

**TELECOM DISPUTES SETTLEMENT & APPELLATE TRIBUNAL  
NEW DELHI**

**Dated 12<sup>th</sup> March, 2019**

**Cyber Appeal No. 10 of 2015**

Standard Chartered Bank ... Appellant

Versus

Mr. Ramesh Tathod ... Respondent

**BEFORE :**

**HON'BLE MR. JUSTICE SHIVA KIRTI SINGH, CHAIRPERSON  
HON'BLE MR. A.K. BHARGAVA, MEMBER**

Appellant : Mr. Amol Sharma, Advocate

Respondents : Mr. Saurabh Kumar Singh for  
Mr. Mahendra B. Limaye, Advocate

**ORDER**

**By S.K. Singh, Chairperson** – Heard learned counsel for the appellant(Bank) and learned counsel for the respondent (complainant).

2. This appeal under Section 57 of the Information Technology Act 2000(the IT Act) is against order dated 15.01.2015 passed by the Adjudicating Officer/Principal Secretary(IT), Government of Maharashtra, Mumbai in

Complaint No.3 of 2014 dated 06.01.2014. By the said order, the learned Adjudicating Officer(AO) has held that the respondent is in violation of Section 43A of the IT Act and directed it to pay to the respondent a compensation of Rs.1,50,000/- to partly cover his loss and legal costs within a month of the order failing which compound interest @ 12% compounded monthly will also be chargeable.

3. Learned counsel for the appellant Bank has raised two serious objections. Firstly, on the basis of pleadings in Para 6(b) of the Memo of Appeal, a grievance has been raised that on the date fixed for hearing i.e. 10.04.2014, the counsel for the appellant Bank had appeared before the AO but the AO was not available. No further date was communicated rather an information was given to the counsel that the next date would be communicated later but, in fact, this was not done and as a result the proceeding was carried on and final order was passed behind the back of the appellant. Secondly, learned counsel has taken us through the order under appeal to point out that the order has not taken note of any fact or circumstances or allegation which could attract and lead to the ultimate finding recorded in Para 6 that the appellant Bank is in violation of Section 43A of the IT Act. According to him, this finding is a completely bald finding not based on any reason or materials and is not supported by the discussion of the documents and facts made in Para 5. He has pointed out that in sub-para III of Para 5, the AO has noted some practices and guidelines

prevailing in foreign countries and has then noted a recommendation of January 2014 by Banking Codes and Standard Board of India for protection which the banks should offer to their customers who use electronic channels to conduct transactions. He pointed out that the alleged fraudulent transaction in this case took place in April 2013 and there is absolutely no discussion as to how the materials discussed in sub-para III of Para 5 could cover or relate to that incident which is the subject matter of present case.

4. Lastly, we were taken through the provisions of Section 43A and Section 47 of the IT Act for supporting the contention that essential conditions to attract Section 43A of the IT Act have not been established and the compensation awarded does not take into account that the complainant did not suffer actual loss because the demand of the Bank for paying the money involved in the transactions under question relating to the credit card of the complainant have admittedly not been paid although more than 4 years have lapsed. This fact would be evident from the nature of prayers made in the complaint petition itself.

5. In reply, learned counsel for the respondent submitted that the complainant has made allegations that the Bank did not provide reasonable security to protect the valuable data of the complainant but those allegations have not been taken note and there is no proper consideration of relevant materials. He however, submits that the relevant materials and grounds for

attracting Section 43A of the IT Act were argued and advanced but they have not been properly dealt with and are not reflected in the order but that should not be permitted to deprive the complainant of adequate compensation granted by the impugned order.

6. On going through the impugned order and other materials including the reply, we find that respondent has brought on record copy of an Email dated 20.08.2014 in support of its reply that notice of further dates was given to the Bank. A perusal of the Email shows that it is addressed to several authorities but not to the appellant Bank or its counsel. The impugned order shows that it has been passed when there was no reply filed by the Bank and no counsel had appeared on its behalf.

7. A careful perusal of the impugned order discloses that it has been passed without proper discussion of materials and without assigning any reasons as to how and why the Bank is in breach of Section 43A of the IT Act. Even submissions advanced on behalf of the respondent reflected vital deficiency in the impugned order because allegedly materials and submissions have not been properly noticed and dealt with which is the grievance of the complainant also.

8. For the aforesaid reasons, we find merit in this appeal. In our considered view the appellant should be given one opportunity of filing its reply within one month from today before the concerned AO so that a fresh order on the merits of the complaint may be passed in accordance with the law. In view of the

proposed order, we refrain from expressing anything on the merits of the case of either of the parties. The order under appeal is set aside and the matter is remitted back to the concerned AO for a fresh decision as observed earlier. This should be done expeditiously and within six months. Both the parties are directed to appear before the AO for hearing within five weeks from today. Learned AO shall fix a convenient date for hearing and deciding the case as per law. The Bank should be careful and prompt in filing its reply within four weeks from today failing which it may be presumed by the learned AO that it is interested in causing delay and does not want to file any reply.

9. The appeal is allowed to the aforesaid extent but without any order as to costs.

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**(S. K. Singh, J)**  
**Chairperson**

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**(A.K. Bhargava)**  
**Member**