

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

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Rep.No.92/BM/2022  
Date of Decision: 06.01.2023

*United Bank Ltd VS Mr. Shabbir Ahmad Agha*

**Subject: REPRESENTATION FILED BY UNITED BANK LTD AGAINST THE ORDER OF THE LEARNED BANKING MOHTASIB DATED 29.03.2022 IN COMPLAINT NO. 2020-2243**

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 20.04.2022 against the order of the learned Banking Mohtasib dated 29.03.2022, whereby it has been held that:

*“In view of above, under the Powers vested in me vide Section 82D of BCO, 1962 read with Section 9 of Federal Ombudsman Institutional Reform Act 2013, I, direct the Bank to credit the Complainant's account by Rs.791,000/- alongwith associated charges if any including Withholding Tax, and report compliance within 30 days of receipt of this order.”*

2. Mr. Shabbir Ahmad Agha (the complainant) has been maintaining an account with the Bank's Sarafa Bazar Branch, Sadiqabad. Reportedly, proceeds of a cheque amounting to Rs.825,565/- were credited in his account on 08-07-2020 and he received a call from an unknown mobile on 09-07-2020. The caller introduced himself as Bank's representative and asked details of his account for verification purposes hurling threat that if he did not divulge the required details, his account would be blocked. He therefore shared his account details alongwith messages received from the Bank. Later on, he came to know that his account had been debited with an aggregate amount of Rs.791,000/-. Although, he continuously pursued the matter with the Bank but without any result. Thus, he escalated his complaint with the learned Banking Mohtasib for retrieving of his defrauded amount.

3. The Bank's stance before the learned Banking Mohtasib was that on 09-07-2020, the complainant signed-up and password was created using QR Code, Mobile Number and One Time Password (OTP); sign up on Digital Mobile Application, the Net Banking was completed. Further, on 9<sup>th</sup>, 10<sup>th</sup> & 11<sup>th</sup> July 2020, he re-logged in Net Banking through Digital Mobile Application using account credentials and added beneficiary accounts with valid OTP confirmation. Digital IBFT payments were performed on the same dates through his Net Banking Account and funds were transferred to the added beneficiaries with valid OTP confirmation. It was the responsibility of the customer to ensure that his Secure Code, Account Credentials and OTP were not shared with anyone. The Bank had also sent OTP alerts against beneficiary account addition on his registered mobile number and his per day fund transfer limit through Internet Banking was Rs. 1.000 million. Since, he had himself compromised his credential with an unknown caller, therefore, it was termed as “complainant's liability.”

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. Aqeel Ahmad, District Operation Manager and Mr. M. Zeeshan Aslam, Investigation Officer have represented the Bank, whereas, Mr. Muhammad Kashif has appeared on behalf of the complainant.

6. The learned Banking Mohtasib thrashed the matter vide Paras 12 to 15 of the order as follows:-

“12. The Bank's stance that utilization of OTP (sent on registered, mobile of complainant) for authentication of transaction and applied is considered as "customer's consent" is preposterous. The Bank is mixing two separate steps with each other. The first step is obtaining "Consent/Request" of customer for availing "Fund Transfer Facility and the second 'step is customer's authentication / registration for security and control purposes to authenticate / identify the card-holder before conducting banking transaction [Refer para 4.2.3 (b)] of SBP PSD Circular No. 5 dated 10<sup>th</sup> June 2016. Where "Consent/ Request" from customer is not obtained/received then extending / opening of fund transfer facility unilaterally or by default by Bank with the activation of account holder's payment card shall be considered as "unsolicited facility". If primary step / condition is not complied with by the Bank, all subsequent activities are "void". Registration / Authentication cannot be made /done if fund transfer channel is not active. In other words, registration / authentication is only possible when customer fund transfer channel is active.

13. The complainant has categorically denied having availed any digital banking service or making funds transfers to the accounts of persons who are not at all familiar to him. In fact, Bank had activated complainant's ADCs channels unilaterally / by default and that too without consent and knowledge of the customer / complainant at the time of activation of his payment card (as admitted by Bank vide para No. 9 above). Bank has failed to provide any evidence that following rules and regulations and binding revisions of State Bank of Pakistan were complied with as no conclusive evidence was provided to this forum.

- a) The provisions of Section 30 of the Payment System & Electronic Fund Transfer Act — 2007 (PS&EFT) were not divulged by the Bank to the customer. The terms and conditions of transfer reads as under:

**"The terms and conditions of Electronic Fund Transfers involving a Consumer's Account shall be disclosed by a Financial Institution, operator or other Authorized Party in English and in a manner clearly understood by the consumer, at the time the Consumer contracts for an Electronic Fund Transfer service, in accordance with the instructions of the State Bank."**

- b) PSD Circular No. 3/2015 dated October 21, 2015. Para 3 with regard to Customer Awareness read as under:

**"A formal customer awareness program regarding Internet Banking threats and safeguards to minimize frauds and Identity Theft risks should be developed and implemented by banks"**.

- c) PSD Circular No 5 / 2016. dated 10th June, 2016.

**Clause [4.2.3 (b)] which mandates that Card Service Provider (CSP) shall take Consumer's consent regarding utilization of payment cards on various ADC's.**

- d) PSD Circular No. 3 / 2018 dated May 9, 2018, para 10 (1) a reads as under:

**"Before activating EFT on any channel / instrument, AFIs shall disclose in writing to its consumers in English and Urdu languages; a) EFT limits on payment instruments as well as on ADCs"**.

14. The Bank has fixed complainant's fund transfer limit through net banking (undisclosed and unsolicited facility) as Rs.1.000 Million per day which does not commensurate with risk profile of customer (refer AOF) hence non-compliant with SBP PSD Circular No. 05 of 2016 (para No. 4.2.e) and SBP-PSD Circular No. 09 of 2018 (para No.X) which. read as under:

**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/domestic payment schemes through legally binding contractual arrangements."***

*In AOF which is the basic relationship document in between customer and Bank, expected aggregate (per month) has been declared as Rs.80,000/- which also does not warrant such a hefty limit of Rs.1.0 million per day.*

*15. The IBFT services attached by default / unilaterally is an "Unsolicited facility" and against the rules and regulations. Bank has admitted that they have no separate "Consent" from customer either in writing or at call centre (para 10 above). Any financial loss arising out of extending such unsolicited facility cannot be passed on to innocent customer. Bank also could not produce any evidence that they have divulged the pros and cons of facility (fund transfer) as stated in the law, rules and regulations referred above. Bank thus has committed maladministration on their part and rendered itself non-compliant with the aforesaid requirement of law I rules and regulations. Bank also could not establish legitimacy of disputed transactions as provided under Section 41 of PS & EFT Act —2007."*

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 accountholder 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.

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

The President/Chief Executive,  
United Bank Limited,  
Head Office at State Life Building,  
I.I Chundrigar Road, **Karachi**

Mr. Shabbir Ahmed Agha,  
S/o Khudadad Khan,  
R/o Mohallah: Pathana, Ward# 1, Kot Sabzal,  
Tehsil: Sadiqabad, District: **Rahim Yar Khan.**

Copy for information to:

- (1) Ms. Samreen Tanveer, PSO to Banking Mohtasib Pakistan, Banking Mohtasib Pakistan Secretariat, 5<sup>th</sup> Floor Shaheen Complex, M.R. Kiyani Road, Karachi.
- (2) Master file.

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