued following regulations / directives in this regard:

PSD Circular number 05 of 2016 (Regulation 4.2 e)

"CSPs shall implement transaction limits and other related security controls for stake holders i.e. consumers, merchants etc. that commensurate with their risk profile."

Para X of SBP-PSD Circular No. 09 of 2018

"All payment- card issuing banks / MFBs shall immediately set reasonable per-day transaction limits commensurate with their risk appetite and transaction volume with the Payment Schemes especially for cross-border usage. Banks MFBs shall ensure that their risk exposure remains within the pre-agreed limits set with the international 1 domestic payment schemes through legally binding contractual arrangements."

14. In view of above discussion, it leaves no doubt that Complainant had become victim due to malfunctioning of UBL Madina Town Branch, Faisalabad's ATM. Further, UBL has also failed to substantiate their stance of "Shoulder Surfing" and allocation of enhanced withdrawal limit not commensurate with status /risk profile of account holder {para No. 8 (e)}, by submitting any conclusive evidence. UBL has therefore rendered itself non-compliant of SBP's regulations referred to above. The Management of UBL is advised to revisit and ensure that SBP's instructions are complied with in letter and spirit."

Thus, these are conclusions arrived at on due consideration of the record and no cavil could be found with such 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. 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,
United Bank Limited,
Head Office at State Life Building,
I.I Chundrigar Road, **Karachi**

Mrs. Nadira Tabassum,
W/o Mr. Tanveer Qaisar,
H. No. 680-B, Muhammadi Chowk,
Peoples Colony No. 2,
Faisalabad. 03239661899 / 0345-5566791

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) Master file.

-Sd-
(Muhammad Saleem)
Director (Legal)