

## **Compendium of Cases Handled by the Banking Ombudsman Offices**

The compilation of various cases handled by the offices of the Banking Ombudsman is given below in brief.

They have been broadly classified under the given Heads:

- A. Operation in Deposit Account**
- B. Complaints relating to Interest Rates**
- C. Non-honouring of Bank Guarantee**
- D. Remittances from Abroad**
- E. Remittance related Complaints**
- F. Complaints relating to Loans**
- G. Other Complaints**

The gist of the complaint along with the decision taken is given for each of the case.

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## **A. OPERATION IN DEPOSIT ACCOUNT**

### **Complaint No. 1**

#### **Complaint in brief**

The complainant had stated that a special term deposit was opened on 16.8.1999 with the respondent bank in the name of his minor daughter represented by the complainant as the father and guardian by paying a sum of Rs.1,50,000/- (Rupees one lakh and fifty thousand only) in cash. The respondent bank is stated to have acknowledged the receipt of the said sum and also issued a deposit receipt. When the deposit receipt was forwarded on 9.8.2002, the maturity date, to the respondent bank for renewal, the bank expressed their inability to renew stating that there was no credit in the deposit account. The complainant has stated that the deposit amount was paid in cash, which the respondent bank denied having received.

#### **Decision:**

The bank stated that the complaint was false and baseless and that the fixed deposit receipt was issued for Rs.1,50,000/- believing that a letter/cheque would be sent requesting the bank to transfer Rs.1,50,000/- from the Saving Bank Account. of the minor towards the fixed deposit account. As was being done in the case of VIP customers, in their enthusiasm to please the customer, the FD receipt was issued on the basis of the oral promise made by the complainant to send the letter/cheque for transfer of Rs.1,50,000/- from SAVINGS BANK Account of the minor daughter.

The complainant, though he indicated that the bank issued the receipt acknowledging the said sum, he could not produce the same. On the date of issue of the deposit receipt, there was a balance of Rs.1,42,576/- in the savings bank Account. The representative of the complainant deposited Rs.10,000 in cash possibly to enable the bank to issue a fixed deposit receipt for Rs.1,50,000/- . Having maintained Rs.1,52,576/- from which a letter/cheque could have been

given for issuing fixed deposit receipt as was done in the past, it is hard to believe that the complainant again brought Rs.1,50,000/- in cash and deposited the same for the purpose of issuing FD receipt that too to the Manager, instead of depositing with the Cashier as was done hitherto. The respondent bank has mentioned that as per RBI directives, cash in excess of Rs.50,000/- is not accepted for issuing FD receipts.

The complaint has been rejected under clause 19(1)(a) of Banking Ombudsman Scheme, 2002.

**Complaint No. 2**  
**Complaint in brief:**

The complainant stated that he was a Savings Bank account holder maintaining good balance with Madurai branch of X Bank since taken over. During his visit to Malaysia between 2<sup>nd</sup> February and 16<sup>th</sup> February 2003, he used the Proton card in a computer shop for purchasing a computer worth Rs.40,000/-. However the card was rejected by the machine as the permissible amount per day was Rs.15,000/- as per the terms on which the card was issued for usage abroad. On checking up the statements, he was surprised to see 15 international debits in his Savings Bank account on account of alleged use of Proton card between 10<sup>th</sup> May 2003 and July 2003 amounting to Rs.28,981.33. Immediately, he gave instructions to the Manager to stop the Proton card operation and lodged a complaint about the wrongful 15 international debits amounting to Rs. 28,981.33. He, therefore, requested the bank to reverse the wrong debits. The complainant submitted proof that he was not abroad when the questioned debits took place.

**Decision:**

The complainant proved his point that he was away to Malaysia between 2<sup>nd</sup> February 2003 and 16<sup>th</sup> February 2003 as per the photocopy of the passport showing entry and exit to and from Malaysia. This was not contested by the bank. The bank made an attempt to make a feeble plea that as per clause 45(c) and 45(g) of the Proton Debit Card User's guide, the bank shall not be liable to

the customer or any other party for any loss or damage suffered. The bank could have got protection only if they could prove beyond doubt the complainant was negligent. Unfortunately, the bank could not produce evidence to prove that the complainant was negligent. Again the customer promptly informed the bank about the alleged wrong international debits, the moment the statements were made available to him when he called on the bank on 5<sup>th</sup> July. The bank had ample time and opportunity to take up with the acquirer to call back the charge slips, verify the signature and charge back the account. This would have helped the customer and the bank from any financial loss. Therefore, the bank is directed to reimburse the complainant the 15 disputed international debits in the account allegedly due to use of Proton card issued to him by the bank. The bank may, if they desire, ask the complainant to execute the indemnity in its favour.

**Complaint No. 3**  
**Complaint in brief:**

'X' the complainant, had issued cheque dated 20.10.2004 for Rs.5,00,000/- (Rupees Five lakhs only) to their supplier and mentioned the supplier's account No. on the reverse side of the Cheque. The cheque was deposited in the drop box of ABC Bank, on 22.10.04 at about 10.30 a.m. The cheque was taken out of the drop box by a miscreant who opened current account in the name of the supplier with Y Bank on 24.10.04 (Sunday). As per the records of Y Bank, the supplier was a proprietary concern owned by one Mr.Z. The bank contended that the opening of account was supported by proof of addresses submitted by the customer. Thus the account was duly introduced with sufficient proof of address. Y Bank confirmed having observed the KYC norms.

**Decision:**

The person giving introduction should be of some standing and have an account with the bank for at least six months to ensure that the accounts are not opened on the introduction of new account holders or persons having small and marginal

balances. In the instant case, the introducer's account was less than 6 months old. There is no record to show that efforts were made to verify the authenticity of the existence of account opened firm.

In the case of Kerala State Co-operative Marketing Federation vs State Bank of India and others, the Supreme Court of India has spelt out the principles governing the liability of a collecting banker are:

As a general rule the collecting banker shall be exposed to his usual liability under common law for conversion or for money had and received, as against the "true owner" of a cheque/draft, in the event the customer from whom he collects the cheque or draft has no title or a defective title. The banker, however, may claim protection from such normal liability provided he fulfils strictly the conditions laid down in Section 131 or Section 131A of the Negotiable Instruments Act, 1881, and one of those conditions is that he must have received the payment in good faith and without negligence. It is the banker seeking protection who has on his shoulders the onus of proving that he acted in good faith and without negligence.

Negligence is a question of fact and what is relevant in determining the liability of a collecting banker is not his negligence in opening the account of the customer but negligence in the collection of the relevant cheque unless, of course, the opening of the account and depositing of the cheque in question therein form part and parcel of one scheme as where the account is opened with the cheque in question or deposited therein so soon after the opening of the account as to lead to an inference that depositing the cheque and opening the account were interconnected moves in an integrated plan.

Negligence in opening the account such as failure to fulfil the procedure for opening an account which is prescribed by the bank itself or opening an account of an unknown person or non existing persons or with dubious introduction may lead to a cogent, though not conclusive, proof of negligence particularly if the

cheque in question has been deposited in the account soon after the opening thereof.

It may be noted that Y Bank opened the account in the name of the supplier on 24<sup>th</sup> October 2004. The cheque for Rs.5,00,000 issued by the complainant was deposited in the account on 25.10.2004. The value of the cheque was credited on 27.10.2004. Rs.3,00,000 was drawn in the morning of 29.10.2004 and Rs.1,80,000 drawn in the afternoon. The Y Bank was negligent in opening the account in the name of the complainant allowing the depositor to immediately draw Rs.4,80,000/- out of Rs.5,00,000/-. The account was introduced by a person who did not have account with the branch for a minimum period of six months as per guidelines of RBI. The address of the account holder in the driving license was left blank. Y Bank was found to be deficient in opening the current account without proper introduction and verification, thereby enabling the account holder to open the account, deposit the cheque and draw major portion of the cheque proceeds in quick succession.

**Complaint No. 4**  
**Complaint in brief:**

The complainant was having a Saving Bank Account. with the opposite party bank. Being an employee of TCS, his salary and other allowances were being directly credited to his account with the bank. He alleged that the bank had issued a cheque-book without his knowledge to someone else and had passed cheques which were not drawn by him. The total amount so fraudulently withdrawn from his account amounted to Rs.977,000/-. A police complaint was also filed.

**Decision:**

The subsequent developments after filing of the police complaint and the opinion given by the GEQD, leads to an irrefutable conclusion that the culprits had made

fraudulent withdrawals by forging the signature of the complainant. In the circumstances, prima facie forgery had been established. Legally if the drawer's cheque is forged or unauthorised, however clever the forgery is, the banker cannot debit his customer's account in case he pays the sum unless he establishes adoption or estoppel. The complainant was out of India during the material time. The bank could not bring out any evidence/proof that the complainant was in any way connected with the fraud or his involvement in the forgery.

**Complaint No. 5**  
**Complaint in brief:**

The complainant, Shri E was holding a current account with A B Bank. On 11.09.1990, following a raid conducted on his premises by the Income Tax Dept., jewellery, FDRs, chequebooks, passbooks pertaining to his bank accounts with various banks including that with AB Bank were seized. The credit balance in his current account with AB Bank at the time of seizure of the documents was Rs.44,769.10 He stated that it had taken thirteen years for the Income Tax Dept. to finalise his case and to exonerate him. The Income Tax Dept. did not to return the chequebook and passbook seized by them, as they were not traceable. The complainant had approached the AB Bank for withdrawing the amount lying in his current account but the bank refused to allow him to withdraw the amount without chequebook and the passbook. The Income Tax Dept. by its letter No. GIR No.V-715 dated 11.09.2003 addressed to AB Bank certified that during search operations conducted in the premises of Shri E on 11.09.1990, the department had seized a chequebook in respect of current account No.929 in the name of Shri E showing a credit balance of Rs.44,647.10 as on the date of seizure adding that the chequebook and passbook were not readily traceable and the department had no objection in allowing operations in the account by the complainant.

**Decision:**

When the complainant had approached the bank on 12.09.2003 for refund of the amount lying to his credit, the bank had refused to allow him to withdraw the amount. Article 90 of the Limitation Act clearly mentions that limitation would start running from the date of demand. The complaint filed with the office of the Banking Ombudsman is not barred by limitation and is maintainable in law.

It is a general rule that the party who affirms any proposition shall prove it. It is also a general rule that the onus lies upon the party who seeks to support his case by a particular fact to prove it. If this basic principle of law of evidence is applied, it is for the bank to prove conclusively as to when and how the account was closed and to produce the documents supporting such payment and closure, which ought to have been in its custody.

It may also be pertinent to note that the Asst. Director of Income Tax [Inv.] had served an order under Sec.132 [3] of the Income Tax on the branch manager directing him not to part with the funds lying to the credit of the complainant in current account No.929. When the bank asserts that the account was closed it is for the bank to bring proof of such closure and it cannot excuse itself stating that records were destroyed or its tapes were not readable. The submission that the bank had permitted closure when there was prohibitory order against it is not credible as in the normal course there is no chance of any bank allowing operations in an account when there is a prohibitory order in force. All the facts and circumstances of the case point out to an irrefutable conclusion that there was no chance that the complainant could have received the refund of the current deposit prior to 2003. Therefore it was decided to direct the bank that it should refund to the complainant Rs.44,647.10 which was lying to his credit as on 11.09.1990 when the passbook and chequebook were seized by Income Tax authorities.



**Complaint No. 6**  
**Complaint in brief:**

The daughter of the complainant was holding an account with the Visakhapatnam branch of ABCD Bank. Since the bank offered the facility of accepting deposits into its customers' account at any branch, her second daughter had dropped a cheque drawn on C Bank, into the Cheque Deposit Box kept at the ABCD Bank. Proceeds of this cheque were to be credited into account of her elder daughter at Visakhapatnam branch of ABCD Bank. As her daughter's account was not credited with the proceeds of the cheque, she had verified with the paying [drawee] bank and found that the cheque had been encashed by someone across the counter after altering payee's name. The address given on the back of the instrument by the person who had encashed it with C Bank had been subsequently found to be false.

**Decision:**

On a perusal of the photocopy of the cheque in question, it was observed that it was a bearer cheque. Further, the alteration of the payee's name was not apparent. In such circumstances, it was felt that the C Bank, being the drawee bank was entitled to the protection under Sec.85 and Sec.89 of the Negotiable Instruments Act. Since the complainant claimed to have deposited the cheque with the ABCD Bank and the cheque was encashed after it was so deposited with it, the bank was advised to settle the grievance.

On the basis of the facts and circumstances of the case, documentary proof of the carbon copy of the 'deposit form' and the existence of the video recording showing daughter of the complainant dropping 'something' to the drop-box at 12.31 p.m., it was safely concluded that the claim of the complainant that her daughter had deposited the cheque with the opposite party bank is genuine.

The contention of the branch manager that the complainant should not have deposited the bearer instrument is also not tenable. Legally nothing prevents a banker from collecting the cheques either crossed or uncrossed. Only in the context of claiming banker's statutory protection under Sec.131 of the Negotiable

Instruments Act, collection of crossed cheques is relevant. In case of crossed cheques, the collecting banker gets protection under Sec.131. If the banker has in good faith and without negligence received payment of a crossed cheque and in case the title to the cheque proves to be defective, he will not incur any liability to the true owner of the cheque, by reason only of having received such payment.

It is necessary to consider the question of the duty of the collecting banker to his customer. As his customer's agent, the collecting banker is bound to show due care and diligence in the collection of cheques given to him. If he fails in his duty, or neglects to use the recognised channels for the purpose and, as a direct consequence of his negligence, his customer suffers a loss, the collecting banker will be required to make good that loss. For the above reasons, ABCD Bank was directed to credit Rs.40,000/- with interest at the savings bank rate.

### **Complaint No. 7**

#### **Complaint in brief:**

The complainant's husband had deposited Rs. 15000/- jointly in the name of self and her name in the bank as on 9.3.93 for one year and the deposit matured on 9/3/94. As on 15.2.96 he expired. When the complainant had approached the bank and produced the death certificate and the marriage certificate and informed that the deposit receipt is lost and asked for the payment of the deposit proceeds, the bank did not make payment and informed that they wanted clearance from their controlling office regarding the heir of the depositor since the deceased had left behind his first wife and children.

#### **Decision:**

As per RBI guidelines the bank should not insist upon succession certificate where the amount to the credit of a deceased depositor does not exceed Rs.25,000/-. As directed earlier by RBI, BO advised that the intention of the depositor to add the name of his wife in the deposit payable jointly was that the deposit should go to the second beneficiary on his death. The bank was advised

to make payment to the complainant after obtaining an indemnity and after following usual formalities such as verification of signature and identity etc.

**Complaint No. 8**  
**Complaint in brief:**

The complainant's mother AA had a deposit with the subject bank. She had a loan also with the same bank. On her death on 13.10.95, the balance deposit proceeds after adjusting towards the loan account Rs. 22188/- was deposited for 48 months and the deposit receipt was issued with a maturity date 17.12.2000 and maturity value of Rs. 37013/-. When the legal heirs approached for payment they received only Rs. 30072/- as on 25.3.2003 instead of the maturity value Rs. 37013/- as promised in the deposit receipt. The bank has not paid interest after the date of maturity.

**Decision:**

The Bank should honour its own commitment, viz., to pay the maturity value of the deposit as appearing on the deposit receipt on the due date as on 17.3.2000 and interest admissible subsequent to the due date till the date payment as per RBI guidelines applicable to the deceased depositor.

**Complaint No. 9**  
**Complaint in brief:**

The complainant maintained a savings bank account with the subject bank for payment of premium to UTI in respect of his ULIP policy. As per arrangement the half yearly premia should be remitted in June 1990 and the last instalment in October 2004. The monthly premia of Rs. 284/- was remitted by his employer Rubber board to the subject savings bank account and the bank in turn was remitting the half yearly premia to UTI. The employer informed that Canara Bank refused to accept the monthly premia of Rs. 284/- recovered from his salary for the month of Aug 2004 on the ground that the arrangement with UTI had been discontinued and the amount of premia should be remitted directly to UTI. The

employer continued to remit the monthly instalment of Rs. 284/- to the bank and the bank received the amount to the credit of his savings account. The bank did not put notice to the complainant or his employer regarding discontinuing remittance of premia to UTI. When the complainant contacted UTI regarding the default, he was informed that his policy was discontinued as he has defaulted remittance of premia from October 2000. The failure of the bank to remit the premia to UTI after October 2000 is a deficiency of service and the bank is liable to compensate the loss sustained to the complainant.

**Decision:**

Since there is no written mandate/standing instruction given by the complainant to debit his savings bank account and pay premia to UTI, the complainant cannot hold the bank for non remittance since the agent of UTI did not produce demand notice for debiting the parties' account. There was no mandate from the complainant to the bank to remit the premium for ULIP to UTI since the agency was terminated by UTI and fresh arrangement was not made by the complainant or UTI. Hence there was no deficiency on the part of the bank for the default of payment of premium by debiting savings bank account of the complainant. The complaint was accordingly closed.

**Complaint No. 10**

**Complaint in brief:**

The complainant, when he tried to withdraw cash through ATM, there was power supply failure and he could not withdraw cash whereas his account was debited by Rs. 600/-. The complainant reported the matter to the bank. But inspite of his request and telephonic talk the bank did not take any action and replied that he might have withdrawn the cash as per the list of transactions available with them.

**Decision:**

On perusal of the disputed transactions and cash summary as per ATM, the bank found that the cash was not dispensed for the disputed transaction and they reimbursed the amount.

**Complaint No. 11**  
**Complaint in brief:**

The complainant having a savings bank account with the subject bank found that there was an unauthorized debit of Rs. 15000 in his account. On enquiry with the bank, they informed that it purported to be the ATM transactions made by him. The complainant claimed that he had not withdrawn any amount on that day. The debits were made by the bank after six months without intimation to the complainant. The complainant requested to restore the unauthorized debit made by the bank.

**Decision:**

The Banking Ombudsman perused the documentary evidence for ATM transactions produced by the bank, which contained the ATM card number and his account number. As nobody other than the card holder can operate the ATM and withdraw money, his argument that he was not aware of the ATM transactions made by him cannot be accepted. The Banking Ombudsman advised the bank to explain the position to the complainant to his satisfaction along with the documentary evidence and the complainant was advised that on the basis of the documentary evidence for ATM transactions provided by the bank, the card holder has undoubtedly made the three ATM cash withdrawals of Rs.,5000/- each.

**Complaint No. 12**  
**Complaint in brief:**

The complainants had arrangements with the bank for immediate credit of outstation cheques. The proceeds of 3 such cheques lodged and credited to the complainants' account in the years 1989, 1991 and 1992 were debited by the bank after several years. The complaint was lodged with a prayer directing the bank for re-crediting the amount of the cheques. The bank submitted that in

respect of one cheque the drawer had withheld the payment and the 2 other cheques had remained unpaid at the drawee bank's end despite follow up.

**Decision:**

In terms of the arrangement between the complainants and the bank, it was stipulated that in case of return of cheques the amount would be debited to the complainants' account and the dishonoured cheques would be delivered back to the complainants. The grounds of return would also be advised by means of a communication. It was observed that the bank had debited the amount of the 3 cheques without following the stipulations and was found negligent.

**Complaint No. 13**

**Complaint in brief:**

The complainants had arrangement with the bank for immediate credit of outstation cheques into the account subject to proviso that in case of dishonour of cheques by the drawee banks, the returned cheques would be delivered back to the customer together with the grounds for return promptly. The bank had debited the aggregate amount of a large number of cheques so purchased during the year 1999-2000 after a substantial delay without returning the dishonoured cheques or giving reasons for such debit after a long period.

**Decision:**

As the deficiency of the bank was clearly established, it was recommended that the bank restore the amount so debited to the complainants' account.

**Complaint No. 14**

**Complaint in brief:**

The complainant lodged the receipt of a Term Deposit 2 years after the date of its maturity with a request for payment of the proceeds of the deposit. The bank did not pay the amount on the ground that the relevant records were not traceable and an investigation by its Vigilance Department was initiated.

**Decision:**

As it was a clear deficiency on the part of the bank, the matter was settled through agreement with the intervention of the office of Banking Ombudsman.

**Complaint No. 15****Complaint in brief:**

The complainant's representative had lodged a cheque for credit into her PPF account on 29.3.2003. While lodging the cheque it was noticed that the cheque was ante-dated by mistake. The complainant's representative changed the date immediately and followed up the action by a confirmatory letter to the bank on the next day. The bank, however, failed to honour the cheque on presentation as a consequence of which the complainant was deprived of the tax benefit available for deposit in PPF account and was also imposed a penalty by the tax authorities for short payment of tax.

**Decision:**

As the bank admitted its negligence, the matter was settled in favour of the complainant.

**Complaint No. 16****Complaint in brief:**

The complainant had presented a matured FDR, 10 days after the date of maturity with a request for payment. However, the bank did not pay the proceeds on the ground that there was shortage of staff and had asked the complainant to keep the FDR with the bank. However, the bank failed to pay the amount even at a subsequent date and contended that the husband of the complainant had outstanding loan with the bank and the FDR in question, was withheld as security there against.

**Decision:**

As this was not tendered as security nor was the depositor a guarantor for the loan granted to her husband, the bank could not legally exercise lien on the proceeds of the FDR.

**Complaint No. 17**  
**Complaint in brief:**

One year four months after the bank having credited the customer's account with the proceeds of 3 bank drafts issued by its own branch debited the complainant's account with the value of the draft together with interest for the intervening period. The bank submitted that the drafts were subsequently found to be forged and it had resorted to the debit of the complainant's account after the forgery was detected. The bank further contended that a fake instrument did not confer any title. The money paid by mistake had been recovered from the complainant.

**Decision:**

The complainant bank collected the drafts as an agent of its customer who was having a long-standing relationship with the collecting bank. The complainant bank had materially and irrevocably altered its position much before the notice of mistake was received from the drawee bank. The drawee bank had failed to detect the forgery of signature of its own officer appearing in the drafts and also failed to verify the records of the stolen draft forms from its own branch. The detection of forgery came to its notice only after a considerable period. The complainant's bank had collected the draft in good faith and it was entitled to get the protection u/s 131 and 131A of N.I. Act. The guiding rules stated that when two innocent parties are affected by the fraud perpetrated by the third party, the party whose negligence had facilitated the fraud could suffer the loss. In terms of equitable principle and doctrine of estoppel as interpreted in section 72 of the Indian Contract Act 1872 the paying banker was disentitled to recover the amount from the collecting banker as its own conduct had contributed to the loss.



**Complaint No. 18**  
**Complaint in brief:**

The complainant had 8 certificates of deposits jointly with her mother and 2 certificates of deposits jointly with her mother and father, payable to either or survivor(s). The certificates had matured in the year 1994. The father and the mother had expired in 1989 and 2003 respectively. The complainant had lodged her claim with the bank after the death of both the parents for payment of the proceeds of the receipt as the sole survivor. However, the bank did not pay the amount and insisted on production of a succession certificate from the claimant.

**Decision:**

The bank argued that decision on the deposits were withheld on the basis of a legal notice received from the lawyer of the late mother stating dispute between the mother and daughter regarding the ownership of deposit held jointly with her late husband. On examination, it was observed that on the death of both her father and mother, the complainant could validly claim the right on the said deposits as the sole survivor. Even in the notice served by the lawyer of the mother, during her lifetime, it was stated that the father of the complainant had no legal heirs except the mother and herself. There, indeed, was no justification in withholding payment to the complainant on receipt of a lawyer's notice from the other depositor, namely, the mother, during her lifetime. However, the circumstances ceased to exist once the mother had expired. After the death of both the parents, the complainant remained the sole survivor and the perceived apprehension of her mother during her life time that the daughter would usurp the money belonging to her late husband (father of the complainant) became a nullity. Furthermore, the complainant had made no attempt to circumvent her mother's intention as long as she was alive and made the claim 2 months after her death. The RBI guidelines on this subject states that the banks may call for succession certificate from legal heirs of deceased depositors where there are disputes and all depositors do not indemnify the bank or the bank has reasonable

doubt about the genuineness of the claimant being the only legal heir. Such grounds were not applicable in this case.

**Complaint No. 19**  
**Complaint in brief:**

A high value cheque drawn on the bank (1) was lodged in the drop box of the bank (2) for credit to the complainant's account maintained at bank (2). It transpired that the payee's name in the cheque was changed under authentication purported to be, that of the drawer, which was collected by bank (3) on behalf of the changed payee from bank (1).

**Decision:**

Upon examination it became clear that the bank (2) had no system to check/control misplacement of instrument lodged in its drop box. No trail of documents was recorded. The bank (3) had collected the cheque for credit to an account, which was not subjected to KYC requirements and had allowed withdrawal of heavy amount without exercising a reasonable caution. The authentication of change in payee's name by the drawer was found to be forged through an examination by the GEQD. Upon a detailed examination of the facts and circumstances as also the relevant law and practice, RBI instructions etc. an Award was passed for restitution of the amount of the cheque to the complainant in the proportion of 50%, 25% and 25% by the bank (1), bank (2) and bank(3) respectively.

**Complaint No. 20**  
**Complaint in brief:**

The bank had raised an unauthorized debit on the savings bank account of the complainant allegedly to recover the monies paid by the former against a clearing cheque lodged by the complainant. The head office of the bank had held that such instrument was lost by the clearinghouse and they were not accountable to the lodger.

**Decision:**

The bank presented the cheque as holders in due course for clearing as an agent for collection on behalf of the complainant and it had credited the proceeds into the lodgers' account. The bank resorted to recovery after a gap of one month. Had the bank advised the lodger about the loss of the instrument promptly he would have retained his remedy against the drawer of the lost cheque. However, due to the delay of one month, which was substantial in this case, the lodger had changed his position. There was nothing to assume that the complainant was not entitled to his money nor was there any malafide on his part. Reliance was placed on the interpretation of section 72 of the Indian Contract Act, 1872 as made by Supreme Court (AIR 1967 SC 540) and also on Cocks –vs- Masterman (1829 3 B & C 902) and Mawji Shamji –vs- The National Bank of India (1901 25 BOM 499-515).

The bank settled the complainant's grievances by paying the amount recovered by them.

**Complaint No. 21**  
**Complaint in brief:**

A cheque of a very large amount drawn on an NRO account in favour of the complainant was intercepted while in transit and collected by the bank for credit to a newly opened account in the name of an alleged imposter.

**Decision:**

The bank had relied on a voter identity card for verification of customers identity, which was found to be a forged one. The address in the voter card was at far away place, nor in the proximity in the banks office. The account was opened on a date anterior to the date of the cheque and within a period of 2 days of opening the account, the cheque was collected and the amount thereagainst was allowed to be withdrawn. The customer identification sheet prescribed under the bank's own 'KYC' policy was not completed.

Bank did not examine the genuineness of the ownership of the instrument while accepting such a high value cheque for collection immediately after an account was opened without proper verification. As the imposter account holder did not have any title, the bank was charged with conversion and, therefore, it had abrogated the protection available under the act. The bank was also negligent in opening the account, for which it had collected the cheque. As the bank had not followed the 'KYC' norms and other instructions for opening the account and, therefore, could not get protection as a collecting banker u/s. 131 of Negotiable Instrument Act. Reliance was also place on Bapulal Premchand –vs- Nath Bank Ltd., (AIR 331946 and Bharat Bank –vs- Kishanchand Chellaram 1954 1, M.L. Je 560).

### **Complaint No. 22**

#### **Complaint in brief:**

The complainants stated that on 18.9.2003 they deposited four cheques for Rs.2,69,905/- with the captioned bank in clearing for collection. No receipt was issued by the dealing official. All the cheques were with Account Payee crossing. While going through the statement of account on 23.9.2004 they noticed that neither the proceeds of the cheques were credited to their account nor the dishonoured cheques were returned to them. On enquiries from the drawers of the cheques they were informed that the three cheques for Rs.69,905/- dated 18.9.03 drawn on X Bank for Rs.25,000/- dated 18.9.2003 drawn on Y Bank for Rs.25,000/- dated 17.9.2003 drawn on Z Bank respectively were encashed from the respective bank branches. On further enquiries it came to notice that these cheques were fraudulently encashed from the respective branches by cancelling account payee crossings under forged signatures.

#### **Decision:**

There is no documentary evidence to show that the three cheques under dispute were actually tendered at P bank branch by the complainants. It is established that the drawers of the disputed cheques have denied cancellation of crossing of

the said cheques in writing to their respective banks as back as in Sep.2003. The paying banks of the disputed cheques did not exercise due care and caution while encashing these account payee cheques with forged cancellation. As the drawers' signatures on cancellation of crossing are apparently forged and the banks have failed to detect the forgery, the banks cannot debit the customers' account. The forged signatures of drawers changing mandate cannot be construed as payments in due course. The complainants in the case will impress upon the drawers of the disputed cheques to write to their respective banks to refund the amount of disputed cheques. The banks are advised to restore the amount of disputed cheques along with interest at applicable FD rate from the date of such debit with suitable indemnity, in view of the pending police investigations.

**Complaint No. 23**  
**Complaint in brief:**

The complainants ABC State Board that they deposited Rs. 4 Cr. out of Pension Fund of the employees of the Board on 21st April 1998 in a bank with a request to issue a FDR for the amount for 39 months. The bank issued FDR No.0125637 due on 21 July 2001 with maturity value on 5,96,74,871/- on 22 April 1998. On 22 April 1998, the complainants requested the bank vide their letter dated 22 April 1998 to extend the period of FDR from 39 months to 64 months and return back the original FDR. The bank extended the period and returned the FDR amending the period, due date and maturity value and handed over the amended FDR to their cashier on 22 April 98. On 21 July, 2003, when they requested the bank to encash the FDR and issue pay order, the branch vide their letter dated 21 July, 2003 informed that the actual due date of the maturity of the FDR was 21 August 2003 and not 21 July 2003 and advised them to present FDR on 21 August, 2003 for payment. On 21 August 2003, when the FDR was presented, the same was returned by the branch vide their letter dated 22 August, 2003 and stating that there were unauthenticated overwritings/alterations in the period, maturity date and maturity value and requested board to send the same back to the bank with

authentication and verification of the material alterations. They mentioned that overwriting on the documents i.e. FDR were to be authenticated by the issuing branch and not by the beneficiary and due to the negligence and unlawful action and omission of the bank branch, the Board has been put to a loss of Rs.91,94,053/- besides interest from 21 July, 2003 till date of application to the Office of the Banking Ombudsman.

**Decision:**

The bank contended that the FDR was made for a period of 39 months and same was not extended for a period of 64 months. However, the original ledger sheet of the questioned FDR shows corrections as per the instructions given by the ABC Board vide their letter dated 22 April 1998. The same corrections are made on the questioned FDR. The BO observed that the corrections as to period, due date and maturity value are made in ledger sheet as well as FDR issued by the bank. The bank is responsible for any correction made in the record of the bank which is in possession of the bank. He, therefore, advised that the bank should treat the FDR as having been issued for 64 months and the rate of interest payable should be that applicable for 64 months as on the date of issue, namely 22 April 1998.

**Complaint No. 24**

**Complaint in brief:**

The complainant deposited in his Saving Bank account No.00000000 with the bank a sum of Rs.35,000/- on 14.12.2004 and a further sum of Rs.35,000/- on 17.12.2004. However, the deposit made on 14.12.2004 was not reflected in his account at all. The amount deposited on 17.12.2004 was reflected on 18.12.2004.

**Decision:**

The bank has admitted having received the money on 14.12.2004 for credit to complainant account. However it claimed that its Teller returned the amount

through one Sales Executive who had opened the account. Sale Executive returned the cash to the customer at his residence but forgot to collect back the stamped receipt. Thus, the deposit of the amount of Rs.35,000/- in the bank on 14.12.2004 is not in dispute. However, it is strange that the employees of a bank that prides itself as a professional bank have acted in a manner totally in violation of established banking practices and rules. There ought to be well-documented procedures to account for cash deposits/credits, which for some reason cannot be put into an account. Any employee, least of all a Teller can't simply hand over cash to another employee/person for being returned to a customer at the latter's residence. In any case the customer has not admitted receiving the amount and the bank has not produced any documentary proof for returning the amount. Thus, the bank has not accounted for the money. In terms of established procedures, rules and banking practices the way, the bank's act is a serious breach of banking practice.

**Complaint No. 25**

**Complaint in brief:**

Claim for restoration of amount of Rs.13,500 debited to the complainant's account, based on an allegation that a cheque drawn on her account was debited for Rs.15,000 whereas the amount paid out was only Rs.1,500 .

**Decision:**

The cheque bore the amount in figures Rs.15,000 and in words as one thousand five hundred. The bank should not have acted according to the provisions of Section 18 of the Negotiable Instruments Act 1881 as per which where the amount in words and figures differ, the amount stated in words shall be considered as the amount ordered to be paid. Further, the bank has also failed in substantiating its stand that it had made a payment of Rs. 15,000 to the complainant's husband and not Rs.1,500. The bank was, therefore, liable to restore the amount of Rs.13,500 to the account.

**Complaint No. 26**  
**Complaint in brief:**

The bank had paid 8 cheques amounting to Rs. 12,59,881 by debit to the account of the complainant's firm even though the firm had earlier advised the bank to stop the payment of the cheques.

**Decision:**

On the basis of the facts of the case, the finding was that the bank had paid the cheques in violation of the instructions given by the account holder. The bank paid the cheques in violation of the stop instruction; it had no authority of the account holder to debit the account with the amount of the cheques. The bank was therefore, liable to pay to the complainant an amount equivalent to the amount of the cheques honored by the bank in violation of the instruction for stoppage of payment. The complainant was entitled to get the payment as a relief whether or not the complainant incurred a loss in the transaction with payee. The payment shall be made with interest charged to the overdraft account involved.

**Complaint No. 27**  
**Complaint in brief:**

The complainant had deposited an envelope containing Rs41,000 currency notes in the ATM Drop box. The bank did not credit the amount for the reason that the envelope was found empty

**Decision:**

It was found that, in the terms of the contract covering the ATM card, the bank had given a reasonable prior notice to the ATM cardholders of the inherent risks involved in the system of depositing cash in the ATM. The ATM envelope carried the caveat that the "cash deposit accepted in ATM is subject to verification by the bank staff and bank's decision in this respect will be final." By dropping the cash envelope in ATM after receiving such a notice, the complainant had voluntarily



subscribed to the risk. The bank had investigated the matter after receipt of the complaint and confirmed that the envelope was found empty. In the circumstances the complaint is not supported by sufficient cause.

The complainant had taken the stand that the loss of her deposit was caused in the process of the bank or its agency handling the envelope. It was found that the information available before the office of the Banking Ombudsman was inadequate to establish the fact that at the time it was deposited, the envelope in fact contained cash of Rs.41,000/-, as stated by the complainant and to discover the reason why the envelope was found empty later. It was found that the complaint was complicated and it required consideration of elaborate documentary and oral evidence. Therefore the complaint was rejected in terms of clause 19(2) of Banking Ombudsman Scheme-2002.

**Complaint No. 28**  
**Complaint in brief:**

The complainant is a registered Association of the flat owners in the building in the city. After the election of a new management team, and registering the signing powers of the new office bearers for bank accounts, dispute arose between the Association's two sets of old and new Office Bearers (OB) about the election process and a civil suit was initiated in which the court issued a status quo order. The Association, acting through the new OB's, raised a dispute under BOS. This is regarding the payment by the bank subsequent to the elections of OB of cheques drawn by old set of OB and recovery of charges for the 'Stop' instructions in respect of unused cheques in the possession of the old OB.

**Decision:**

It was found that the bank's payment of the cheques bearing the signatures of old OBs was not in order. However, regarding the bank's liability for the payment of the cheques the liability to the Association will arise only if the old OBs had authority to issue the cheques. Whether or not the old OB had the power to continue in the management in terms of Court Order at the material time would

be the question. To determine this, interpretation of the judicial orders passed on the Association's submissions and access to the record of the court proceedings is required. As this is not within the scope of BOS, this part of the complaint was rejected. The bank had contended that at the relevant time the old OBs were authorized to issue the cheques. Issue of the stop instruction from new OBs would not, therefore, arise. If the bank knew that old OBs had no authority, there was no need for the instructions. In view of this and as the bank has not denied that it had sought the instruction, it was found that the bank erred in collecting the 'stop' instructions charges and its refund with interest was awarded.

**Complaint No. 29**

**Complaint in brief:**

The case is that the bank debited the complainant's savings account (receiving salary credits) with sum of Rs.37,416 without his consent or authority and hence the amount should be restored to his account. The bank submitted that the disputed debit was made in terms of a letter from his employer and in response to it the bank issued a Pay Order to the employer. The employer's letter stated that the amount was inadvertently remitted to the complainant's SAVINGS BANK salary account and he was not entitled to this amount.

**Decision:**

Bank's contention was that the debit, represented salary paid by mistake and therefore, was repaid to the employer, and this transaction was similar to what prevails in respect of excess payment of government pension to pensioners. This was not accepted for the reason that excess amounts of pension paid by banks on behalf of the government are recovered from the pensioners' accounts and are remitted back to the government. The recovery takes place in terms of a letter of undertaking given by a pensioner to the bank concerned authorizing the bank to recover by debit to the account any amount to which the pensioner is not entitled. In the case under dispute there was no written authorization to the bank on the above lines. In the circumstances, the example of recovery of excess

amounts from pensioners relied upon by the bank was not relevant and was therefore, not acceptable.

The facts presented by the bank do not support its claim that, through the bank, the employer is entitled to take back amounts wrongly paid to the credit of the employees' accounts. In this case the bank acted as an agent of the employee in receiving funds and passing on the salary amounts to the employee's account. As soon as the amount was paid to the employee, even though the employer paid it by mistake, it became the money of the customer (the complainant) and bank cannot pay it back to the employer without the consent of the customer. This follows the decision in Jammu & Kashmir Bank Ltd. vs Attar-ul-Nisa, Supreme Court case.

**Complaint No. 30**  
**Complaint in brief:**

Shri A B, the complainant, found four withdrawals had been made from his account between 7.3.98 and 23.5.98 in his NRE SAVINGS BANK account when he was abroad. On 28.8.98, the complainant lodged a complaint with the Police stating that his room mate in Saudi Arabia had stolen 5 cheque leaves while coming to India in February 1998, forged his signature and fraudulently withdrawn Rs.1.20 lakhs.

**Decision:**

The bank informed that payments had been made since the signatures had tallied. They also informed that the matter was under investigation by the Police. On 7 May 1999, the office of the Banking Ombudsman rejected the complaint on the following grounds: a) The complaint with the Police was still under investigation; b) Additional evidence was required and c) the matter involved complex question of law. The complainant was advised to approach a civil court.

The complainant filed a writ petition in the Karnataka High Court to set aside the order dated 7 May 1999 passed by the Banking Ombudsman and to direct the Banking

Ombudsman to decide the dispute on the basis of expert opinion. On 26 February 2003 the court passed an order acceding to the petitioner's prayers. The complainant's advocate sent a copy of the order passed by the court to the office of the Banking Ombudsman. In a communication to the Bank, their attention was drawn by the office of the Banking Ombudsman to the various cases decided by the Hon'ble Supreme Court of India and the different High Courts as also to the extant RBI circulars on the subject and it was indicated that in the facts and circumstances of the case, settlement of the claim of the complainant was warranted. The Bank was asked to inform the office of the Banking Ombudsman of the course of action proposed to be followed. Based on the advice of the Forum, the bank entered into a settlement with the complainant and paid the amounts debited to the account in settlement of his claim on 23 August 2003. Thus the complaint was resolved.

**Complaint No. 31**

**Complaint in brief:**

Complainant 'A' was maintaining two Current Accounts with the Bank 'C'. He alleged that two cheques pertaining to these accounts were missing. He reported the matter to the Bank on 10.03.2004 requesting to stop payment of the cheques. He was informed by the bank that one cheque for Rs.40,000/- was already encashed before the above intimation was received by the branch.

**Decision:**

The signatures were got verified by the private experts by the complainant and by the bank from Government Examiner of Questioned Documents (GEQD), Kolkata who opined that 'person who wrote specimen signature did not write on the cheque in question'. As the payment made by the bank of the cheque in question cannot be treated as payment as per apparent tenor of the instrument and payment in due course and bank 'C' is liable to reimburse the amount to the account holder as the paying banker will not get protection under Section 85 of NI Act. The decision was given in view of the following judgments of the Supreme Court: -

(a) "In Canara Bank vs. Canara Sales Corporation and others (AIR 1987 SC 1603)" wherein the Court has held when a cheque presented for encashment containing forged signature the bank has no authority to make payment against such a cheque.

(b) In another case of Pirbhu Dayal vs. Jwala Bank (AIR 1938 Allahabad 1947) (Ref: Tanan's Book- page 304)- where the court held it is duty of the employee of the bank to identify the signatures of the customer and if he fails to discharge the duty the amount cannot be debited from the customer's account merely on the ground that the customer was negligent to the extent that he allowed the cheque book to remain unlocked.

**Complaint No. 32**  
**Complaint in brief:**

Shri Y, working as a Lecturer, got his salary credited to his S.B. Account as per the instructions of his employer. However, on the same day, as per the instructions of his employer, the same amount was debited to his account and kept in Suspense Account by the Bank. Shri P approached the Bank on 3<sup>rd</sup> May 2003 and gave a letter to the Manager requesting restoration of the credit. Despite protracted correspondence, the Bank did not restore the credit.

**Decision:**

The complaint was taken up with the Bank. Bank's attention was drawn to the judgement delivered by the Hon'ble Supreme Court (SC) in the case of J A K Bank Ltd. vs. Attar-ul-Nisa (1967) 37 Comp. Cas.62: AIR 1967 SC 540 in which the SC considered the question as to whether, without the account holder's permission, a bank can refund the amount paid by mistake in the account of a customer by a third person. The Hon'ble Supreme Court held "Where the amount had been paid even though by mistake into the account of a constituent of the bank it was not open to the bank to reverse the entries at the instance of the person paying in the money into the constituent's account on the ground that the payer had made a mistake. We agree with the High Court that Section 72 has no application to the

facts of this case". In view of the above legal position, the Bank was advised that debiting the account of the customer/complainant based on the request of the College, was not in order and the matter should be sorted out.

**Complaint No. 33**  
**Complaint in brief:**

Shri HJV when he was trying to withdraw Rs.5000/- from an ATM, only Rs. 1400/- (14 notes of Rs. 100/-) came out physically from the ATM. He did not get any receipt from the machine. Immediately, he brought this to the notice of the security personnel present there and subsequently reported the incident to the Bank.

**Decision:**

Having regard to the facts of the case, it was clarified to the Bank's officials that a proper investigation should have been made immediately on receipt of the report of short payment made to the customer by the ATM. The possibility of a few notes getting stuck in the machine resulting in short payment could not be totally ruled out. Had the report of short payment been followed up immediately, excess cash might have been found in the bins of the concerned ATM at the time of verification of cash balance before replenishment of cash. The Bank did not question the observations of the Banking Ombudsman and credited the amount claimed by the complainant.

**Complaint No. 34**  
**Complaint in brief:**

The Complainant has alleged unauthorized debits of Rs. 4.86 lakhs and Rs.1.48 lakhs to her Savings Bank Account and Current Account on 5<sup>th</sup> March 2003 and 23<sup>rd</sup> July 2002, respectively.

**Decisions:**

There was no law, which cast a duty on the account holder to inform the Bank about loss of cheque leaves. There was no agreement with the account holder to inform the Bank about loss of cheque leaves. There was no concrete evidence about the Complainant's knowledge of forgery, but the fact that the loss of

cheque leaves was not reported to the Bank would indicate that she had knowledge of forgery.

The Bank was advised that as per the opinion of the Government Examiner of Questioned Documents, the signatures on the two cheques in question, were not those of the account holder (the Complainant). The Bank's attention was drawn to RBI Circular letter DBOD LEG. BC. No.86/09.07.007/2001-02 dated 8<sup>th</sup> April 2002 and relevant case laws on the subject. The cheques in question were forged and the Bank did not have the mandate of the Complainant to debit her accounts. Further, as a paying banker, the Bank did not have any protection for payment of forged cheques.

Even if the collecting Bank was responsible for the wrongful collection of the disputed cheques, there was no provision in law in terms of which the account holder was precluded from claiming from the Bank reversal of the wrongful debits to her accounts. It was not the bank's case that the complainant had prior knowledge of the forgery. The Knowledge of the Complainant about forgery stands disproved by the Bank's own contradictory submissions.

Further, the following references have been made:

1. In his treatise on "Banking Law and Practice in India, (Vol.I, 20<sup>th</sup> Edition, Page 437), Tannan has observed as under:

"Forged Cheques: Forged cheques create legal problems. The position appears to be as under:

(i) A customer who is aware that his cheques have been forged is under a duty to communicate that knowledge to his bank. {Greenwood v. Martins Bank, (1933) AC 51, Taihing Cotton Mill Ltd. v. Liu Chong Hing Bank Ltd., (1985) 3 WLR 317-321 (PC)}

(ii) The Privy Council has held that the modern law of negligence does not impose on the customer of a bank a duty of care to take reasonable precautions in the management of his business to prevent forged cheques from being

presented to it. (Tai Hing Cotton Mill Ltd. v. Liu Chong Hing Bank Ltd.). The wider risk of negligence in this case lay with the banker.

(iii) But the customer must exercise due care in drawing his cheques, so as not facilitate fraud or forgery. {London Joint Stock Bank Ltd. v. Macmillan, (1918) AC 777; Commonwealth Trading Bank of Australia v. Sydney wide Stores Proprietary Ltd., (1981) 148, CLR 304}”.

2. The legal position in respect of a cheque bearing a forged signature purporting to be that of the drawer, is very ably summarised by Ramaswamy, J. in Abbu Chettiar v. Hyderabad State Bank, (1954) 14 Comp. Cas.221; AIR 1954 Mad.1001:

“(i) It is for the customer to establish affirmatively that the signature on the disputed cheque is not that of the customer but a forgery. (ii) If the drawer’s cheque is forged or unauthorised, however clever the forgery is, the banker cannot debit his customer’s account in case he pays the sum unless he establishes adoption or estoppel. (iii) What amounts to adoption or estoppel is dependent upon the circumstances of each case. (iv) In order to make the customer liable for the loss the neglect on his part must be in or intimately connected with the transaction itself and must have been the proximate cause of the loss. (v) The banker cannot set up either estoppel or adoption if his own conduct or negligence has occasioned or contributed to the loss, the well-settled principle being that where one of two innocent parties must suffer for the fraud of a third, that party should suffer whose negligence facilitated the fraud”.

3. Tannan has observed as under in his aforesaid treatise on Banking Law and Practice (Page 391):

“The rule of law which has now definitely emerged is that negligence (in the popular sense, meaning carelessness, stupidity or a remissness) is irrelevant and immaterial in law, unless there is a legal duty to take care. Such a duty may either be statutory, or contractual or may be a special one arising from the relationship of the parties and the essence of any action founded upon it is not



negligence as such, but the breach of that duty. Negligence, therefore, in law strictly means the breach of the legal duty to take care.”

**Complaint No. 35**  
**Complaint in brief**

The complainant deposited a cheque for collection and credit to his Savings Bank account. He holds a receipted counter-foil of the Pay-in-slip. However, the proceeds of the cheque had not been credited as the said cheque had bounced for lack of funds in the account of the drawer. Further, the bank had misplaced the cheque.

**Decision:**

The Bank has admittedly returned the cheque by ordinary post. This constitutes gross negligence for which the Bank should compensate the Complainant. It cannot point out to the customer (the complainant) his legal rights to obtain a duplicate cheque from the drawer. More than a year has elapsed from the date of presentation of the cheque to the Bank. The complainant cannot be expected to wait any longer for the Bank to arrange for obtention of a duplicate cheque. As such, the Bank should credit to the account of the complainant the amount of the cheque and pay interest as per paragraph 4 of Reserve Bank of India circular DBOD.No.Leg.BC.55/09.07.005/2004-05 dated November 1, 2004.

**Complaint No. 36**  
**Complaint in brief:**

The complainant was operating a joint savings account with her parents with the operation mode at “anyone or survivor”. However, on April 29, 2000, the Complainant had gone to the Branch to withdraw cash, which she was not permitted to do reportedly because her name had been “removed” from the names of the joint account holders. She immediately asked the Branch Manager to freeze the account. She then questioned the Bank’s action in not allowing her to operate on the joint account. She also added that anyone who wanted to

operate the account should get an order from the court and instructed the Bank not to allow any one to operate the account. Subsequently, the bank confirmed that the Branch had stopped further operations in the account and noted to allow operations therein only after receipt of a fresh mandate signed by all the account holders. However, subsequently, she was informed by the Branch that the account had been closed.

**Decision:**

The Banking Ombudsman observed that the bank had not only violated its own instructions in allowing closure of the account, on the strength of a letter which did not indicate the reasons for closure, it had acted contrary to the repeated assurances given by it to the effect that no further operations would be allowed without a mandate signed by all. The complainant has been led to believe that she need not take any other step to protect her interest. The bank itself had admitted "inadvertence" and in so many words, tacitly accepted that the Complainant was entitled to 1/3 of the balance in the account. He also made it clear that the original request of the complainant to freeze the account was also not sustainable. Accordingly, both the sides were enjoined upon to seek an amicable settlement.

**Complaint No. 37**  
**Complaint in brief:**

He has been dealing with the respondent bank's branch since the inception of the branch in the year 1978. The complainant was availing Cash Credit Limit of Rs. 6.00 lacs, which had been enhanced in stages from Rs. 2.00 lacs to Rs 6.00 lacs keeping in view the transactions in the account. Besides, the interest and other charges on the cash credit limit, the complainant had been paying about Rs. 1.00 lac PA towards the exchange on drafts purchased from the Bank.

Based on his experience in 2003 wherein he could not deposit cash in his account on 31.3.2003, the complainant approached his bank on 29/3/2004

whether cash would be accepted in cash credit account on 31/3/2004. The Branch Manager flatly refused that he would accept cash on 31/3/2004 in cash credit account. When the complainant tried to persuade the Branch Manager to accept the cash deposit on 31/3/2004, the Branch Manager, annoyed with the persuasion, asked the complainant in a very indecent manner to close the account, immediately. The complainant submitted a letter dated 29/3/2004 to the bank immediately stating therein all the above facts. As there was no response from the bank, the complainant had to close his cash credit account by repaying the dues of the bank as on 30/3/2004, which caused a financial loss of about Rs. 36,000/- incurred towards stamp duty etc. for creating EM in bank's favour to secure cash credit advance.

**Decision:**

The bank denied any indecent behaviour by the Branch Manager with the complainant and submitted that the letter dated 29/3/2004 written by the complainant was replied to on the same day. The bank produced the proof of delivery of the bank's letter.

The Banking Ombudsman observed that the complainant had been a valued constituent of the bank since the date of inception of the branch. It would be improbable that any such customer would dissociate himself from the bank on fictitious grounds. Accordingly, the bank was asked to present the break up of cash receipts made in cash credit and other accounts on 31/3/2003 and 31/3/2004 to disprove the complaint that the bank branch, on 31/3/2003, accepted no deposits and that similar action was threatened for 31/3/2004 by the Branch Manager. The statement subsequently submitted by the bank showed that there were indeed no cash receipts at the branch in cash credit accounts on 31/3/2003 as well as on 31.03.2004. It establishes the claims of the complainant as well as a deficiency in the bank's services as there are no guidelines or instructions for not accepting deposit in CC accounts on the last day of the financial year. The complaint is therefore, justified. The BO, therefore ordered

that the respondent bank shall pay to the complainant a sum of Rs. 30,000/- towards the cost of stamps etc. incurred by the complainant for getting fresh limit sanctioned from another bank as a direct consequence of the closure of the account with the respondent bank and also Rs. 3,000/- towards costs of misc. expenses to the complainant”

**Complaint No. 38**  
**Complaint in brief:**

The complainant deposited Rs.6,00,000/- under an F.D. with the respondent bank and got it renewed on its maturity. The respondent bank informed the complainant that a demand loan of Rs.4,00,000/ along with interest was due against the said F.D.. The complainant availed no loan against the F.D. so he informed the above facts to the bank and requested to correct the bank's records. As the complainant was in need of money, so he requested the bank for premature payment of his F.D. in question. The respondent bank refused payment without assigning any reason. The complainant requested the office of the Banking Ombudsman for a relief of payment of the amount of his F.D. with up to date interest and any other relief, which the office of the Banking Ombudsman deems fit.

**Decision:**

The bank claimed that the complaint does not come under the purview of the Banking Ombudsman Scheme, 2002 as the complainant had already filed this complaint before the State Consumer Forum. The State Forum did not decide the case in favour or against either party. The bank failed to produce any evidence in support of its contention that the case was again filed before the National Consumer Forum. The complainant on the other hand filed an affidavit that the matter has neither been filed before a civil court nor the same is pending before any other Forum. The office of the Banking Ombudsman held that the matter is neither subjudice nor decided by any other Forum/court tribunal, hence Banking Ombudsman has a right to adjudicate the matter.

On submission of the copy of the ledger folio of the complainant's account, the Forum observed that there was no credit entry in the account against the loan against the said FDR to the complainant. The bank's position proved beyond doubt that it is a case of fraudulent withdrawal, although the withdrawal slip had the complainant's signature. The mere fact that the entry relating to the said loan existed in the bank's cashbook without being made in the complainant's ledger account or passbook had no meaning. Further, the relative FDR was found to be under the complainant's custody without any endorsement or noting of lien/charge thereon.

On scrutiny of various documents presented in the case, submissions of both the parties, it was established that the bank is not justified in refusing payment of the matured FDR, as no loan was availed of by the complainant against the same.

**Complaint No. 39**  
**Complaint in brief:**

The complainant lodged a complaint with the office of the Banking Ombudsman that her Savings Bank account was debited by Rs 35,000/- through cheque No. 681243 dated 08.09.2004 for Rs. 20,000/- & 681245 dated 09.09.2004 for Rs 15,000/-. These cheques were stated to be stolen from her chequebook and were not containing her genuine signatures. The complainant approached the bank for the wrong debits but without results and then came to the office of the Banking Ombudsman.

**Decision:**

The complainant disputed the signatures as drawer on the cheques while the bank was contending that the payment was made in due course. The respondent bank furnished the report from GEQD that confirmed the stand of the complainant.

The bank has submitted that the complainant neither stopped the payment of the cheques nor lodged an FIR against the person who forged her signatures. and claimed defense that payment was made in due Course and the forgery could take place due to the negligence of the complainant as the chequebook was kept carelessly facilitating the miscreant to have access on it.

If the cheque has been paid in due course the paying banker will be eligible for protection under Section 85 of Negotiable Instruments Act, 1881. But in case of a cheque bearing forged signature of the drawer the bank can not get any protection as the cheque shall not be the cheque issued by the drawer and there will not be any mandate to debit his account by the account holder. Hence, the bank shall be under obligation to make good the amount so debited through a cheque containing the forged signature of the drawer to the account holder.

**Complaint No. 40**  
**Complaint in brief:**

The complainant submitted that when he was writing the requisition for a new chequebook of the account, it was noticed by him that next cheque No. 373189 was missing from his existing chequebook. He alleged that the cheque was missing from the time he received that chequebook. The complainant immediately approached the bank branch and was told that a cheque bearing the same number of Rs.39,000/- had been encashed on the same day by the bank. On verification of the cheque, the complainant noticed that signature on the cheque was neither of the complainant nor was it written by him. He alleged that it was pre-planned by bank employees. Before delivering the chequebook to the complainant, the bank employee marks/puts account No. on each leaf of the cheque book. The complainant suspected that the bank employee might have taken the cheque while writing the account No. and encashed it when there was sufficient/maximum balance in the account.

**Decision:**

The respondent bank in their submission stated that a chequebook containing 10 cheque leaves was issued to the complainant and he had personally acknowledged receipt of the same from the bank's counter. He had neither reported the loss of the said instrument nor stopped its payment at any point of time. Hence, his charge of removing the cheque leaf before the cheque book was issued was considered false and baseless. The complainant was having enough time to intimate bank, personally or by telephone to stop the payment of that missing cheque, which the complainant had not done. After due verification of the signature on the cheque with that of the specimen signature card by the passing officer, the payment of the cheque was made to the bearer of the cheque by the bank. No irregularity on the part of the bank had been found at any level of the bank. A separate enquiry on the complaint was conducted by an official of the Regional Office of the bank who found that no human or system failure at any point of action by the bank was noticed. Meanwhile, the Police authority on the complaint has seized the paid cheque, specimen signature card cum account opening form and requisition slip for issue of new cheque book from the bank. The bank will take further action on receipt of the investigation report from police authority.

After a review of all the points raised by the complainant and the respondent bank, it was observed that the cheque No. 373189 for Rs.39,000/- was a vital and an essential document of this case. Therefore, the genuineness of signature on it should be got verified and accordingly the disputed cheque should be sent by the bank to the Govt. Examiner for Questioned Documents, Kolkata for verification and report.

After repeated follow up by this office, the respondent bank informed that they had approached various authorities of the police to get back the documents seized by the police, but the bank could not succeed. However, due to obvious reasons, the bank did not feel it proper to demand the investigation report from

the police as the case was against their bank and it would be interpreted as interference into the fact-finding process of the police.

After going through the case papers on record, the submission made by the both parties and following the Law & Practice of Banking as well as Instructions issued by the RBI from time to time, it was observed that this office may not be able to adjudicate the complaint at an early date, as envisaged in the BOS, 2002 and it would take a long time to dispose off the complaint as disputed cheque No. 373189 for Rs. 39,000/- of the complainant alongwith other records related to the account were under the police custody which at present were not accessible to this office. In the absence of the original documents, it will not be feasible to get it verified and form any definite opinion about the merits of the case. Accordingly, the complaint is rejected under Clause 19{2} of BOS, 2002.



## **B. COMPLAINTS RELATING TO INTEREST RATES**

### **Complaint No. 1**

#### **Complaint in brief:**

A customer (complainant) of X Bank has complained that X Bank issued FCNR(B) deposit certificate for US\$ 20,000. The interest rate was mentioned as 5.5% (interest compounded at half yearly rests). However, when the deposit receipt was submitted by the complainant on the date of maturity, the bank told her that there was an error and the interest rate has been reduced and credited at 5.4% only. The complainant expressed that she was entitled to 5.5%.

#### **Decision:**

The bank replied that the interest rate prevailing on the date of deposit was 5.25%. While filling up the details, inadvertently they mentioned the earlier interest rate of 5.5%. As soon as they came to know about the error, they corrected the said mistakes in their books. When the party approached for getting the matured deposit, the mistake was pointed out to the complainant and she was also told as per the RBI directive, the bank cannot give more than 5.25%.

In respect of FCNR(B) deposits, the RBI has issued Master Circular No. DBOD.No.Dir.BC.49/13.03.00/2000-01 dated 4<sup>th</sup> November 2000 to all commercial banks which indicates that no bank shall accept or renew a deposit over three years discriminate in the matter of rate of interest paid on the deposits, between one deposit and another accepted on the same date and for the same maturity, whether such deposits are accepted at the same office or at different offices of the bank, except on the size group basis.

X Bank, as per their circular No. ID:17:2001 dated 2<sup>nd</sup> March 2001 has advised all branches, the revised rates of interest on FCNR(B) deposits for US\$ w.e.f. 5<sup>th</sup>

March 2001 for a period of three years at 5.25%. They have made it clear that as per RBI guidelines, interest rate offered on FCNR(B) deposits of the same size group for the same maturity on any day shall be uniform at all branches. Thus all branches are uniformly required to allow interest rates of 5.25% so as to comply with the RBI directives.

In the complaint, the complainant has mentioned as under:

“I was told that there was an error and the interest rate has been reduced and credited at 5.4% only”. In bank deposit receipt, interest rate has been mentioned 5.5%. Even though the complainant has mentioned in the complaint that she was told that the rate of interest was being reduced to 5.4%, in practice, the rate of interest at 5.25% was only allowed as per the instructions from International Division, X Bank. Merely because the complainant has stated that the interest rate of 5.4% was being allowed, it cannot be construed that she has received excess interest of 0.15%. In short, the mistake of fact cannot be taken advantage of either by the banker or the complainant as per Section 72 of the Contract Act.

In the fixed deposit, the rate has been mentioned as 5.5%. Just because, the bank has not indicated that the rate of interest at 5.5% per annum, it cannot be construed or argued that the rate of interest of 5.5% is for three years. The bank cannot make an attempt to take advantage of the fact that percentage per annum has not been mentioned and so for full three years the rate is 5.5%. The overriding factor is that the RBI directives only will prevail. Hence X Bank cannot offer different rates for different customers for the same maturity i.e. 3 years on 20<sup>th</sup> March 2001. Assuming the bank has stated the deposit figure as US\$ 2000 instead of US\$ 20000 and the interest rate at 3.25% instead of 5.5%, the bank cannot take advantage of the mistake and state that only the amount and interest mentioned in FD receipt will be paid. Accordingly, the complaint has been rejected under clause 19(1)(a)(d) of Banking Ombudsman Scheme, 2002.

## **Complaint No. 2**

**Complaint in brief:**

The complainant had placed a deposit of Rs.5.1 lakhs and secured overdraft against it. The deposit carried interest at 10% p.a. and the bank charged interest on the overdraft at 17.5% p.a. The complainant contended that charging interest at 17.5% p.a. was unfair. Further, the complainant alleged that the bank charged excess interest on local cheque discounting in violation of point 8 of the Master Circular issued by RBI on 30<sup>th</sup> July 2002. The complainant contended that the bank was charging interest for two days on local cheques deposited for clearing instead of one day.

**Decision:**

As regards the interest on overdrafts, reference was made to DBOD Circular No. DBOD.BC.36/13.03/00/98 dated 29<sup>th</sup> April 1998 which reads as: "As per instructions in RBI Circular DBOD.No.Dir.BC.109/13.01.09/95 dated September 29, 1995 read with circular DBOD.No.Dir.BC.98/13.01.04/96 dated July 4, 1996 interest rate chargeable on loans and advances granted against domestic/NRE term deposits upto Rs.2 lakh is two percentage points above deposit rates and for advances over Rs.2 lakh the interest rate chargeable is not less than bank's own PLR. It has now been decided that advances against domestic/NRE deposits to the depositor, should be at an interest rate equal to PLR or less." As per the above mentioned circular, the bank has to charge interest on advances against domestic term deposit at PLR or less. In short, the bank is prohibited from charging interest in excess of PLR. The bank has to examine this aspect and refund excess interest, if any, charged over the PLR during the relevant period.

The RBI per their circular DBOD.No.Dir.BC.99/13.07.01/95 dt. September 12, 1995 has clarified that "withdrawals against Uncleared Effects" should be treated as unsecured credit. Even if the contention of the complainant is to be taken into account, the bank is free to charge interest as per RBI directive on unsecured

credit, as the facility extended to him was clean in nature. However, the complainant was not able to produce any letter of sanction to the effect that he was made available the facility of advances against uncleared effects. Hence the complaint has no merit and requires to be rejected.

As regards the interest on local cheque sent for clearing, the bank was advised to follow the spirit behind the Circular DBOD.No.Leg.BC.21/ 09.07.007/2002-03 dated 23<sup>rd</sup> August 2002 reads as under: In case where the instrument of face value exceeding Rs.15,000/- is received for clearing and the proceeds of the instrument are credited to the account, in whatever manner in advance of the date of actual realization of the amount, interest at the stipulated rate (in addition to the usual service charges prescribed by the bank) shall also be charged for the period for which outlay of funds is involved.”

**Complaint No. 3**  
**Complaint in brief:**

The complainant was enjoying overdraft facility of Rs.10 lakhs in 1996. The overdraft facility was enhanced to Rs.25 lakhs in 1997 taking into account the business needs and eligibility of the complainant. During late 2001, the proprietor of the firm noticed that the Bank had been charging overdue/penal interest on his overdraft account since 1996. He approached the branch and requested them to reverse the penal interest levied.

**Decision:**

The bank informed that the firm had resorted to overdrawals over and above the sanctioned limit. The complainant had also not got his limit renewed by submitting the necessary financial statements despite reminders. The overdrawals allowed were temporary in nature for which 2% penal interest was charged as per the bank's procedure. It was pointed out to the complainant that

the statement of account issued by the bank, clearly indicated charging of penal interest which should have been objected to by him in 1997 itself. The complainant had no documents to prove that he had submitted financial statements seeking renewal/higher limit. The complainant also agreed that although he had not given any letter to the bank seeking overdrawal, he had issued cheques knowing fully well that it would result in overdrawal of the account, which would be construed as if he had requested for additional facility. Therefore, it was pointed out by the Office of the Banking Ombudsman that there were lacunae on both the sides by way of lack of necessary documents/records/letters. Hence, in view of their good relations, both the parties were advised to explore the possibility of having an amicable settlement.

**Complaint No. 4**  
**Complaint in brief:**

The complainant availed himself of three housing loans. He approached the bank for conversion of fixed rate of interest provided for in the agreements to floating rate. The Bank also granted this and the rate of interest was reduced from 8.75% per annum to 8.5% per annum. The complainant, not being satisfied with the quantum of reduction in the rate of interest and the effective dates of reduction, requested the bank to examine the matter again and allow further reduction as indicated by him. His contention was that such reduction in rate of interest should be given from the date of issuance of the bank's circular rather than from the date of sanction of reduction accorded by the appropriate authority.

**Decision:**

The bank stated: "As per the corporate policy of the bank, requests for concession in rates of interest on housing loans is considered only on receipt of a written request from the customer and the same is examined on a case to case basis. Branches on receipt of such requests have been advised to take the matter with their Controlling Authorities for a decision in the matter. Further, such

concessions, when extended, are with a prospective date and not from the date of request of the customer.” Further, the loan agreements executed by him provided for fixed rate of interest and he could not demand, as a matter of right, reduction in the applicable rate of interest.

However, the Banking Ombudsman observed that there was no transparency regarding grant of floating rate, from the fact that the Bank had not advised the Complainant about 1) Benchmark Rate, 2) Mark up or Mark down and 3) Re-set period. As the circular did not mention the re-set period, which was an essential factor for changing the rate of interest and charging the correct rate, it could be presumed that changes in interest rates would be effective from the date of change of Benchmark Rate. In the first instance of conversion, the consent of the borrower was required, subsequent re-fixations based on change of Benchmark rate, did not require any representation by the borrower. The effective date given in the Central Office circular would be the date material for subsequent changes and it would be automatic. The Banking Ombudsman also clarified to the complainant that reduced rates offered under new schemes could not be claimed, as matter of right, by existing borrowers. The Bank verified the interest charged on all the three loans, made floating rate effective from the date of complainant’s letter.

**Complaint No. 5**  
**Complaint in brief:**

The complaint is that the bank unilaterally revised the rate of interest shown in a short term deposit receipt (STDR) issued in the name of the complainant and paid interest less by Rs. 15,146 than what was actually committed and due. The claim for interest is based on fact that the bank had issued a deposit receipt showing the rate of interest @ 6.5% p.a. and with effective date of 14.07.2002. The bank subsequently altered the terms of deposit for the reason that the funds were actually received only on 24.07.2002 and hence the rate applicable was only 4.20% p.a., the revised rate in force on that date.

**Decision:**

On the basis of the facts of the case, it was decided that the contract represented by the deposit receipt was void since the bank did not receive the full consideration viz. funds of Rs. 3 lacs, with value date 14.07.2002. It was, however, found that the bank was liable to refund the amount received to the depositor on 18.12.2002, the date the contract was found to be void. As the bank failed to return the funds, an order was passed for the payment of the amount with interest for the delay period as compensation at the rate applicable to the bank's NRE FDs.

**Complaint No. 6  
Complaint in brief:**

The complainant's father's joint Fixed Deposit was under partition suit hence it was not renewed on maturity date. In the meantime, both the account holders expired. After obtaining succession certificate and settlement of partition suit the complainant submitted claim for payment of fixed deposit with up-to-date interest. The Bank had paid the maturity value but without interest for overdue period.

**Decision:**

As per RBI Circular DBOD.No.Div.BC.621/13.03.001/2000-01 and 64/13.03.001/2000-01, more weightage has been given to the deceased accounts in the matter on the subject of making payment of interest for the overdue period. Taking a cue, the bank paid the interest for the overdue period.

**Complaint No. 7  
Complaint in brief:**

The subject bank had issued three term deposit receipts in the name of AA of amount Rs. 134000/- each. The above receipts were furnished by K who had deposited the deposit receipts as security deposit in favour of AA for its project.

The complainant had handed over the original deposit receipts to K for getting it renewed. But K neither got renewed the deposit nor furnished new security deposit. The bank sent a notice instructing the complainant to renew the deposit. The complainant intimated the bank that the original deposit receipts were given to M/s K and had requested the bank to release the payment and remit the proceeds to AA. The bank replied that K has not given the FDRs to it for renewal. The complainant intimated that an amount of Rs. 20.66 lacs is outstanding from KTDC and requested the bank not to release the payment to K as AA is the absolute owner of the deposits. The bank advised the complainant to produce the TDRs in original for renewal as the payment of the proceeds of the matured TDRs will be paid only to the beneficiaries of the TDRs. They also advised the complainant to take up the matter suitably with KTDC for lifting any lien on the TDR or get a discharge on the back of the TDR for payment if the TDRs are kept with KTDC.

**Decision:**

The bank informed that they had intimated the complainant to produce the original TDRs with an instruction to get the lien lifted or to get a discharge on the back of TDRs for the payment of the proceeds to AA, if the TDRs were kept with K. The complainant neither produced the TDRs nor gave any explanation to their earlier statement dated 1.3.2000 that the original TDRs were given to M/s KTDC. As per the request of the complainant that TDRs were not available with them and requested to renew the deposits by issuing the duplicate receipts, the bank had issued duplicate receipts by taking suitable indemnities. Banking Ombudsman observed that the bank could not produce the application form of the deposit or any other documentary evidence to substantiate their stand that payment of deposit receipts required concurrence from K and the reason for adding the clause 'payment to be made only with the concurrence from K' on the duplicate receipt. In the absence of the above, the Banking Ombudsman directed the bank to make payment of the proceeds of the deposits to AA as the



court had not restrained the bank from making payment to AA as they were the beneficiaries of the deposits.

## **C) NON-HONOURING OF BANK GUARANTEE**

### **Complaint No.1**

#### **Complaint in brief:**

The bank did not honour invocation of Bank Guarantee issued in favour of the complainant on behalf of one of its customers. When the matter was taken up with the bank it stated that the bank was in touch with the applicant

#### **Decision:**

The bank was bound by its own commitment under the guarantee issued by it. The bank was advised to redress the grievance of the complainant.

### **Complaint No.2**

#### **Complaint in brief:**

The complainant had requested for extension of Bank Guarantee issued in their favour or in case extension was not done, pay the guarantee amount. The bank neither extended the validity period nor paid the guarantee amount to the complainant. The bank had taken the plea that a case was pending before BIFR in respect of the applicant company who was a borrower of the bank and a recovery proceeding was also filed before the DRT for recovery of the bank's dues from the complainant company.

#### **Decision:**

The bank in its argument further contended that the invocation made was conditional and therefore, the bank could not extend the validity period of the Bank Guarantee without the consent of the borrower. However, this view was not communicated to the complainant before the expiry of the Bank Guarantee. It was also observed that the bank did not respond to the complainant's letter of extension or invocation, which was an unequivocal communication from the complainant. Even if the letter was conditional as contended by the bank, the

bank did not intimate so to the complainant within the validity period. Non-fulfillment of any condition between the applicant company and the bank could not be the ground for rejection of the invocation notice. The subject case was registered with the BIFR much after the receipt of the complainant's letter. In view of the above reasons, the bank agreed to pay the amount of the guarantee to the complainant through mediation of the BO.

### **Complaint No.3**

#### **Complaint in brief:**

The bank was alleged to have dishonoured bills presented by the complainant drawn strictly in terms of a letter of credit issued by the bank in its favour. The bank had put forth the argument that the challan accompanying the bills was not received as per the terms of the L/C and the test report requested as a part of the inspection report was not in conformity with the invoice.

#### **Decision:**

The opener duly signed the receipted challan with certain extraneous conditions outside the subject L/C, which was in violation of Article 13(c) of UCP500. The inspection certificate was found to be in order. The description given in the test report bore the same details as mentioned in the said inspection certificate. Further, the submission of test report was not required in terms of the subject credit and the bank was not obliged to raise objection on additional documents presented. On the whole therefore, the objections raised by the bank were frivolous. As per the advise of the BO the grievance was redressed.

### **Complaint No.4**

#### **Complaint in brief:**

Claim against a Bank Guarantee (BG) for partial invocation was lodged within the validity period of the BG with a request for extension of the remaining amount for a further period before the expiry. The bank did not honour the guarantee. After

protracted correspondence the bank admitted the amount of partial invocation but did not extend the validity of the guarantee for the balance amount. The bank had argued that the complaint was not maintainable under Banking Ombudsman Scheme, 2002 as it was time barred. By accepting the amount of the partial invocation made by the bank the beneficiary had absolved the bank of its liability towards the BG as the BG had already expired. Any claim on a subsequent date was not maintainable. The disputants being both public sector organizations, a clearance from the Committee of Disputes (Govt. of India) was necessary. The complainant's letter stated "you are requested to extend the Bank Guarantee for the balance amount for a further period of 6 months. In case of failure you are also authorized to invoke the BG for the balance amount .....". The bank had questioned the use of the word "authorize" and stated that the bank being not an agent of the beneficiary and in the absence of any contractual relationships between the beneficiary and the bank, it was not obliged to act on the basis of authorization.

**Decision:**

The complainant had lodged the complaint before the office of the Banking Ombudsman within the period of limitation as contained clause 13(a) & (b) of the Banking Ombudsman Scheme, 2002. As the office of the Banking Ombudsman is neither a court nor a tribunal, clearance of the High Powered Committee of Disputes was not required. A careful reading of the words of the letter of invocation in conjunction with the provision of BG indicated that as the applicants had failed to fulfill their obligation to an extent, partial invocation was in order. For the remaining part of the contract some more time could be given, which the beneficiaries granted. It was implied that the applicants would arrange for such extension, failing which the bank was "authorized" to invoke the balance amount of the BG. The bank's objection to the use of word "authorize" had to be examined in the context of common law, facts and circumstances.

Further, as the contract of guarantee is a document with the concurrence of three parties, the bank could not set up an estoppel by arguing lack of contractual relationship or by playing on the word “authorization”. Several other banks have been acting on and complying with similar letters of authorization issued by the complainant. The bank was found to have violated RBI guidelines vide its circular dated 2.1.1978.

In the circumstances, an Award was passed against the bank directing it to pay the amount of guarantee to the complainant.

**Complaint No.5**  
**Complaint in brief:**

The complaint is regarding non-payment by the bank of a bank guarantee, on receipt of the invocation from the complainant. The bank contended that it had paid to the complainant a total amount of Rs. 4.81 lakhs towards a set of 5 bills, which the complainant had drawn on the BG applicant. The bank contended that by this payment it had performed its obligation under the BG fully and, therefore, there was no scope to raise the additional claim of Rs.5.17 lakhs towards a second set of three invoices.

**Decision:**

It was found that in terms of the BG, the bank’s obligation to pay any amount due there under to the complainant would arise only (i) if there was non-payment of sale value to the complaint by the BG applicant, and (ii) if the complainant presented a written claim to the bank for the amount of default. In respect of the 5 bills the above two conditions were not met. Therefore, the payment of Rs.4.81 lakhs for the 5 bills made by the bank did not in any manner affect the bank’s obligation under the BG. The BG was open to the complainant to raise claims later in accordance with its terms. The claim for the payment of Rs. 5 lakhs, made by the complainant was valid and binding on the bank according to terms of the BG issued.

**Complaint No.6****Complaint in brief:**

The complainant claimed that the validity of a Bank guarantee (BG) issued in the complainant's favour was up to 30.08.2003 and that the BG was invoked on 22.08.2003 during its validity, whereas the bank contended that the validity of BG was only up to 30.07.2003 and the BG was not invoked during its validity.

**Decision:**

The facts of the case revealed that a correction had been made in the expiry date of the BG written in numbers in the guarantee extension letter, which was delivered to the complainant (beneficiary) through the applicant. The issue involved is such that to determine the expiry date agreed to by the parties and for the adjudication of the complaint, oral evidence of the complainant, the bank officials and BG applicant party would be required. Therefore, the complaint was rejected in terms of clause 19(2) of the Banking Ombudsman Scheme.

## **(D) REMITTANCES FROM ABROAD**

### **Complaint No. 1**

#### **Complaint in brief:**

A customer of X Bank complained that his son sent a cheque dated 1<sup>st</sup> March 2004 for US\$ 50,000 for payment towards the housing loan taken by him from Y Bank. After 30 days from the date of deposit of the cheque, the complainant called on the Manager and also Central Office of X Bank complaining of the delay in credit. X Bank has given credit on 6<sup>th</sup> April 2004 applying the conversion rate of Rs.43.55 being the rate prevalent on that date. The complainant has contended that his son's account with Bank of America, USA was debited on 16<sup>th</sup> March 2004 and so the exchange rate prevalent on 17<sup>th</sup> March 2004 viz. Rs.45.05 should have been applied. He also claimed interest for the period from 17<sup>th</sup> March 2004 to the date of the payment and additional interest to be paid to Y Bank towards the housing loan in addition to the compensation for mental agony and stress suffered by him.

On taking up the matter with X bank, they have stated that as per FEDAI Rule 5(ii) dealing with clean instruments "The applicable exchange rate for conversion of the foreign currency inward remittances shall be the one prevailing as on the date of conversion of foreign currency amount into Indian Rupees by the concerned Authorized Dealer". When the complainant pointed out that his son's account was debited on 16<sup>th</sup> March 2004 and was requesting verbally for immediate credit, he was offered the facility of the cheque purchase/discount by the bank, whereby he would have got the exchange rate prevalent on the date of purchase/discount which was approximately about Rs.45 per US\$. In fact, the purchase/discount would have enabled the bank to pay a premium in addition to the exchange rate of Rs.45/-. However, the complainant declined the offer stating that his son's account has already been debited on 16<sup>th</sup> March 2004 and the bank's Nostro account was credited on 17<sup>th</sup> March 2004. He was expressing as to how the Bank would be in a position to purchase/discount, after it has been

sent for collection and the value of the cheque has been debited to his son's account and the Nostro account of X bank has been credited.

**Decision:**

(iii) If the complainant had wanted to utilize the proceeds for repayment of the loan taken by his son from BOB, he could have simply endorsed the cheque in favour of Y Bank and could have deposited with them. However, as per the FEDAI rules, the rate of exchange prevalent on the date of conversion is to be applied. The bank has correctly applied the exchange rate by applying the rate prevalent on the conversion date.

(vi) To a pointed question, whether he would have accepted the exchange rate prevalent on 17<sup>th</sup> March 2004, in case the exchange rate of 6<sup>th</sup> April was more than Rs.45.05, the complainant stated that naturally he would have accepted the rate prevalent on 6<sup>th</sup> April 2004, as it was beneficial to him. It is apparent that the complainant wants to get the rate, which is beneficial to him and not the rate, which is to be applied correctly. In the instant case, as rupee has appreciated after the value date, he has demanded that rate on the value may be applied. He has confessed that he would not have lodged the complaint, had rupee depreciated as in the past and the exchange rate of more than Rs.45.05 was prevalent on 6<sup>th</sup> April 2004 i.e. the date of conversion.

In view of the foregoing, the complaint has been rejected under clause 19(1)(b) of the Banking Ombudsman Scheme 2002.

**Complaint No 2**

**Complaint in brief:**

On behalf of the complainant, an NRI, the complainant's father lodged a complaint with the BO's Office on 31st December 2002. As per the complaint, the complainant opened a NRE account with a bank branch on 21st February 1987



by depositing a sum of Rs.12700/- Again on 22nd February 1987 a sum of Rs.25400/- was deposited in the account, which was duly entered in the passbook given by the bank branch. During the complainant's visit to India in August 2002, when she and her father went to the bank to know about the status of the account, it was found that the account had a meager balance of Rs.324.86 as on 01.04.1997. After repeated requests to peruse the ledger folio, it was learnt that the entry relating to deposit of Rs.25400/- was missing from the ledger and a debit entry of Rs.17600/- against cheque No.913702 was shown in the ledger. The complainant further stated that as far as her memory goes she did not withdraw any money. In her letter dated 21st August 2002 addressed to the bank, a copy of which was sent to the office of the Banking Ombudsman along with the complaint, it was also stated that she did not possess any chequebook of the above account.

**Decision:**

(i) The Banking Ombudsman observed that there were only two entries in the passbook and the first entry in the passbook also appeared in the ledger, the genuineness of which was not under question. The onus of proving that the entries in the passbook, genuineness of which itself have not been disputed was on the bank. In the absence of any such proof the bank has to accept that the money had been deposited by the depositor but not accounted for in its books.

(ii) Regarding the other issue of withdrawal of Rs.17600/-, it could be concluded that when there has been a fraud in regard to one case, there might have been fraud in other case too. However, considering the facts that (i) while bank does not have the copy of the paid cheque with it, the complainant herself was not sure about non-withdrawal; (ii) the withdrawal has been shown against a cheque which was from the cheque book issued to the depositor as per entry in the ledger; (iii) apart from two deposit entries mentioned by the depositor, ledger showed one more deposit entry about which no mention has been made by the

complainant; (iv) the complainant herself did not care to look into her deposit account for about 15 years, the benefit of doubt should go to the bank.

(iii) The bank on 30.08.2003 submitted a copy of General Ledger (Foreign Currency Account) and contended that there were only two transactions in the account i.e. on 21st February 1987 for Rs.12700/- and on 28th February 1987 for Rs.5100/-. There was no entry of Rs.25400/- in this account also. B.O., however, felt that absence of entry in the foreign currency account did not by itself prove that the entry in the passbook was not genuine. If the deposit had not been recorded in the account of the depositor it might have as well been omitted from the foreign currency account also.

(iv) BO passed an Award directing the bank to pay the complainant the amount of Rs.25400/- along with interest at savings bank rate from 22nd February 1987 till the date of actual payment.

(v) The bank made a review application with the Hon'ble Review Authority against the award of the B.O. The Hon'ble R.A. vide its order dated 11.06.2004 remanded the above award for considering it afresh on the following grounds -

"In this case, resolution of dispute has been defied due to absence of direct evidence of deposit. The dispute is about the deposit of Rs.25400/- on 22nd February 1987, but there is no evidence whatsoever of the actual deposit. The entries in the passbook or in the ledger are only corroborative pieces of evidence and are not sufficient to establish the fact of deposit. As seen from the impugned Award, the Ombudsman had been guided only by his feeling as regards the entries in the passbook. Since entry in a passbook cannot per se be accepted as evidence of actual deposit, it is not possible to accept this as a basis to arrive at any conclusion. Unless the amount is shown to have been deposited with the bank with some concrete evidence, the bank cannot be held liable for payment of the amount.

The other part of the dispute relates to withdrawal of the sum of Rs.17600/- from the account. The pleadings in this regard raise issues of facts as regards

issue of chequebook to the Complainant; and issue of cheque by the Complainant from that book. These facts are disputed. Consideration of these issues needs a full trial and the B.O. is evidently not equipped to do so. If the Complainant insists on the B.O. deciding this dispute also, the B.O. should consider if it would be within his jurisdiction or not, and pass an appropriate order accordingly."

In view of the documents/evidence produced by the bank, the complaint was rejected under clause 19 of the BOS, 2002.

**Complaint No 3**  
**Complaint in brief:**

Smt. N, the complainant, stated that her daughter is having an account with NRE Branch of A Bank. Her daughter had drawn a cheque in her favour on 03.01.2005 and forwarded to her by post, which did not reach her. She stated that when she had informed the same to her daughter, she had sent a stop payment letter dated 26.03.2005 to the bank. However, the bank informed her that the cheque was paid in clearing to M branch of V Bank and was advised to contact V Bank. She stated that money was for her medical treatment and requested BO to direct the V bank to pay the amount of the cheque of which she was the true payee. On scrutiny of the complaint and enclosures thereto, it was observed that the cheque in question was presented in clearing on 16.03.2005 by V Bank's branch and paid by A Bank on 17.03.2005. Since it was a case of conversion, the complaint was registered against the collecting bank i.e. M branch of V Bank's and advised it to settle the grievance or to file its version. V Bank filed its version stating that one Mr. N had approached its M branch for opening a Savings Bank. It stated that the account was opened with address proof, introduction and care. It stated that Mr. N deposited the cheque bearing No.010205 dated 03.01.2005 for Rs. 2.00 lakh on 13.03.2005 for collection at its M Branch. The payee's name on the cheque was skilfully altered to read in favour of Mr. N. The branch had sent it for collection to A Bank's Main Branch at

Hyderabad. It stated that it was acting as collecting bank and all the requirements of Section 131 of the Negotiable Instruments Act 1881 were complied and hence it is protected by Sec.131 of the Act.

**Decision:**

(i) The opposite party's contention was that A Bank was negligent as a paying banker as it has paid the altered cheque. It is duty of the collecting bank to act without negligence, therefore, when the collecting bank confirms the endorsement, the paying bank would be naturally entitled to assume that the collecting bank had performed its duty without negligence. The paying bank in such cases is therefore entitled to protection under Sec.85 and 85A.

(ii) One of the issues, which arose for consideration, is whether the opposite party bank can claim protection as a collecting banker. The document obtained by the bank for proof of identification was a copy of the passport. No other documents were obtained and no enquiry appears to have been made to identify the customer. Therefore, the V Bank was negligent in opening of the account and has collected the cheque for an impersonator through the account so opened by it. Hence, the bank cannot claim protection under Sec. 131 of the Negotiable Instruments Act. Therefore it was held that the complainant is entitled to recover Rs. 2.00 lakh being the amount of the cheque collected by the V Bank and withdrawn by an impersonator through the account opened by it.

**Complaint No 4**

**Complaint in brief:**

The complaint was in respect of alleged fraudulent withdrawal of Rs.50000/- from the account of the complainant company by forging the signature of the authorized signatory.

**Decision:**

(i) The bank filed its version stating that the alleged withdrawal was made from the company's current account on 29.11.2003 and the complainant had informed the bank about the loss of two cheque leaves on 08.12.2003. It stated that the accountant was the custodian of the chequebooks and that during the course of their discussions, the accountant had offered to reimburse the amount owning moral responsibility. Later it was brought to its notice that the company had dismissed the accountant from service. The bank stated that though it had approached the police authorities for filing a complaint, the police authorities had refused to accept the complaint, as the suspected crime was committed in the office of the complainant's company itself. However, the complainant had filed a police complaint and the police authorities had seized the disputed cheque and other documents from the bank. The complainant by its letter-dated 24.08.2004 had informed the BO that it had requested the police authorities to obtain forensic expert's opinion as to the genuineness of the signature on the disputed cheque. However the complainant could not furnish forensic expert's opinion on the genuineness of the signature,

(ii) It was observed that when a fraudulent withdrawal was alleged a handwriting expert's opinion as to the genuineness of the signature was of prime importance. In the absence of such a report, the truth in the allegation of a fraudulent withdrawal could not be verified.

(iii) It was also observed that involvement of the company's accountant in the matter was suspected and his dismissal from the company's service corroborated such suspicion.

(iv) Therefore BO was not inclined to proceed further in the matter as the genuineness of the signature on the disputed cheque is not confirmed and the involvement of the company's own employee in the matter is not ruled out. The complaint was therefore dismissed.

**Complaint No 5**  
**Complaint in brief:**

The complainant stated that she instructed X branch of the bank at Chandigarh to remit Rs.60,50,000/- (Rs. Sixty lacs and fifty thousand only) to a Bank at Auckland, New Zealand in INR ( Indian rupees) to which bank agreed vide its e-mail communication dated 25.08.2004 . However the bank remitted the amount in NZ \$ without consulting her. She stated that she suffered a loss of Rs.2,84,000/- on account of the difference in the conversion rate. The complainant attached a photocopy of conversion rate indicated by a Bank at Auckland, New Zealand pertaining to that date and stated that the bank converted the amount at the rate of Rs.30.70 while the rate of conversion at Auckland was Rs.29.26. She added that due to this a deal for purchase of a petrol pump in New Zealand was cancelled. She requested for refund of Rs.2,84,000/- along with other financial damages.

**Decision:**

(i) As per the bank's record, the bank received an instruction on 25th August 2004 from the complainant to remit INR 60,50,000/- from her NRE account No.700-1-00-67656 held with the Chandigarh branch of the bank to an account No. 0235016316200 held with Bank, at New Zealand. The bank had initially conveyed to the complainant by e-mail that it could remit the money in INR. However, when the Chandigarh branch of the bank contacted its Payments Division, New Delhi regarding the remittance, it was informed by them that the remittance cannot be made in INR but must be made in New Zealand dollars (NZ \$). The bank immediately contacted the complainant on 25th August 2004 over the phone and informed the complainant that her instructions for remittance cannot be made in INR but must be made in NZ\$. The discussion between the bank and complainant were over the telephone since time was the essence. The bank, pursuant to a series of discussions with the complainant, understood that the complainant had agreed for the remittance of the money in NZ\$ at the special rate @30.70 per NZ\$. The bank had therefore remitted INR 60,50,000/- in NZ\$ at the special rate @30.70 per NZ\$. She alleged that when the money reached in

New Zealand dollar, it was less than what was required for the deal for the Gas Station and she failed to arrange the balance to finalize the deal and the deal was cancelled.

(ii) During the meeting both the sides reiterated their position. The Banking Ombudsman observed that it is difficult to establish whether the bank indeed contacted the complainant on telephone on 25.08.2004 to say that the remittance in INR cannot be made, since the complainant had denied the telephone conversation. The complainant showed evidence that the bank's Delhi Office subsequently on 21.09.2004 made a remittance of Indian Rs.20,000/- to New Zealand and contended that the bank could have effected the remittance of Rs.60,50,000/- as per her written request. Later on a reference from BO, the Bank stated that there no regulations prohibiting remittance to New Zealand in Indian rupees. The BO observed that the bank is negligent in remitting the amount in NZ \$ inspite of clear written instructions from the complainant to remit the amount in INR. The bank should pay to the complainant an amount of Rs.2,84,000/- being the loss suffered by the complainant because of the difference in conversion rates prevailing on that date, as claimed by the complainant. The bank should further pay interest as applicable to NRE savings accounts from the date of transaction till the date of payment of the above amount. For this purpose the interest rate prevailing on the date of remittance is to be applied.

**Complaint No. 6**  
**Complaint in brief:**

A bank collected Rs.5.85 lakhs from the complainant, for issue of a draft in forex, on the understanding that a TT for the same purpose earlier sent would be cancelled. Both the TT and the DD were paid out by the foreign bank and the complainant's demand for refund of Rs.5.85 lacs (less partial payment received from the bank) has not been met.

**Decision:**

Facts show that the bank failed to advise the foreign bank properly to ensure that the foreign bank treated the TT order as cancelled and did not execute it. The bank was found to be deficient in service and was ordered to pay the complainant's claim.

**Complaint No. 7**  
**Complaint in brief:**

The bank received an inward forex remittance with instructions to credit the amount to the joint savings account of the complainant and the deceased, maintained with E or S instructions. The bank initially refused to credit the remittance since one of the beneficiary, the joint holder, was deceased. After making queries and obtaining legal opinion, the bank later credited the remittance. The complainant has claimed compensation for loss due to exchange rate variation during the period of the delay.

**Decision:**

The contract pertaining to the joint account with the bank became inoperative on the death of one of the joint holders and on the bank coming to know of the demise. Subsequent to the death, the bank had only the obligation to pay out the balance standing to the credit of the joint account to the survivor or otherwise deal with it according to the survivor's instructions. Subsequent to the death, it was not permissible for the bank to receive and place to the credit of the account any fund remitted payable to the deceased and any other individual jointly. The fact that the bank eventually credited the amount to the account does not imply any liability on part of the bank to pay the amount on the date of the receipt of the remittance. In view of the foregoing, the bank's action in not crediting the remittance to the account was found to be in order and the complaint is found to be without sufficient cause.



## **(E) REMITTANCE RELATED COMPLAINTS**

### **Complaint No. 1**

#### **Complaint in brief:**

Cheque No. 319572 dated 29.8.1996 for Rs. 82,930/- was received by BB bank, Patna from Employees Providend Fund, Maharashtra and Goa branch in favour of the complainant for credit to his Saving Bank Account No. 7265 maintained at the branch. The cheque in question was sent to service branch Mumbai. But the proceeds of the cheque was credited to the complainant account on 18<sup>th</sup> October 2002 i.e. after six years.

#### **Decision:**

In the reconciliation meeting, after hearing both the parties, it was observed that the bank's functionaries failed to discharge their duty at the material time. It was negligence on the part of the bank, which has put the complainant in financial loss. As such, the bank was advised to reconcile the matter in terms of instructions contained in RBI Circular No. DBOD.BC.147.09.07.007/99-2000 dated the 9<sup>th</sup> March 2000. The bank paid the interest for the delayed period (72 months )@ 13% +2% (penal) as per above circular and credited the remaining amount i.e. a sum of Rs. 55033/- after adjusting a sum of Rs. 22604/- already paid on 4.1.2003 to the complainant's account.

### **Complaint No. 2**

#### **Complaint in brief:**

The complainant maintained his SAVINGS BANK account with the subject bank. He had deposited a cheque for Rs. 60000/- drawn on XYZ Bank Ltd, Coimbatore to the subject bank for collection. On enquiry with the bank, the bank informed that the cheque was lost in transit. The bank neither credited the proceeds of the cheque nor returned the cheque for proceeding against the drawer. He requested that the bank may compensate him with the amount of the cheque and another Rs. 30,000/- for the mental tension.

**Decision:**

In respect of cheques lost in transit in the clearing process or at the paying bank's branch the bank should have immediately brought the same to the notice of the account holder so that account holder can inform the drawer to record stop payment and can also take steps to obtain a duplicate cheque. The onus of such loss lies with the collecting banker and not with the account holder. The banks should reimburse the account holder related expenses for obtaining duplicate instruments and also interest for reasonable delay occurred in obtaining the same.

As per Section 45 of the Negotiable Instruments Act, where a bill of exchange or cheque has been lost before it is overdue, the person who was the holder of it may apply to the drawer to give him another bill of the same tenor, giving security to the drawer if required, to indemnify him against all persons whatever in case the bill alleged to have been lost shall be found again. If the drawer on request as aforesaid refuses to give such duplicate bill, he may be compelled to do so.

As per order 7 Clause 16 (section 61) of Code of Civil Procedure for suit on lost negotiable instruments –where the suit is founded upon a negotiable instrument, and it is proved that the instrument is lost, and an indemnity is given by the plaintiff, to the satisfaction of the court, against the claims of any other person upon such court may pass such decree as it would have passed if the plaintiff had produced the instrument in the court when the plaint was presented and had at the same time delivered a copy of the instrument to be filed with the plaint.

In view of the above, the bank was advised to help the complainant to provide relevant documents for filing legal suit against the drawer of the cheque. The complainant was advised to request for duplicate cheque from the drawer as per Section 45a of the NI Act by writing to the drawer. In case of not receiving the duplicate cheque from the drawer the complainant was advised to file a civil suit against the drawer as per Civil Procedure Code.

**Complaint No. 3**  
**Complaint in brief:**

The complainant had purchased a DD for Rs. 7140 on Udaipur, and sent the same to Mr. S in Udaipur, Rajasthan. The payee had returned the demand draft to him stating that his bank could not accept the DD as it was made payable at Udaipur, Gujarat instead of Udaipur, Rajasthan. The DD was lost in transit and the complainant requested the bank to issue a duplicate draft to the correct centre. The branch manager did not oblige even after his several visits and said that the complainant should find the address of the bank in Udaipur, Gujarat in order to confirm that they did not encash the demand draft. The bank has admitted that the said demand draft was issued to wrong center.

**Decision:**

The bank has issued a demand draft to a wrong centre without verifying the bank code and was very callous in issuing the demand draft. BO advised the bank to obtain an indemnity from the complainant and issue a duplicate draft for Rs. 7140/- to the correct centre without collecting any charges from the complainant since the mistake was solely due to the deficiency of service on the part of the bank. The bank was also advised to give a compensation of Rs. 500 for their unfriendly attitude towards their customer and giving an evasive reply without settling the issues.

**Complaint No. 4**  
**Complaint in brief:**

The complainant had deposited two Government cheques well within the budget period for collection to the bank. The bank failed to present the cheques to the drawee bank within the validity period as a consequence of which the proceeds were not collected. The concerned Treasury Office refused to revalidate the

cheques as the Government allotment in respect thereof had since been surrendered.

**Decision:**

As the bank's negligence was apparent, the grievance was redressed through conciliation and the bank paid the proceeds to the complainant.

**Complaint No. 5**  
**Complaint in brief:**

The complainant did not get the proceeds of a cheque sent to her banker by the CDA Office. The bank contended that the cheque sent in collection to the drawee branch, was lost in transit and, as it had remained outstanding in the books of the drawer, it had requested issuance of a duplicate cheque by the drawer. However, as the duplicate cheque had not yet been received, the complainant's grievance could not be redressed by the bank.

**Decision:**

As the complainant was suffering due to delay in receipt of the amount apparently due to the negligence of the bank, the bank was directed to obtain a duplicate cheque within 15 days, failing which the bank would credit the complainant's account with the amount of the cheque together with interest at FD rate for the delayed period and penal interest thereon.

**Complaint No. 6**  
**Complaint in brief:**

The complainant had purchased a Demand Draft in favour of the Customs authorities, which was lost before delivery to the payee. The bank declined to issue a duplicate DD in lieu of the lost one in the absence of a request from the payee. The bank argued that even though the original draft had remained unpaid as per the records of the drawee branch, in case the draft was subsequently

presented by the payee the bank would be obliged to pay. Unlike the drawer of the cheque, the purchaser had no right to stop payment of the draft. Once it was delivered to the payee because the ownership had passed on upon such delivery.

**Decision:**

On examination of the documents and submissions made, the following observations were made:

- (a) Draft in question was lost before its constructive delivery to the payee.
- (b) The drawer and drawee were same legal entity (one branch of the bank issuing on another branch of the same bank).
- (c) The holder could insist on treating it as B/E and when the draft was lost the holder was entitled to a duplicate under section 45A of the N.I. Act. The purchaser remains a holder as long as the draft is not delivered to the payee.
- (d) The purchaser also stated that in compliance with the order of the High Court the dues payable to the beneficiaries were already paid by the complainant.

The relationship between the purchaser of the draft and bank was merely that of a debtor and creditor. Therefore, the purchaser could apply for a duplicate and the bank could pay the amount of the draft to the purchaser in time before the draft had been delivered to the payee. It was, therefore, held that the bank and the purchaser both could approach the payee for obtention of a letter of non-receipt of the draft and the bank could pay the money to the complainant on submission of an indemnity bond.

**Complaint No. 7**  
**Complaint in brief:**

The complainant has been maintaining a current account with Bank for collection of cheques issued by their customers. The complainant alleged that during the period, 1998-99 to 2000-01, the bank delayed in crediting their account to the

extent of 16 days to 81 days for the customers' cheques deposited by them. According to the Ministry of Finance circular of 25/4/1996, all Public Sector Banks were liable to pay penal interest for delays in crediting Government accounts beyond 15-days/one month. During inspection of accounts of the complainant, Government Audit Party pointed out that the bank did not follow the instructions of the Government of India and penal interest amounting to Rs.49.48 lakh was payable by the bank for inordinate delay in crediting the Government account. In compliance of the Audit observations, the complainant demanded payment of the amount of Rs. 49.48 lakh but the bank did not take any action nor replied to their letters.

**Decision:**

Clause 13(3)(b) of Banking Ombudsman Scheme contemplates that the complaint should not be filed before Banking Ombudsman beyond the limitation period of one year from the date of final reply given by the concerned bank to the complainant's representation made under clause 13(3)(a). The question of delay in crediting the accounts first came to the knowledge of the complainant in June 2001 after Government audit pointed this out and the complaint was filed in January 2004 to this office. Therefore, in Banking Ombudsman's opinion it is well within the Law of Limitations.

As per Reserve Bank of India's directions, in normal circumstances, the cheques under local clearing should be credited on the same day/next day of deposit with the banks. However, in this case, instructions of Ministry of Finance and RBI circulars issued in this regard providing a special arrangement require the banks to comply with. Banking Ombudsman referred to RBI circulars GA.NB.No.2425 /42.01.011/94-95 dated 19<sup>th</sup> June 1995 and GA.NB.No.1115/42.01.011/95-96 dated February 14, 1996 and GA.NB.No.1061/42.01.011/97-98 dated April 22, 1998. In the circulars the banks have been directed to pay interest on delayed remittances on Government dues.

The Banking Ombudsman concluded that the bank shall verify the dates of deposit of instruments in question, actual delays which took place and the claims made by the complainant for the period 1998-99 to 2000-2001. The bank shall comply with the guidelines of RBI and instructions of the Ministry of Finance that are applicable in this case and which had been accepted by both the parties as a special arrangement on the issue of crediting deposited cheques and also having regard to the observations/objections of Government Audit during 1998-99 to 2000-01. The bank shall pay interest for the delayed periods at applicable rates as per guidelines of RBI to the complainant.

**Complaint No. 8**  
**Complaint in brief:**

The complainant availed educational loan from a branch of the respondent bank. The complainant was required to pay GBP 3950 for her admission in the above institute. She purchased a foreign currency draft payable at London branch of the bank. The complainant thereafter approached the draft-issuing branch and reported loss of the draft and requested for issue of a duplicate in lieu of the original draft. The bank, after completing the necessary formalities in this regard, issued a duplicate draft on furnishing a letter of indemnity executed in the bank's favour by the complainant and a surety (the complainant's father). Subsequently, the complainant again approached the bank with a request to cancel the duplicate draft and to refund the amount of the draft to her stating that she has decided to postpone her studies in the above institute. At her request the bank cancelled the duplicate draft and refunded the money to the complainant. Later, on receipt of Nostro Account outstanding entry memo, the respondent bank came to know that the original draft was paid to the payee by the paying branch at U.K. on its presentation to the bank. Accordingly, the bank took steps to enforce its right under the indemnity bond. The complaint filed with the office of the Banking Ombudsman was that as the paying branch of the respondent bank had wrongly paid the draft subsequent to the stop payment instruction, the

respondent bank should be stopped from enforcing the indemnity bond executed by her.

**Decision:**

After the draft is delivered to the payee, the purchaser's right to claim the money and stop payment become disputable. The purchaser cannot ask the bank to stop payment on the ground such as failure of consideration or dissatisfaction with some bargain. Since the bank pledges its own credit involving its reputation, it has no defense except in case of fraud.

The Forum observed that the bank's act was justified in making payment of the original draft to the payee on its presentation. Such payment of the draft by the bank despite the stop payment instructions of the draft-issuing branch cannot be considered as a deficiency in services on the part of the bank. The complainant along with the surety furnished a letter of indemnity to the bank and thus agreed to indemnify the bank against all consequences that may arise from payment of the original draft. The bank had every right to enforce the indemnity furnished to it. The office of the Banking Ombudsman cannot restrain the bank from enforcing the legally executed indemnity. The office of the Banking Ombudsman did not find any deficiency in services on the part of the bank and the bank's act in this case as within its legal rights.



## **(F) COMPLAINTS RELATING TO LOANS**

### **Complaint No. 1**

#### **Complaint in Brief:**

The complainant availed a loan under PMRY from the subject bank for a starting a flourmill. She had mortgaged her land documents as security for the loan. When she closed the term loan the bank informed her that the title deeds were missing. Even after 3 months there was no favourable reply from the bank regarding the documents.

#### **Decisions:**

The bank agreed to obtain fresh title deeds at their cost within one month's time.

### **Complaint No. 2**

#### **Complaint in Brief:**

Complainant availed a Housing loan of Rs 3 lakhs from the bank in July 2000 for the purpose of construction of a residential building repayable in 168 monthly instalments at an interest rate of 12.25%. The complainant requested to reduce the interest rate to 7.75%, but the bank refused to do so stating that the revised interest rate was applicable to loans sanctioned with a repayment period of 5 years. So he approached AA Bank and after processing the documents and inspection of site they took over the loan by paying a cheque for Rs 266,000/- to BB bank who charged Rs. 5242/- as pre-closure charges.

#### **Decision:**

The bank had recovered Rs 5242/- as foreclosure charges as per their circular dated 14.05.2002. Since they have neither mentioned about the foreclosure charges in the loan sanction letter nor communicated it subsequently before debiting the charges Banking Ombudsman directed the bank to refund Rs 5242/- to the complainant.

**Complaint No. 3**  
**Complaint in Brief:**

The complainant had availed a housing loan of Rs. 23 lacs from the subject for purchasing a flat. Since he was transferred to Vadodara he decided to transfer his housing loan to ABC bank for the convenience of monitoring the loan account. The complainant remitted the loan amount with up-to-date interest till 23.12.04 to the bank with an instruction to the bank to handover the title deed pertaining to the housing loan. The bank did not oblige for the reason that the complainant did not remit 2% pre-closure charges. As per the complainant, when the loan was availed, he was not informed about the prepayment/pre-closure charges and the brochure offered by the bank mentioned 'No prepayment/pre-closure charges'. There was no mention of the pre-closure charges in any of the loan agreement signed by him and the bank did not put him on notice about the pre-closure charges either at the time of availing of loan or afterwards. In view of the above, the complainant demanded waiver of pre-closure charges and return of the original title deeds.

**Decision:**

The bank had replied that at the time of availing the loan, the complainant was put on notice, by explaining to him that the terms and conditions of sanction are subject to changes from time to time including interest rates. It was explained to him very clearly that the pre-closure and prepayment exemptions relate to advance payment of installments or closure of the loan by own funds remitted through his accounts with the bank and not applicable in the event the loan is closed through takeover by other banks. When the complainant request for closing the account by availing loan another bank he was informed about the pre-closure charges.

However, the Banking Ombudsman observed that the bank did not produce the copy of the sanction/loan agreement or any correspondence with the complainant accepting the conditions of the pre-closure charges to be levied by the bank if the housing loan of the complainant was to be taken over by another

financial institution. However taking into consideration of the fax communication of the complainant dated 9.12.2004 before the closure of the loan account on 23.12.2004 where the complainant had requested to waive the penalty of 2% as pre-closure charges it was inferred that the bank had informed the complainant about the preclosure charges before clearing the liability. The bank was, therefore, advised as a matter of goodwill to collect only a maximum of 1% pre-closure charges and release the title deeds soon after the closure of the loan.

**Complaint No. 4**  
**Complaint in Brief:**

The complainant was enjoying cash credit limits with the bank for Rs. 200 lacs. As the service of the bank was not to his satisfaction, the complainant decided to switch over to another bank. The new bank gave a demand draft for the amount outstanding in his cash credit account and the complainant asked the first bank to close the loan account. Even after clearing the dues, it did not close the loan account and release the security documents demanding additional amount of Rs. 350729/- in the form of takeover penalty. The complainant was not advised about such a penalty called take over penalty for cash credit account. The bank did not include any such conditions in the documents executed by them. The complainant's request was the release of the security documents taken for cash credit facility extended without any penal charges.

**Decision:**

The bank informed that at the time of availing loan, the borrowers had been put on notice by explaining to them that the terms and conditions of sanction are subject to changes from time to time including interest rates. As and when the change is effected in the terms /conditions, such changes have been published, for awareness of the customers, through notices displayed in the Notice Board of the branch. In the case of working capital loans, 2% penalty charges are levied on the basis of the average balance of the preceding 12 months.

The Banking Ombudsman observed that the bank vide its circular dated 20.4.2004 mentioned about the pre-closure/take over charges for traders' loans prescribing 2% penalty. In this case the loan was sanctioned on 23.8.2004. Naturally, the condition regarding levying of prepayment charges should form a part of either the loan documents or the sanction conditions accepted by the party. The bank was asked to produce documentary evidence to show that the disputed conditions had the party's consent. The Bank could not produce any documentary evidence to show that disputed conditions had the complainant's assent. In view thereof, the bank waived the pre-closure charges for the complainant's account and settled the complaint.

**Complaint No. 5**  
**Complaint in Brief:**

Complainant was sanctioned a housing loan for Rs. 4,60,000/- by A Bank. The complainant has stated that he had (i) deposited Rs.2,300/- with the bank as application fee, (ii) paid token money of Rs.10,000/- to the landlord, (iii) paid to architects a fee of Rs.5,000/- and (iv) spent Rs.1,400/- towards cost of advertising. However, bank subsequently did not disburse the loan. As a result, the complainant suffered monetary loss as mentioned above along with Rs.5,000/- towards interest loss on the money borrowed from other sources. The complainant alleged that he had complied with all the requirements of the bank. However, the loan was not disbursed without giving any justification.

**Decisions:**

The bank had sanctioned the loan in principle with the condition that the disbursement the loan will be subject to legal and technical clearance of the property. Bank's contention that the bank had sanctioned the loan when the property to be purchased was not decided by the complainant, was found not tenable as the complainant had published the advertisement on the said property inviting objection from the public before the sanction of loan in principle. From the records and proceedings, it was observed that the complainant was not guided

and advised properly by the bank about the requirements of the bank. Further, bank could not produce any letter advising the complainant to comply with the legal requirements of the bank. On the other hand, the complainant was given the understanding that the loan would be disbursement and relying on that understanding, he incurred expenses in this regard and the complainant suffered inconvenience and financial loss. The Bank was advised to compensate complainant by paying Rs.10000/- as full and final settlement of claim towards the loss and inconvenience caused to him.

### **Complaint No. 6**

#### **Complaint in brief:**

The complainant had availed himself of a housing loan of Rs.5,90,000/- from S bank. When the S bank's operations were taken over by A bank, the complainant was charged penalty (assignment charges) for transfer at 8% and pre-closure charges at 2% of the outstanding loan amount were levied. And, when he opted for a fresh loan from B bank to close the loan, the bank B charged take-over charges. He claimed for compensation of all the charges as he was not responsible for the circumstances, which forced him to migrate to B Bank.

#### **Decision:**

The Banking Ombudsman clarified the legal position regarding charging of prepayment penalty at 2% keeping in view the agreement executed by the complainant while obtaining the loan from S bank. On taking over of the loan by A bank from S bank, it had stepped into the shoes of S bank. Thus, A bank was vested with the legal right to fix the rate of penal charges for pre-closure of the loan and collect the charges as per provisions of the said loan agreement.

A bank indicated that the recovery of assignment charge from the complainant was based on instructions issued by its Corporate Centre. The instructions are to recover invariably, the stamp duty already incurred for assignment of the particular loan to our Bank (by S bank) from the borrower, who opt for take over

of their loans by other Banks / Housing Finance Companies, in addition to the pre-payment penalty of 2% of the amount outstanding in their loan accounts. However, the BO observed that the instructions of the Bank's Corporate Office apparently formed the basis of recovery of the assignment charge and not the provisions of any law or of the agreement executed by the complainant. From the correspondence exchanged with the Bank, it appeared that the assignment of the loan to the Bank was a sequel to its decision to take over the assets and liabilities of S bank. This was a decision of the bank and the complainant was not a party to it. Such take over was not in terms of any specific enactment and therefore, charges in this regard, did not appear recoverable. The decision of the Corporate Office, it was felt, could not override the provisions of any law or those of the agreement.

Regarding loan transfer charges paid by the complainant to B bank, the decision to approach the B bank was taken by him. He had not even approached A bank for allowing continuance of the facility. The Complainant accepted the above position.

**Complaint No. 7**  
**Complaint in brief:**

The complainant had submitted that the respondent bank disbursed an amount of Rs.3,00,000/- till 3/1/2000 against a sanctioned loan of Rs.3,80,000/- for construction of house. The respondent bank released the remaining amount of Rs.80,000/- on 24/11/2000 after a huge delay although applied for it on 16/2/2000, credited it to savings bank account of the complainant but reversed the amount back to the loan account on the same day without any intimation to the complainant, although the house was not complete. The complainant represented to the respondent bank against its unauthorized act and claimed the loss/ damages.

**Decision:**

The first installment of house building loan was released on 5/11/1999 and the moratorium period was 18 months from the date of disbursement of the first installment of loan or completion of house, whichever was earlier. It is obvious from the submissions of the complainant as well as the respondent bank that the house could not be completed by 24/11/2000. The complainant requested to release the last installment in the month of February 2000, but the action of the bank delaying the release of the installment up to November 2000 i.e for more than 9 months may could not be justified. The respondent Bank gave no convincing reasons for the delay.

The recovery was to be effected from March 2001 for Rs.4900/- p.m. as per the loan agreement. Hence, no installment was due on 24/11/2000. So the act of the respondent bank appropriating Rs.80,000/- towards recovery of the loan through a cheque (the blank cheques were already obtained towards recovery by the respondent bank) was not proper. The repayments were due from March 2001 only, and the house could not be completed due to wrongful act of the respondent bank. Thus, the bank was not entitled to charge any penalty or penal interest.

The bank was advised to release the last installment of Housing Building Loan immediately, to reschedule the repayment of loan three months after the release of last installment or completion of house, whichever is earlier, to waive penal interest and penalty, if any and to pay a sum of Rs.10,000/- to the complainant towards all expenses etc. incurred by the complainant due to non completion of the house as a result of delay in disbursement.

**Complaint No. 8**  
**Complaint in brief:**

The complainant approached the office of the Banking Ombudsman with a grievance that he was allowed a Term loan as well as the Working Capital Limit under KVIC Margin Money Scheme by the respondent bank. The Insurance of Land & Building, Plant & Machinery, & the Stock (Raw Material, Stock in Process & the Finished Goods) was got done by the bank and the Insurance Premium was recovered from the complainant. There was a Fire Accident in the factory. The complainant reported the matter to the bank with documentary evidence for a loss of Rs 2.70 lac towards stock & Rs 0.25 lac towards the Land & Building & requested the bank to lodge the claim with the Insurance Company. The bank official visited the spot and lodged the claim for Rs 2.95 lacs after physical verifications; but the claim was passed for Rs 42,340/- only by the Insurance Company against the loss of Rs 2.95 lacs for which neither the bank informed the complainant, nor had his consent. The complainant stated that thus he could not take up the matter with the Insurance Company. The complainant also added that as the whole stock was lost in the fire accident, the factory was not in operation. The amount of insurance claim received by the bank was to be provided to the complainant to restart the factory; but the bank appropriated this amount towards the loan. Further, the KVIC Margin money was to be appropriated in the loan account after two years, which the bank had also not done. Further, the bank charged interest at a higher rate than specified for SSI.

**Decision:**

In the cases of KVIC Margin Money Scheme, the collateral security is to be obtained by the bank. It may be some immovable property or FD etc. Hence, the bank rightfully obtained the collateral security furnished by the complainant. As per Income Recognition Norms, the interest on NPA accounts is not to be applied, but in no case it affects the liability of the borrower as the interest is not to be debited to the loan account and the liability of the borrowers remains the same. Hence, the claim of the complainant in this regard is not tenable.



As per the above Scheme, the amount of the Margin Money was to be appropriated after two years if the industry had been operating for this period. There was no requirement for the approval from the KVIC as was claimed by the bank in this respect. The bank was to appropriate this amount. However, the respondent bank confirmed to having credited the Margin Money received from the KVIC in the accounts of the complainant

The bank also confirmed that the interest charged in the accounts of the complainant has been rechecked as per its H.O. guidelines and the excess interest charged to the tune of Rs 29,760/- was refunded to the complainant.

The complainant is reported to have issued a legal notice to the Insurance Company for the short settlement and he himself is initiating legal proceedings for the same. In any case, this is an area where the bank has no direct role to play. As regards the waiver of the interest on the loan accounts of the complainant after the fire accident, there is no mandatory provision, as claimed by the complainant. The bank cannot be compelled to take action. However, the bank can consider it as a rehabilitation measure while deciding the rehabilitation proposal for the sick unit of the complainant.

The bank was examining the proposal for revival of the sick unit on merits. The complainant will have to furnish all the required documents & fulfill the formalities as per bank's norms for revival of the sick unit.

### **Complaint No.9**

#### **Complaint in brief:**

The complainant lodged a complaint that it was supplying PVC insulated wire to the AA Board and in lieu of the payment the Board was issuing Promissory Notes under SIDBI rediscounting scheme. The respondent bank discounted the Promissory Notes but the bank did not rediscount the Promissory Notes with SIDBI. The Promisor had not honoured the Promissory Notes from December

2002, hence, the respondent bank classified the account as NPA being overdue. The bank was threatening to stop the transaction in the account of the complainant. The complainant contended that there was State Government Guarantee for the Promissory Notes, so no liability was on the shoulders of the complainant and the respondent bank was under obligation to have rediscounted the Promotes from SIDBI.. As there was no fault on the part of the complainant, the bank was to proceed against the Board as well as against State Govt. for which the respondent bank failed to act properly. The act of the respondent bank affected the interest of the complainant by affecting the goodwill of the firm in the market, making the unit not in a position to meet the supplies against the supply orders already on hand which may cause penalty or the firm may be black listed and by affecting its performance adversely.

**Decision:**

In its reply the respondent bank submitted that the bank had been discounting the Promissory Notes issued by MPSEB, timely, upto the sanctioned limit of the complainant. The account of the complainant was not classified as NPA because there was the State Government guarantee. However, income recognition concept of the RBI will be applicable on the account. As the Board had not honoured the Promissory Notes discounted by the bank, the interest etc. was not being serviced. Hence, it was obligatory on the part of the complainant to repay bank's dues on non-payment of Promissory Notes by Board. As regards, the rediscounting of the Promissory Notes from SIDBI, the bank was having surplus funds and was not requiring refinance and the Promissory Notes were not rediscounted with SIDBI. However, in no way it had affected the interest of the complainant. As per scheme, even if, the bills were rediscounted and not honoured by the Board, SIDBI would have claimed the amount from the bank only, as the bank was under obligation to make good the amount to the SIDBI and the bank thereafter would have claimed it from the complainant. For this purpose, the complainant had furnished an undertaking. The bank also produced

a letter of SIDBI stating therein that under the BRS of SIDBI, payment is received from the discounting bank on due dates as per demand raised by SIDBI.

The complainant had contended that while the bank under SIDBI rediscounting scheme discounted the Promissory Notes issued by the MPSEB, the bank had not rediscounted the same but presented for payment direct to the Board on due dates which were dis-honoured . If, as per sanction, the Promissory Notes had been re-discounted with SIDBI, the bank would have had no concern with the MPSEB, but, with this failure of the bank, his account had been classified as NPA, causing loss to the complainant. As there was a Guarantee from the State Govt. for the promissory notes, the liability of the complainant automatically stood terminated, according to the complainant. Secondly, the bank had wrongly classified his account as NPA, due to dishonour of the promissory notes.

However, it is seen from the letter of SIDBI that it confirms that under the bills rediscounting scheme of SIDBI, the payment on the due dates would be asked from the discounting bank. Moreover, the complainant had also furnished an undertaking stating that availing itself of rediscounting facility from SIDBI in respect of the aforesaid Promissory Notes, SIDBI will be under no obligation to present the Promissory Notes for payment on due dates and notwithstanding the non-presentation, they will remain liable on the said Promissory Notes. Thus, the contention of the complainant has no merits. Secondly, during the hearing the bank confirmed that as there was a Govt. guarantee for the promissory notes, the complainant's account had not been classified as NPA.

The Guarantee, however means that in case of dishonour of the Promissory Notes, the complainant has recourse to recover the amount from the State Govt. and the Board and similarly in case the bank who by being a holder in due course has recourse against the complainant as well as the Govt. and the Board. It was for this reason that the bank had obtained the collateral security etc. The bank is right in its act to recover the amount of the dishonoured Promissory

Notes from the complainant who had executed the documents for the very purpose. As the complainant will have recourse to exercise against the Board as well as State Govt., the contention of the complainant is not tenable.

### **Complaint No. 10**

#### **Complaint in brief:**

The complainant approached the office of the Banking Ombudsman with a grievance that the respondent bank rejected the loan proposal without furnishing valid reason. Despite clarifications, from the complainant, the bank remained rigid on its decision. The complainant requested relief for mental torture, social humiliation as well as financial loss incurred to him in completing the formalities required by the bank.

#### **Decision:**

The bank in its reply submitted the bank official had made a market survey to know the repute of the complainant and his family, in the local market, which was not favourable. The complainant could not furnish the required documents and could not rectify the shortcomings, in the proposal. The proposal was processed on the basis of information available on the record and it was rejected on 25-02-2004 as the proposal was not found technically feasible and economically viable. The complainant was not asked by the bank to submit the Valuation Certificate.

Sanctioning of or rejecting the loan on merits, is a conscious decision of the bank and the applicant cannot claim a loan as a matter of right. In this case, the bank has fully justified the decision taken for rejection. In view of the above, and guidelines issued by the Reserve Bank of India, the claim of the complainant is not tenable.

### **Complaint No.11**

#### **Complaint in brief:**

The complaint was lodged that the respondent bank was not considering the educational loan application of the daughter of the complainant without assigning any valid reason to the complainant, although the complainant is an ex employee of the bank and is availing the education Loan for his son and pension loan etc.

**Decision:**

The educational Loan is generally allowed to the student jointly with the father/guardian keeping in view the repaying capacity of the father/ guardian, so that the loan may be recovered from the father/guardian, if the student cannot succeed to get employment. The complainant's pension is not adequate and he already stood as co-borrower in educational loan of his son. His overdraft limit against NSC & demand loan against pension are already out of order due to non-repayment. Hence, his application for fresh Educational Loan was not found to be viable and could not be sanctioned.

The Banking Ombudsman examined the information held on the record and observed that any loan proposal is to be processed by the bank to assess the technical feasibility & economic viability. The bank owing to the lower repaying capacity of the complainant did not consider his new request for the fresh Educational Loan for his daughter economically viable. The complaint was accordingly rejected.

## **(G) OTHER COMPLAINTS**

### **Complaint No. 1**

#### **Complaint in brief:**

The grievance of the complainant was that the bank had levied prepayment charges and had charged interest on the subsidy portion of the loan amount.

#### **Decision:**

The BO pointed out that the terms and condition specified in the sanction letter did not provide for levy of prepayment charges. The bank admitted that about 8.2% was collected as prepayment charges. The Banking Ombudsman observed that in the absence of any agreed condition for levy of prepayment charges, the bank could not levy it. The bank refunded the prepayment charges.

### **Complaint No 2**

#### **Complaint in brief:**

The complainant availed a car loan from the bank. The field officer of the bank impressed upon her that the loan was sanctioned at 9% interest and the loan could be closed within a year of regular payment of EMI without payment of any additional expenses. When she closed the loan account with the bank, she realized that the bank has charged an interest of 11.43% and they had charged an additional 3.31% as pre-closure charges. The bank did not return the duplicate key of the vehicle even after she remitted the entire amount demanded by the bank on 28.3.2005. During the currency of the loan, the bank issued a 'free credit card' as 'gift' to her for whom they charged Rs. 700/- as service charges, which was neither asked for by her nor used by her. She requested for the refund of excess charges collected by the bank and return of the duplicate key of the vehicle.

#### **Decision:**

The bank officials replied that the bank has charged as per the terms and conditions agreed to by her. The Banking Ombudsman stated that the bank through their agent misguided the complainant about the rate of interest and bungled on many issues with respect to her loan account. She had to approach the police station for getting the duplicate keys and the post date cheques given by her were yet not returned to her. Though the bank resolved the issues, there was severe bungling and gross negligence in the matter and the complainant was put to anguish and mental tension. as she was forced to contact the bank many times for each issue. Bank also did not care to give a timely reply to this office to settle the complaint. Hence the Banking Ombudsman advised the bank to pay a token compensation of Rs. 10000 to the complainant on her acceptance of the same and withdrawal of the complaint. The complaint was treated as closed.

### **Complaint No 3**

#### **Complaint in brief:**

The complainant had alleged that the bank had charged interest far in excess of the stipulations as contained in RBI guidelines on their overdraft amount against the security of FCNR deposit receipt. The bank had granted an overdraft limit against the security of FCNR deposit of adequate value at an interest of 22.25% whereas the deposit carried interest at 6.25%.

#### **Decision:**

The bank's internal circulars issued from time to time showed that interest was to be charged on the basis of credit ratings and on the basis of a benchmark rate linked to the bank's PLR. As the bank could not justify its stand of charging an interest at 22.25% which was substantially higher than the interest rate as stipulated in the bank's internal circulars, an Award was passed against the bank to refund the excess interest recovered from the complainant.

### **Complaint No 4**

**Complaint in brief:**

The complainant's uncle had a Savings Bank account with the Bank, in which he is one of the nominees. After death of the account holder the complainant requested the bank for completing formalities to pay the amount. But the bank refused to pay. The account holder died on 14.10.2002 leaving a "Will" in this Savings Account was also included as an asset. A probate was granted by Additional Session Judge on the basis of the Will. In spite of all this, the bank has refused to pay the amount to nominee, which is a deficiency in banking services.

**Decision:**

An Award was passed by the Hon'ble Banking Ombudsman ordering the bank to pay the nominee after identification and acknowledgement.

**Complaint No 5****Complaint in brief:**

The complainants, Shr and Smt M invested Rs.3.00 lakhs in 8% Relief Bonds through the Bank during April 2002. Bonds for Rs.2 lakhs were held by Smt. M as the first holder and Shri M as the second holder. Bonds for the balance amount of Rs.1 lakh were held in the name of Shri M as the first holder and Smt. M as the second holder. At the time of submitting the applications, they had signed a declaration that individual investment in the said bonds by either of them was less than Rs.2.00 lakhs. The Bank issued the Bond Certificates. However, Bank subsequently informed that they had invested more than the prescribed limit of Rs.2.00 lakhs and requested them to return the Bond Certificate for Rs. One lakh. Accordingly, they returned the certificate dated 10th April 2002 and sought refund. After protracted correspondence and follow up, the bond amount of Rs. One lakh was refunded to them on 7th November 2002. On 11th November 2002, the investors claimed interest



from the Bank for the amount lying with the Bank for 7 months. On 25th November 2002, the Bank informed them that they were not in a position to pay interest as they had only acted as agents of Reserve Bank of India. However, the investors pursued the matter with the Bank particularly in view of the subsequent clarification issued by Reserve Bank of India that the ceiling of Rs.2 lakhs would be reckoned on a first holder basis and that the second and subsequent holders' names ought to have been ignored for the purpose of reckoning the ceiling. Ultimately, when the Bank persisted that their action was as per the guidelines of Reserve Bank of India and refused to pay any interest, the investors approached the office of the Banking Ombudsman seeking relief by way of payment of interest by the Bank.

**Decision:**

The Bank took the plea that since the funds were not retained by them, the matter of interest claim by the investor had to be taken up by the investor with Reserve Bank of India. On taking up the matter with the Central Office of RBI and also the Public Debt Office at Bangalore, Reserve Bank of India advised that the action of the Bank in refunding the amount to the applicants was not in order in view of the clarification issued by Reserve Bank of India vide their Circular dated 14<sup>th</sup> May 2002. The Bank therefore paid the interest claimed by the complainants.

**Complaint No 6**

**Complaint in brief:**

The complainant had availed himself of a Housing Loan from Bank, in 2003. One of the terms of sanction of the said loan was "prepayment fee of 2% on the principle outstanding if the prepayments are made through Institutional / HFC's cheque / Pay Order. In case the premature closure of Home Loan account with own funds, no prepayment charges will be levied".

When the Complainant approached Bank with a request to close his Home Loan account, and issued a cheque from his Savings Bank account maintained with

Bank, the Bank demanded 2% prepayment penalty on the amount outstanding. He contended that prepayment penalty was not payable by him since he had closed the loan by issuing a cheque on his savings bank account with Bank. But, the Bank insisted on payment of penalty stating that it had come to know that the source of funds for closure of his housing loan was a housing loan availed from Home Finance Company.

**Decision:**

Aggrieved by the Bank's refusal to deliver his property documents unless he paid the prepayment penalty, he approached the Banking Ombudsman for redressal of his grievance on January 01, 2005. On taking up the matter with it, the Bank informed that it had probed the transaction and found that the contention of the Complainant that he had obtained a loan from his Company, was false and the documents submitted by him in this regard were forged. Further, they had found that the Complainant had availed himself of a loan from Home Finance Company and that the loan amount was credited to his saving bank account with the Bank. The matter was examined by the BO based on the documents submitted by both the parties. As the complainant had prepaid the loan by a cheque on his Savings Bank account, it was decided that the Complainant was not liable to pay the prepayment penalty of 2% as contended by the Bank. Hence, the Bank was advised to release the property documents to the Complainant without insisting upon prepayment fee of 2%.

In view of the clear stipulation of the prepayment penalty clause in the sanction communication issued by the Bank to the Complainant, which was pointed out by the office of the Banking Ombudsman, the Bank agreed to release the documents without insisting upon payment of pre-closure penalty. Accordingly, the property documents were released to the Complainant without collection of prepayment penalty.

**Complaint No 7**

**Complaint in brief:**

The Complainant had five Fixed Deposits with Branch of the Bank. The Complainant was working as Janatha Deposit Collector (JDC) with the Branch. However, owing to ill health he resigned from the job on October 27, 1986. At the time of submitting his resignation, he requested the Bank to appoint his nephew, Shri R as a Janatha Deposit Collector (JDC). Shri R was appointed JDC on 25.02.1987. In accordance with the requirements of the Bank, Shri S N offered his five Fixed Deposits as security vide his letter dated 27.02.1987 giving the following undertaking:

“ In terms of the above letter, I am herewith enclosing the deposit receipts bearing No..... , duly discharged along with a memorandum of charge over the deposits for being held with you as security. You are at liberty to adjust the said deposit for any loss or damage the Bank might or may suffer and any liability fixed on Sri. R at the absolute discretion of the Bank on account of his failure or negligence in carrying out faithfully the duties as Janatha Deposit Collector from time to time.” Further, in his letter-dated 17.01.1992 addressed to the Branch Manager, the Complainant gave the following undertaking. “ I hand you herewith the above KCC receipts duly discharged and request you to hold the same as security for the faithful service as JD Collector. You are at liberty to adjust the above said deposits for any loss or damage the Bank might or may suffer and any liability fixed on me at absolute discretion of the Bank on account of my failure or negligence in carrying out faithfully the duties as Janatha Deposit Collector from time to time.” The Complainant had also signed a memorandum of charge / lien-over deposits form on 23.07.2004.

On September 28, 2004, the Complainant approached the Branch for premature refund of four Fixed Deposits and crediting the proceeds to his savings bank account since he was in need of funds due to his ill health. Thereafter, the Complainant in his letter dated January 4, 2005, stated that the alleged excess amount paid by the Bank to the JDC should have been deducted from the monthly remuneration paid to the JDC and requested for refund of the said Fixed

Deposits. According to the Complainant, the action of the Bank in withholding the deposits was not proper. As there was no positive response from the Bank to his letters, the Complainant approached the Banking Ombudsman.

**Decision:**

When the matter was taken up with the Bank, the Bank submitted that the Complainant had offered the five Fixed Deposits as security for any loss or damage that the Bank may suffer or for liability fixed on Shri R on account of his failure or negligence in carrying out faithfully the duties entrusted to him as JDC from time to time. Shri R stopped collection work with effect from 22.03.2003 without any intimation / notice. Since his whereabouts were not known, his services were terminated by the Bank's Zonal Office subject to final settlement. Further, it submitted that the Branch had released four deposits of the Complainant amounting to Rs.1,81,778. 90 and credited the proceeds thereof to his S.B account (which was confirmed by the Complainant in his letter dated 01.02.2005 addressed to the Bank's Head Office). However, the deposit for Rs. 34,153/- was withheld since a sum of Rs.32,583/- was recoverable from Shri Raja, JDC, in terms of Supreme Court judgment. The Bank contended that in view of the foregoing, and discharge of FD and undertaking letter given by the Complainant, the said deposit would be released as soon as the liability in the name of Shri R was settled.

The BO advised the Bank that the excess commission paid by the Bank was not a loss incurred by the Bank in the process of collection of deposits relating to pigmy deposit accounts and hence it was not covered by the memorandum of charge / undertaking given by the Complainant. In view of this, the Bank could not also exercise general lien over the deposit. General lien is available to a banker only in cases where there is no agreement creating specific charge on the securities with the Banker. The Bank no doubt had recourse against Shri R for recovery of the excess payment of commission depending on the final orders of

the Court in the matter. In the light of the discussions during the Hearing, the Bank agreed to release the deposit of the Complainant.

**Complaint No. 8**

**Complaint in brief:**

The complainant lodged three documentary bills for collection. The bills remained unpaid due to insufficient funds. The bank had forwarded the bills to the drawee bank instructing Delivery against Acceptance, although the customer had desired Delivery against Payment. The bank contended that as per URC 522 collection could not contain bills of exchange payable at a future date with instruction that the commercial documents be delivered against payment. As the underlying bill had tenor of 60 days, the bank had interpreted the collection to be Delivery against Acceptance.

**Decision:**

(i) The banks are only permitted to act upon the instructions given in such collection instructions and in accordance with UCPDC Rules. It is, therefore, incumbent on the parties to give instructions to all concerned – seller to the remitting bank, to the purchaser. And the rules will be the guiding principle. Further, banks will not examine documents in order to obtain instructions. It is the responsibility of the party preparing the collection instruction to ensure that the terms of delivery of documents are clearly and unambiguously stated, otherwise, banks will not be responsible for any consequences arising there from.

(ii) Normally collections should not contain bills of exchange payable at a future date with instructions that the commercial documents are to be delivered against payment. However, notwithstanding 7(a) of UCPDC, it is not inconsistent to draw bill on D/P basis with a tenor for delivery of the documents. 7(b) stipulates that in such cases collection instructions should be the guiding principle. The respondent bank is clearly guilty of overlooking these requirements by

interpreting, the alleged absence of instruction, as per their contention, to make the bills D/A.

(iii) The purport of D/P with tenor implies that unless the payment is guaranteed on the maturity date, the underlying goods, represented through the commercial document like bill of lading/air freight bill would remain the property of the holder (the foreign bank in the instant case), who remain responsible for payment for value received.

(iv) On specific query, they answered that they did not get the impugned bills noted and protested. If they had indeed assumed the bills to be D/A, it was also a requirement to note and to protest in the event of non-payment on due date. Thus the bank, by interpreting D/P bills as D/A bills, in their own wisdom neglected the basics of banking practice, protest (or other legal process in lieu thereof) in the event of non-payment or non-acceptance”.

(v) The bank also overlooked the purport of Article 7(b), which does permit submitting D/P bills with tenor. The bank also failed to return the dishonoured documents to the complainant till date and it confounded the dishonour by their inability to protect the customers’ interest first, by acting contrary to the customers’ instructions, second, by not keeping a legal recourse open and third, by not taking reasonable care to obtain payment from the drawees.

(vi) On detailed examination of the documents, submissions and the Banking Law & Practice, the bank was found deficient/negligent in handling the export bills under collection. An Award was passed against the bank to pay the rupee equivalent of the bills at the conversion rate as on the respective due dates plus 7 days transit time together with interest at 12% per annum compounded at quarterly rates till date of payment.

### **Complaint No. 9**

#### **Complaint in brief:**

The complainant approached the respondent bank to let out space in its locker room to keep an Almirah containing gold & silver bullion, which the bank

accepted at an Annual Rent of Rs. 15,000/- Accordingly, the bank debited the charges for the years 2000-2001, 2001-2002, 2002-2003 & 2003-2004.

The respondent Bank expressed its inability to extend the facility beyond 31.10.2003 & requested the complainant to remove the Almirah from the premises vide its letter dated 21.10.2003 and debited the account of the complainant by Rs. 1,45,000/ on 22.10.2003 which the complainant could detect on receipt of the statement of account from the bank. When the complainant enquired on the reasons for this debit, the bank informed that it had calculated rent @ Rs.5,000/ pm and debited the difference to the account. As this debit was not acceptable to the complainant, he approached the office of the Banking Ombudsman with a complaint.

#### **Decisions:**

The bank debited the complainant's account with Rs. 1,45,000/- being the difference in charges recovered by the bank for previous three years and that chargeable as per bank rules. During the, the banker admitted that the charge for safe custody of the complainant's almirah in the bank was agreed at Rs. 15,000/- per year. The bank continued to recover the rent at the above rate for 3 years, but thereafter as a surprise debited the complainant's account with Rs. 1,45,000/- on the plea that the bank was entitled as per rules to charge rent @ Rs. 5,000/- per month, an offer of the bank which was originally not accepted by the complainant and was agreed upon at Rs.15,000 per year, after negotiations.

The bank did not deny receipt of the complainant's letter mentioning therein the rent for safe custody of his almirah in the bank as Rs. 15,000/- per year, which was acknowledged by the bank. The bank's act of recovery for 3 years stopped it from subsequently recovering the rent at a higher rate without the complainant's consent or knowledge. It is an established practice in the banking that no debit can be raised on the customer's account without his consent or in violation to the terms of the agreement, if any entered in to between the bank and the customer.

In the instant case it was agreed between the bank and the complainant that the bank would charge rent @ Rs. 15,000/- per annum. The bank was therefore not entitled to recover rent in excess of the agreed amount, without his consent.