

**In the National Consumer Disputes Redressal Commission
New Delhi**

Reserved on: 07/06/2024

Pronounced on: 19/11/2024

FIRST APPEAL No. 694 of 2023

(Against the order dated 11.05.2023 in CC no.249 of 2015 of the Maharashtra State
Consumer Disputes Redressal Commission, Mumbai)

With

IA nos.8515 and 8516 of 2023 (Stay, exemption from filing the typed copies of
documents)

DCB Bank Limited
Mumbai Main Office
154 Sardar Vallabhbhai Patel Road
Dongri, Umerkhadi
Mumbai - 400 009

Appellant

VS

1. Ajoy Kumar Mehta
2. Sheelu Mehta

Respondents

Both having permanent
Address at:
"Kalyan", 96 Shakti Nagar
Chambal Garden Road
Kota - 324 009
Rajasthan

FIRST APPEAL No. 835 of 2023

(Against the order dated 11.05.2023 in CC no.249 of 2015 of the Maharashtra State
Consumer Disputes Redressal Commission, Mumbai)

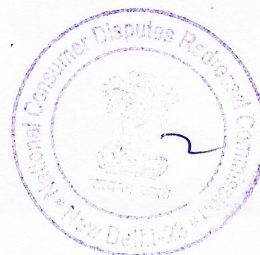
Ajoy Kumar Mehta
1101 Wonder View Apartment Kotri
Kotaa, Rajasthan - 324 007

Appellants

Currently at: Apartment no.1A8
Shaikh Mashal Building
Dhak Bine Qays Street
Area no.10, Salmiya Kuwait

Sheelu Mehta
1101 Wonder View Apartment Kotri
Kotaa, Rajasthan - 324 007

Currently at: Apartment no.1A8
Shaikh Mashal Building



Dhak Bine Qays Street
Area no.10, Salmiya Kuwait

Through Power of Attorney Holder:

Hargurmit Singh
E - 15, Masjid Moth
New Delhi - 110 048

Vs

DCB Bank Limited
Mumbai Main Office
154 Sardar Vallabhbhai Patel Road
Dongri, Umerkhadi
Mumbai - 400 009

Respondent

BEFORE:

HON'BLE MR JUSTICE A P SAHI, PRESIDENT

For the DCB Bank

Mr Ashutosh Marathe, Advocate
(Through V C) and Mr Nihant Panicker
Advocate

For the Complainants

Mr Aman Singh Bakshi, Advocate
(Through VC).

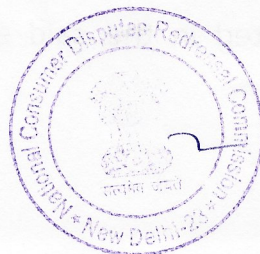
ORDER

1. These two appeals arise out of the same impugned order dated 11.05.2023 whereby the complaint has been allowed holding the Bank deficient in its services and causing loss to the complainants for which they deserve to be indemnified.

2. The Complainant has filed an Appeal for payment of the interest that had been paid by the Complainant on the overdraft account to the tune of Rs.8,81,628.81. They have also urged that the compensation demanded was Rs.20,00,000/- but the relief has been granted only for Rs.1,00,000/-, hence the entire claimed amount should be awarded.



3. The Bank has filed its Appeal FA/694/2023 for setting aside the entire Order passed by the State Commission.
4. The deficiency in service was alleged by the complainant after the complainant's account was hacked through a fake e-mail ID resulting in facilitating of two withdrawals amounting to a sum 53,000 US Dollars. The bank denied its allegation contending that the instructions for clearing the transactions were received from the e-mail ID of the complainant and therefore, if any loss has been caused to the complainant, the same cannot be claimed as reimbursement keeping in view the special terms and conditions of the instructions duly executed by the complainant for operating the account in question.
5. The State Commission rejected the defence of the Bank and it allowed the complaint partly, hence, the Bank has also filed this appeal contending the order has been passed bereft of any consideration of the terms and conditions on record, and even on facts, the transactions took place on the same e-mails provided by the complainant. The bank has also taken a stand that it did communicate with the Bank to which the money was transferred after hacking. Since the money had been withdrawn by the hacker, the recipient bank had expressed their inability to proceed any further.
6. The complainants had opened a joint account with the respondents investing their money which the complainant no.1 had received post retirement on 08.04.2014. Complainant no.1 is a professional Chartered



Accountant who had shifted to Kuwait and his two sons had undertaken higher studies abroad. The complainant in order to facilitate his expenses had requested for an Over Draft facility (in short, 'the OD') with DCB Bank Ltd., Mumbai against his fixed deposit of Rs.2.00 crore. The said request was accepted with a limit of 90% against the deposit and accordingly the complainants were given an OD facility to the limit of Rs.1,80,00,000/-.

7. The contention of the complainant was that since they were abroad, in order to facilitate the transactions they had signed blank RTGS instruction forms that were kept in the custody of the Manager Ms Meenaz H Thanawala. According to the complainant this was done at her suggestion and it was agreed that before executing any transfer of funds, the Bank Manager would call upon the complainant and inform them about the best exchange rate from the Forex department. Only thereafter, approval to the RTGS would be tendered to the Forex department.

8. The complainants therefore, on this assurance of utmost faith transacted their accounts and for that they admitted the arrangements of a monthly transfer of 2500 US Dollars for meeting the educational expenses of their son Mr Anchit Mehta who was then studying in the United States of America (USA).

9. An e-mail dated 24.09.2014 has been brought on record according to which the complainant had instructed the Bank requesting them to debit a sum of 2500 US Dollars every month from their account and it was also stated in the said e-mail that the same may be treated as a

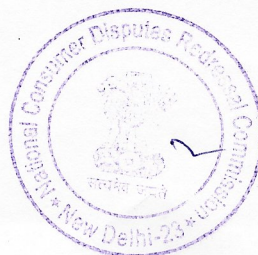


standing instruction. The complainant submits that they received a response from Ms Meenaz H Thanawala, Branch Manager on 26.09.2014 intimating them to complete other formalities and sent an e- mail marked to Mr S K Pillai with a copy to her so that the forms can be sent to them.

10. It was under this written arrangement that the complainants sent their confirmatory instruction on 26.09.2014 for transferring 2500 US Dollars to their son's account. RTGS forms were accordingly issued on the same date. This system of transaction was again repeated with another request for transfer of 2500 US Dollars to their son Anchit Mehta on 27.10.2014

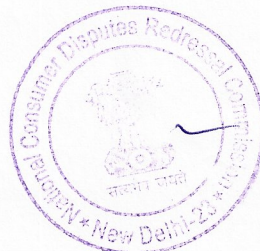
11. According to the complainants, two more forms pre-signed by them, were still available with the Branch Manager but the complainants did not issue any instructions for any further transaction of the amounts from the said account for their son. They decided to continue to directly make remissions to their son from Kuwait. The complainant therefore, submits that no further instructions of any regular transfer were made to the Bank from the OD account.

12. Complainants allege that they were surprised to know about the two withdrawals from their account, one on 27.01.2015 and the other on 30.01.2015 when they realised that a sum of 25,000 US Dollars and 28,000 US Dollars respectively were shown to have been withdrawn from their account on the said dates. They immediately informed the Bank by



e-mail on 01.02.2015 calling upon the Bank for immediate reversal of the entry and also rectification of the interest on OD.

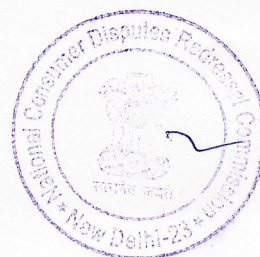
13. According to the complainants they tried their level best for the reversal and it was with great difficulty that ultimately the Nodal Officer of the Bank intimated them that the amounts were withdrawn fraudulently by someone and the amounts were transferred to a Bank located in the United States of America (USA). On receiving this information the details were sought and the complainants came to know that the said amounts had been transferred to one Ms Jennifer G Thilodeaux in her Bank account in J P Morgan Chase Bank NA, New York, NY USA. The said amounts had been transacted through the Standard Chartered Bank (SCB), New York. Thereafter the appellant bank woke up and despatched an e-mail to the SCB, New York for recall of the payment on 12.02.2015. There are two e-mails in respect of the two withdrawals referred to above and the response received from the J P Morgan Chase Bank was to the effect that the remittance of the amount had originated through instructions from the e-mail of the complainant wherein security had been compromised. The two responses in respect of both the withdrawals are on record and the DCB Bank again requested the SCB for recall of the funds from the J P Morgan Chase Bank as the e-mail for remittance, even though they had originated from the e-mail account of the complainant, yet its security had been breached. Further requests were made for blocking of payments in order to protect the interest of the bank and for recall of the funds. This e-mail is also on record.



14. The Standard Chartered Bank was reminded of the same and for processing the request made by the DCB Bank but ultimately a response was received from the SCB that they were unable to comply with the request as the funds had been withdrawn and the case was closed.

15. It is in this back ground that the complaint was filed and the complainants alleged deficiency on the part of the DCB Bank alleging that it was their careless and reckless handling of the Bank forms tendered by the complainant to Ms Meenaz H Thanawala, Branch Manager who allowed the passage of the hacked amount without cross checking and confirming the instructions as was done in the past. Complainants allege that the transfer of such a huge amount ought to have been checked and confirmed from the complainant which was not done for reasons best known to Ms Meenaz H Thanawala who along with other bank officials acted upon the hacked e-mail of the complainant resulting in the loss suffered by them.

16. It was alleged that Mr S V Patil, Nodal Officer of the Bank confirmed that the said transfer was in fact in violation of the normal banking practice as a result the money was transferred to a fraudulent beneficiary. It is also alleged that the instructions for the transfer of money on the hacked e-mail is stated to have been received for withdrawal that was required for payment of some alleged Surgery and medical dues, and subsequently to meet the balance of the same. Thus 25,000 US Dollars



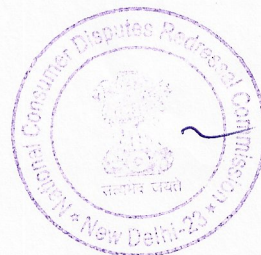
were debited allegedly for some Surgery and 28,000 US Dollars for the balance to meet the said expenses.

17. Complainants allege that they had never shared the e-mail ID with the alleged beneficiary Ms Jennifer G Thilodeaux or any other persons nor any request for transaction regarding payments for any surgery was intimated.

18. The appellant bank replied firstly by contending that since the OD facility was sanctioned for Rs.1,80,00,000/-, the State Commission in 2015 had no pecuniary jurisdiction and the complaint as framed was not entertainable. The complainant had prayed for reimbursement for Rs.33,88,628/- with interest @ 12% thereon till the date of payment, compensation of Rs.20 lakh and cost of Rs.1.00 lakh. Learned counsel urged that the aforesaid calculated amount as prayed for in the complaint exceeded the limits of pecuniary jurisdiction of the State Commission and hence, it ought not to have been entertained.

19. The second ground taken by the Bank before the State Commission was that this OD facility was taken by the complainants for commercial purpose which is evident from the nature of transactions negotiated through the said account and therefore, the complainant does not fall within the definition of the word 'Consumer' as defined under the provisions of the Consumer Protection Act, 1986.

20. The complaint was also resisted on the ground that this allegation of oral arrangements and pre-signed RTGS forms was never proved nor



established and therefore no inference can be drawn on the basis of such oral arrangement as alleged by the complainant.

21. The terms and conditions for the operation of the account on instructions was also pleaded to establish that the bank had no liability in the event the complainant faces any such impediment relating to hacking of his e-mail ID.

22. It was also therefore, urged that in the absence of any lapse in the duty performed or negligence established by any evidence, no liability could be fixed against the Bank. The Bank had made its effort genuinely for recall of the amount on the allegations made by the complainant but since the amount had already been withdrawn by the fraudulent beneficiary, the complainant did not have any indemnifiable claim for the alleged deficiency in services against the Bank.

23. The State Commission has rejected the arguments advanced on behalf of the Bank and has decreed the complaint by recording that the Bank had failed in its duty to observe due care with the resultant that account of the complainant was hacked on the strength of his e-mail instruction that was allegedly fake.

24. Learned counsel for the complainant/ appellant in FA no.694 of 2023 has advanced his submissions contending that the faith reposed in the bank together with the instructions given, were clearly breached by the bank officials themselves and consequently they cannot deny the liability of reimbursement. He submits that the claim made before the



State Commission was for the reversal of the amount that was hacked and it was well within the pecuniary jurisdiction of the State Commission. He further submits that in view of the order of this Commission, an affidavit was filed on 09.01.2024 giving the details of the description of the statement of accounts to establish that the account had been opened only for conducting regular affairs and also utilisation of the facility for meeting the educational expenses of their son in the USA. It is urged by the learned counsel that even though the arrangements made with the bank were clearly communicated, the operation of the account for regular affairs does not in any way non suit the complainant to maintain a complaint before the Consumer Forum for the amount which was claimed before the State Commission and was well within its pecuniary jurisdiction.

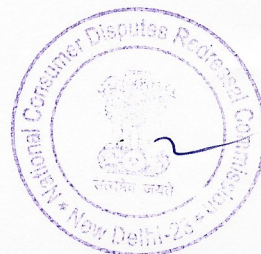
25. It was also explained that even though the Bank account opening form was tick marked for business requirements the same was only intended by the complainant as a matter of fact for general requirements and personal expenses. During his oral submissions Mr Bakshi urged that in fact the entire form was filled by the Bank officials and the complainant had only signed the blank forms. He submitted that the affidavit filed clearly states that they were transactions to mitigate their temporary losses, pending payments, family expenses and expenditure in India, that were transacted through the said accounts. This was an arrangement undertaken because the complainant was living in Kuwait therefore, they intended to transact their regular affairs through the said account and in



fact the transactions do not fall within the definition of commercial purpose as alleged by the bank. There is no proper genuinity except or the like or any such demarcated intention of the said account. He further submits that the objections taken and the grounds raised in the appeal filed by the Bank in FA no.835 of 2023 deserve to be allowed and Appeal No.694 of 2023 deserves to be dismissed. He submits that in the case of ***Shrikant G. Mantri Vs. Punjab National Bank, Civil Appeal No. 11397 of 2016 decided on 22.02.2022*** as relied upon does not in any way militate against the complainant and rather comes to their aid making the complaint maintainable.

26. Mr Ashutosh Marathe, learned counsel for the Bank has advanced his contention that the complaint is not maintainable as the complainants are not consumers, there is lack of pecuniary jurisdiction, and there was neither any arrangement nor any documents in writing to establish the allegation of arrangements for confirming the transactions made. No liability can be fixed in the absence of any deficiency that could be established on the basis of facts pleaded before the State Commission.

27. Supplementing the arguments, he has also relied on the reply before this Commission on 16.01.2024 to the affidavit of the complainant denying all the allegations and attempting to demonstrate that the OD account was used mainly for the purpose of transaction of business which was commercial in nature including investments in shares and also



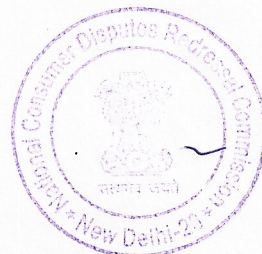
payment for property. Relying on the said reply he has further cited the following three decisions to substantiate his submissions:

- (i) ***Bharati Knitting Company vs DHL Worldwide Express Courier Division of Airfreight Ltd.,*** - (Civil Appeal no. 9057 of 1996) II (1996) CPJ 25 (SC) decided on 09.05.1996;
- (ii) ***M/s Modern Insulators Ltd., vs Oriental Insurance Co. Ltd.,*** (Civil Appeal no. 6895 of 1997) I (2000) CPJ 1 (SC) decided on 22.02.2000; and
- (iii) ***UCO Bank vs S D Wadhawa*** (RP no. 2479 of 2008) III (2013) CPJ 523 (NC) decided on 24.07.2013

28. He then submitted that the issue with regard to fake ID used for hacking the account was a serious dispute on a question of fact and therefore, the same cannot be entertained as a complaint before the consumer forum.

29. In rejoinder, the learned counsel Mr Bakshi for the complainant urged that the Bank account had clearly indicated the predominant purpose for meeting the regular expenses of the complainant in India and also for the purpose of supporting the education of their children. In such circumstances, the operation of the OD account was a facility not for profit generation as held in the case of ***Shrikant G Mantri*** (supra). Consequently, the contention of the Bank that the nature of the transaction was for commercial purpose is untenable.

30. Having heard learned counsel for the parties, the undisputed facts are that the Bank account was opened where the purpose indicated was



business. Learned counsel for the complainant argued that the form was filled up by the bank officials but there is no cogent or convincing evidence to accept the same. Complainant no.1 is a retired chartered accountant and he cannot therefore be expected to mention the purpose being ignorant of the options given in the form itself. It is for these reasons that the complainant was called upon to file the affidavit to explain this, which has been filed on 09.01.2024. The response has also been filed by the Bank on 16.01.2024. The averments as emerge from a comparative study of the two affidavits, the nature of transaction through the OD account indicates a personal requirement as well as for some other payments.

31. The question therefore is as to whether the Complainant is a Consumer as defined under the Consumer Protection Act, 1986 and as to whether the Complaint made about a deficiency in services can be entertained as the Bank contends that the services obtained were for commercial purposes.

32. The first question is about the nature of the service obtained which was an overdraft facility from the Bank for which the account was opened. The recital and the Application Form therefore do indicate that the Complainant had ticked the box of business purpose. The transactions which have been made by the Complainant from the said Account have been narrated in the affidavit filed on 03.01.2024. The said affidavit narrates that a Fixed Deposit Account had been opened by the



Complainant and it is thereafter that the said fixed deposit was pledged against the overdraft facility that was availed of. The Application forms were signed by the deponent and sent to the Bank from Kuwait. The contention is that the requisite forms had been filled up by the Bank officials. The ticking of the box of business requirement cannot be said to be an ignorant act by the Complainant who is a Chartered Accountant. Nonetheless, the facilities that were availed of were basically for international transfers in order to meet the expenses of the deponent's son who was studying abroad and also for meeting transactions within India for conducting his regular affairs. It has also been stated that this was clearly known to the bank officials, which is evident from the communications that have been narrated in paragraph 7 and 8 of the affidavit. In paragraph 9 of the affidavit it has been categorically stated that the transactions made through the Account are not for any business purpose. They relate to some temporary loans to the family, pending payments, family expenses and other payments relating to the OD amounts. Thus the intention was not for any commercial purpose at all. The same has been further elaborated by extracting a chart in paragraph 12 of the said affidavit and a detailed description of each transfer has been reflected through the statement of accounts which has been brought on record. The other expenses are shopping, travel expenses and cash withdrawals made from time to time. None of these transactions therefore reflect any commercial venture being the purpose for the utilisation of the funds. Thus the dominant purpose of the transactions through the OD



Account was not to facilitate any kind of profit generation for any commercial venture even though the Application form had been ticked indicating the purpose as business. This affidavit has been replied to by the Bank through the affidavit dated 15.01.2024 where it is alleged that investments and commercial transactions have been entered into which are sought to be disguised as temporary loans. It is alleged that there are 133 debit entries and approximately 73 credit entries in the OD Account which aggregate to Rs.4,11,46,000/-. Out of these 26 transactions that have been outlined to indicate the temporary loans given to the HUF. These transactions however do not indicate strictly a commercial purpose transaction.

33. In para 10 of the reply the Bank has come up contending that two transactions of 28.11.2014 and 23.02.2015 have been transferred for registering a property in Phoenix Mall for a shop. This acquisition of a shop was therefore an investment for a commercial purpose and not for self-use.

34. Considering the aforesaid allegations and counter allegations the major transactions as indicated do not establish that they have been used strictly for any profit generating commercial business venture. In such circumstances the Complainant cannot be denied the benefits of accessibility under the Consumer Protection Act on the ground that he is not a Consumer for maintaining a complaint. The service rendered as defined under Section 2(o) is a banking service which is covered there



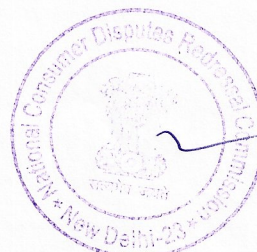
under. It will be useful to quote Section 2.(o) of the Consumer Protection Act, 1986 which is extracted hereinunder.

"2.(o) "Service" means service of any description which is made available to potential [users and includes, but not limited to, the provision of] facilities in connection with banking, financing insurance, transport, processing, supply of electrical or other energy board or lodging or both, [housing construction,] entertainment, amusement or the purveying of news or other information, but does not include the rendering of any service free of charge or under a contract of personal service;"

35. On the facts as indicated above the overdraft facility was predominantly for the personal use of the Complainant and was a facility in connection with Banking hence the service availed was that by a Consumer as defined under Section 2 (d) of the Consumer Protection Act, 1986. Section 2 (d)(ii) is extracted hereinunder:-

"2.(d)(ii) [hires or avails of] any services for a consideration which has been paid or promised or partly paid and partly promised, or under any system of deferred payment and includes any beneficiary of such services other than the person who [hires or avails of] the services for consideration paid or promised, or partly paid and partly promised, or under any system of deferred payment, when such services are availed of with the approval of the first mentioned person [but does not include a person who avails of such services for any commercial purpose];

[Explanation.- For the purpose of this clause, "commercial purpose" does not include use by a person of goods bought and used by him and services availed by him exclusively for the purposes of earning his livelihood by means of self-employment"



36. Merely because one of the transactions was in respect of purchasing a shop will not convert the entire nature of the services availed as an overdraft facility for commercial investments. The stand therefore taken by the Bank on this account deserves rejection and the finding recorded by the State Commission therefore has to be affirmed. The ratio of the judgment in ***Shrikant Ji Mantri (Supra)*** therefore does not denude the Commission from entertaining a Complaint in relation to the reliefs prayed for. The Complaint was very much maintainable as the Complainant was a Consumer and availed of the services of the overdraft facility which account has been admittedly hacked.

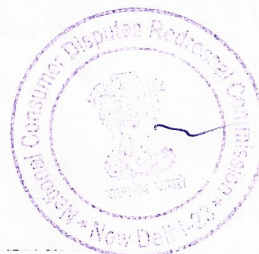
37. The next issue is the fact of the account having been hacked through a fraudulent transaction. This fact has been admitted by the communications of the Bank itself that undertook the exercise of communicating with the Standard Chartered Bank for reversal of the amount. The said facts are evident after the Complaint was made by the Complainant to the Bank. The request document dated 02.02.2015 has been filed as annexure A (32) describing clearly therein that the remittance was a disputed payment and required a reversal. The fact that the security of the email id had been compromised has been clearly mentioned in the document dated 27.01.2015, and on 30.01.2015. The Bank itself repeated this exercise once again on 04.02.2015 which document is also on record. These messages and communications one after the other which are on record leave no room for doubt that they indicate breach of security and ultimately the Standard Chartered Bank



intimated the Appellant Bank that they were unable to comply as the funds have been withdrawn and the case was being closed. This entire narration of events supported by these documents filed as annexure A32 therefore demonstrate that the Bank itself had been pursuing for the reversal of the amount but ultimately failed in its attempt as the amount had been already withdrawn.

38. There was no attempt made by the Bank to either lodge a Criminal or Commercial case or pursue the matter further as a result whereof the Complainant was left with no option but to file the Complaint.

39. The question is as to whether there was any voluntary act on the part of the Complainant so as to contribute towards the hacking. The Complainants have clearly come out with a case that they never shared the email id with any one. The Bank did not come up with any evidence or material to demonstrate that the Complainant had compromised his own email id voluntarily. On the other hand the standing instructions for remittance of the amount was only to the tune of USD 2,500/- per month and not beyond that. The Bank Manager Ms. Meenazs Thanawala therefore seems to have been grossly negligent in clearing the transfers of USD 25,000/- and USD 28000/- respectively without bothering to call the Complainant to verify the same and without referring to the name of the beneficiary that was a foreigners name. It was not related to any hospital at all. The Complainant has relied on the requests and instructions made for transfer one of which is annexure 22 which indicates



that the instruction was only for USD 2,500. In such circumstances there was no occasion for sending any mail to the Bank by the Complainant for USD 25000 or 28000 to Jennifer G Thibodeaux. The documents therefore do indicate that the transaction that was carried out on the basis of such fake communications was negligently handled by the Bank officials particularly Ms. Meenazs Thanawala the then Bank Manager.

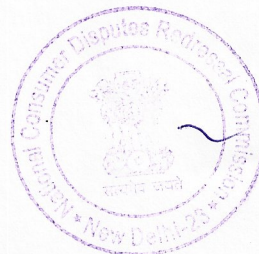
40. It is also evident from the narration of facts that the Complainant had met the Bank Officials who gave assurances and did make efforts for the retrieval of the amount which reflects that the Bank itself had realised that the loss occurred on account of the fraudulent transaction and on account of the hacking of the mail id of the Complainant. The deficiency on the part of the Bank Officials is that when the said fake mails were requesting for transfer of amounts far beyond USD 2500 as instructed by the Complainant, then in that event efforts for verification should have been made keeping in view the fact that the name of the beneficiary was absolutely alien.

41. It is at this juncture that the contention on behalf of the Bank deserves to be dealt with which is the claim of no liability of the Bank under the terms and conditions of the Account. Learned Counsel for the Bank has emphasised that the undertaking was given in the printed format duly signed by the Applicant to the effect that the Bank shall not be responsible for ensuring the authenticity, validity or source of any instructions and shall not be liable if any such electronic instructions



turned out to be unauthorised, erroneous or fraudulent. According to the learned Counsel for the Bank the said instructions categorically includes email instructions as well. The email id disclosed therein by the Complainant also is followed by an undertaking of the risks involved giving an unconditional authority to the Bank to act on his email instructions.

42. The aforesaid argument is based on the said written undertaking but such an undertaking cannot be construed as an authority to the Bank to entertain palpably fake instructions. The Bank itself has undertaken the exercise for the reversal of the amount and is now trying to take a cover of the said undertaking on the ground that the Complainant is estopped from raising such a plea. In the opinion of this Commission the said undertaking does not amount to any waiver of the right of the Complainant to sue the Bank once it is established that the transaction was fake and had resulted on account of the hacking of the account due to the negligence of the Bank Officials. The law on the issue of vicarious liability of a bank for the acts of its employees has been dealt with by the Apex court in the case of ***Canara Bank vs. Canara Sales Corporation, (1987) 2 SCC 666, Pradeep Kumar Vs. Post Master General, (2022) 6 SCC 351*** and the latest judgment of the Apex Court in the case of ***Leelawati Devi & Anr. Vs. District Cooperative Bank Ltd., Civil Appeal No.6564 of 2023 decided on 15.04.2024.***



43. In the circumstances this is not a case of voluntary act or a contributory act of the Complainant that has resulted in the hacking of the account. The Order of this Commission in the case of **UCO Bank vs SD Wadhwa, 2013 vol 3 CPJ 523** was a case with regard to a cheque book having not being handled by the account holder himself. The ratio of the said judgment nowhere applies on the facts of the present case and as such the reliance placed on the said judgment by the learned Counsel for the Bank cannot be appreciated.

44. The handling of the instructions for transacting the OD Account as authorised by the Complainant has therefore been breached. It is also established that the security of the email id had been compromised and had the Bank taken due care of verifying the instructions and confirming it from the Complainant the hacking could have been avoided. The reply filed by the Bank to the affidavit of the Complainant nowhere meets this requirement by giving any plausible explanation and consequently we do not find any error in the conclusions drawn by the State Commission which are hereby confirmed.

45. Coming to the appeal filed by the Complainant being FA/835/2023 we find that the State Commission has justifiably awarded interest on the defalcated amount and has proportionately given compensation. The fact that the Complainant had taken an overdraft facility that was burdened with the rate of interest as indicated therein, was known to the Complainant. No concession therefore would be permissible on that



account as the opening of the overdraft account is a matter of contract and the interest rate therein cannot be a standard for comparison for the award of interest in the present Complaint.

46. For all the reasons hereandabove we do not find merits in any of the Appeals.

47. Both Appeals are accordingly dismissed.

Satish/Rita/ Karan/Court-1



Sd/-

(A.P. SAHI, J.)
PRESIDENT

AS
20/11/2024



4298

150/
175/
20/11/2024