

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

Rep.No.91/BM/2022
Decision Dated: 06.01.2023

Standard Chartered Bank Ltd VS Mrs. Nazia Naseeb

Subject: REPRESENTATION FILED BY STANDARD CHARTERED BANK LTD AGAINST THE ORDER OF THE LEARNED BANKING MOHTASIB DATED 14.03.2022 IN COMPLAINT NO. 2020-565

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

This representation has been filed by Standard Chartered Bank Ltd (SCBL) on 18.04.2022 against the order of the learned Banking Mohtasib dated 14.03.2022, whereby it has been held that:

“In view of the foregoing, I, under the powers vested in me vide Section 82D of the Banking Companies Ordinance, 1962 read with Section 9 of Federal Ombudsmen institutional Reforms Act2013 direct the Bank to make good the complainant’s loss by crediting his account with PKR. 168,800/- in pursuance of these findings and report compliance within 30 days from the date of this order.”

2. Mrs. Nazia Naseeb (the complainant) has been maintaining her account with the Bank’s Khayaban-e-Etihad Branch, DHA, Karachi. Reportedly, she received a call from a number similar to SCB's Help-line # 111-002-002 on February 8, 2020. The caller posed himself as an official of the Bank and obtained her Debit / ATM Card number along with PIN Code of old Card pretending for activation of her new Chip-based ATM Card. Furthermore, she also received several emails from the Bank on 08.02.2020 wherein she was informed about transfer of funds from her account. However, no amount was mentioned in the said emails. On her query, she came to know that an amount of PKR. 168,800/- was fraudulently transferred from her account through four (04) IBFT transactions. Although, she immediately lodged complaint at the Bank’s Help-line but without any result. Thus, she escalated her complaint with the learned Banking Mohtasib for retrieval of her defrauded amount.

3. The Bank submitted its response before the learned Banking Mohtasib as follows:

- a) That it was an alleged spoofing / fake call case. The complainant had shared her confidential financial credentials with an unknown person which helped in execution of the disputed transactions.
- b) Her Card was EMV Compliant Card which was issued on 18-12-2019 and was activated on 11-02-2020
- c) However, the Bank did not provide /share copy of the formal Investigation Report.

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 20.12.2022. Mr. Shafqat Ali Shah, Manager FRM 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 11 to 13 & 17 and 18 of the order as follows:-

“11. Having heard both the parties and examined the record it has emerged that the Complainant is maintaining account since November 2018. The complainant by deception had shared her credentials with unknown person which is one of the factors resulting fraudulent funds transfer from her account. However, in the instant case non-compliance of SBP directives by Standard Chartered Bank (Pakistan) Limited and its ineffective monitoring played significant role in successful execution of disputed transactions. As per SPB PSD Circular No. 9 of 2018 dated November 28, 2018, Banks/MFBs are required to monitor on 24/7 basis usage/activity regarding payments made through their Cards or through online transactions on their Internet Banking platforms. The Banks/MFBs shall have arrangements in place to immediately contact (through multiple communication channels) and coordinate with designated people of Payment Schemes for taking appropriate action in case any abnormality in transaction patterns is observed. In the instant case four (4) consecutive and out of pattern funds transfer transactions were executed (funds transferred to (Bank Al Baraka & MMBL) but Bank's system failed to notify this unusual activity and generate alerts.

12. It was observed that complainant has immediately notified and lodge complaint on the Bank's Helpline and Bank has also admitted by sharing call recording as mentioned para No 8 (a) above. However, the Bank has found negligent to take prompt action to get hold the funds from the member Banks. The SCB took exorbitant time to notify the incident to the beneficiary's Bank after lapse of two days when the disputed funds. have already been cashed out, as mentioned at para 10 (f) above. Had the Bank took action soon after they received the complaint the complainant would have been saved from the losses.

13. Moreover, as per SBP directive issued vide PSD Circular 9 of 2018 dated November 28, 2018, it was mandatory for the Bank to issue SMS alert to customer on execution of transaction performed against Card. Para (iii) of the said Circular is reproduced herein below.

"With effect from January 01, 2019, Banks/MFBs shall send free of cost transaction alerts to their customers through both SMS and email (where email IDs are available) for all international and domestic digital transactions including but not limited to ATM, POS and Internet. banking transactions. Such transaction alerts shall be generated and relayed to customers immediately after the execution of transaction. For this purpose, registered mobile phone numbers and valid email addresses (where applicable) of all customers shall be obtained, verified and updated in the Bank/MFB's database well before the deadline".

17. It was noted that Banks did not properly investigate the case and summarily disposed of by shifting of its responsibility on complainant. It was also noted that concerned officials were found negligent toward responding queries raised by this forum and deliberately

delayed submission of vital information without any cogent reason, Bank has rendered itself non-compliant and committed malpractice.

18. The management of SCB is advised to impart proper training to their concerned officials and direct the respective Department to conduct thorough investigation of such cases in future as prime obligatory responsibility of Bank is to protect the interest of depositors which was lacking in the instant case.”

Thus, 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. Moreover in a recent judgment of the Hon’ble Supreme Court dated 14.10.2022 in CP.No.1464-1512/2021 it has been observed:

“The learned counsel for the petitioner stated that in the facts and circumstances of the case the Banking Mohtasib did not have jurisdiction to entertain the complaints. Therefore, we asked him to refer to the reply/objection filed before the Banking Mohtasib to ascertain whether this objection was taken, but it transpires that it was not. On the contrary, the petitioner submitted to the jurisdiction of the Banking Mohtasib and contested the complaints on merits. The learned counsel next contended that the complainants had themselves provided information which facilitated the said amounts to be withdrawn from their bank accounts. However, the Banking Mohtasib had noted that the complainants had specifically stated that they had not applied nor requested the Bank for the facility of Mobile Banking or Inter-net Banking, therefore, we enquired whether the petitioner was given such authority by the complainant, but the learned counsel could not refer to any document availing of the said facility. Under the circumstances, it cannot be stated that the Banking Mohtasib's findings are contrary to the facts. Therefore, leave to appeal is declined and, consequently, these petitions are dismissed.”

Thus, this objection stands repelled.

9. 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.

10. The loss of money to the complainant has occurred due to the reason that the Bank's facility of EFT was made operational without his request / consent. Had this channel not been opened by the Bank the account holder would have avoided this financial loss. Further, the Bank could not produce any document / evidence to the effect that they had complied with the provisions of law, rules and regulations discussed supra.

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)

The President/ Chief Executive,
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Copy for information to:

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- (2) Raja Adil Khan, Manager, Client Experience, Standard Chartered Bank Ltd, 1st floor, Client Care Unit, I.I. Chundrigar Road, **Karachi 0300-9239770**
- (3) Master file.

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