

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

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Rep.No.97/BM/2022  
Date of Decision:20.01.2023

*United Bank Ltd Vs Azhar Abbas*

Subject: **REPRESENTATION FILED BY UNITED BANK LTD AGAINST THE ORDER OF THE LEARNED BANKING MOHTASIB DATED 28.03.2022 IN COMPLAINT NO. 2021-8952**

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 26.04.2022 against the order of the learned Banking Mohtasib dated 28.03.2022, whereby it has been held that:

***“In view of above, I under the Powers vested in me vide Section 82D of BCO read with Section 9 of Federal Ombudsman Institutional Reform Act 2013, allow the Complaint and direct the UBL to pay / credit the complainant's` account with Rs. 208,247/- and report compliance within 15 days of receipt of this order. UBL may ask the member Bank/HBL for repatriation of funds held at their end.”***

2. Mr. Azhar Abbas (the complainant) has been maintaining an account with the Bank's Shah Rukn-e-Alam Branch, Multan. He alleged that between 14-06-2021 to 16-06-2021, his account was debited with an amount aggregating Rs 208,247/- through six fraudulent transactions of Internet Banking. Further, he received only one SMS alert for the last transaction and had not received SMSs for other transactions although he was availing this facility. After the receipt of the message, he contacted the Bank where he was informed about un-authorized withdrawals taken place from his account. Whereas, he had neither requested for Internet Banking Facility from the Bank nor he had ever used it. Although, he lodged a complaint with the Bank on 16-06-2021 but without any result. Thus, he escalated his complaint with the learned Banking Mohtasib for retrieval of his defrauded amount.

3. The Bank's stance before the learned Banking Mohtasib was that the complainant's Mobile Banking Channel was created on 14-06-2021 and six Net Banking Transactions aggregating Rs 208,247/- were conducted from his account through UBL Digital Application on June 14, 15 and 16, 2021 respectively. The Net Banking Facility was activated on 14-06-2021 through UBL Digital Application by utilizing his personal credentials such as Date of Birth, CNIC Number, Debit Card Number and after inputting One Time Password (OTP) sent on his registered mobile number. Later, beneficiaries were also added on the same date. He also called UBL Contact Center on 14-06-2021 for transaction enhancement limit (allow financial transaction) after creation of Net Banking Facility on 14-06-2021. Afterwards, three disputed transactions of Rs 5,000/-, 10,000/- and 2,447/- had been transferred to a beneficiary's account maintained with the Telenor Microfinance Bank on 15<sup>th</sup> and 16<sup>th</sup> June 2021 where funds were instant withdrawn. Further, two transactions of Rs. 100,000/- and 90,600/- had been transferred to the HBL on 15-06-2021, where funds of Rs. 49,978/75 were still available while the remaining funds had been withdrawn before the receipt of the incident report. However, the beneficiary was not traceable and lien had been marked on the said account.

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 03.01.2023. Mr. Adnan Aziz Malik, Area Manager and Mr. Zeeshan Aslam, Investigation Officer have represented the Bank, whereas, Mr. Azhar Abbas complainant himself has appeared.

6. The learned Banking Mohtasib thrashed the matter vide paras 13 to 16&18 of the order as follows:

*"13. UBL did not comply with SBP's directive contained in PSD Circular No 5 dated 10<sup>th</sup> June 2016, {para 4.2.3 ,(b)} which is very clear that customer's consent has to be obtained regarding its utilization. Said regulation reads as under:*

**Para No. 4.2.3 (b)**

***CSPs shall take consumer consent regarding the utilization of Payment Cards on various ADCs or their cross border usage while maintaining the record of consent as per SBP record retention policy.***

14. *Bank failed to submit any evidence with regard to:*

***a) full disclosures / divulging the terms of fund transfer in clear manner as stipulated in Section No. 30 of the Payment System & Electronic Fund Transfer Act, 2007 - "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..."***

***b) Compliance with SBP-PSD Circular No.3 dated 21<sup>st</sup> October, 2015 with regard to Section 3 "customer awareness."***

*15. The Bank's stance that utilization of OTP (sent on registered mobile of complainant) for authentication of transaction and applied it 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 cardholder before conducting banking transaction (Refer para 4.2 (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 accountholder's payment card shall be considered as "unsolicited facility". If the Bank does not comply with primary step / condition, 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 funds transfer channel is active.*

*16. Authentication/registration and sending OTP are security tools to identify the customer/cardholder, which is a secondary step. SBP vide PSD Circular No. 3 dated 21<sup>st</sup> October, 2015 has clearly stipulated in Para 2.2.1(a) & (b) that Registration/Enrollment*

for Internet Banking should be done prior to offering Internet Banking products and services. The said paras read as under:

**Para No.2.2.1. Authentication Controls**

- a) **Registration/enrollment for Internet Banking customers should be done prior to offering Internet Banking products and services after due verification through appropriate means;**
- b) **In order to authenticate customers who use Internet Banking products and services, the Bank shall implement at least Two Factor Authentication (2FA) such as Passwords (1 factor) and One Time tokens, Dangles etc. (2nd factor).**

18. *UBL has failed to establish the legitimacy of disputed transactions in terms of Section 41 of the Payment System and Electronic Fund Transfer Act, 2007. Therefore based on the information & documents submitted, arguments put forwarded by all the parties and keeping in view the provisions of SBP Circulars & Payment System and Electronic Fund Transfer Act, 2007, it has been established that fund transfer channel of complainant was opened by the Bank without consent and knowledge of the customer. Gross violations of rules/regulations of SBP, the Payment System & Electronic Fund Transfer Act, 2007, lack of due diligence and controls have rendered Bank non-compliant and malpractice, maladministration has been established, therefore, Bank is liable to make good the loss of customer with no fault on his part.”*

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 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.

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,  
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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)**