

**DISTRICT CONSUMER DISPUTES REDRESSAL COMMISSION-III: WEST  
GOVT. OF NCT OF DELHI  
C-BLOCK, COMMUNITY CENTRE, PANKHA ROAD, JANAK PURI  
NEW DELHI**

**Complaint Case No.564/2010**

In the matter of:

Shri Umesh Arora  
Sole Proprietor of  
M/s Kailash Overseas  
At Block – B, Bharti Vihar,  
Shabad Diary, Delhi – 110042.

.....Complainant

**Versus**

Bank of India  
Through its Branch Manager  
Kirti Nagar, Branch  
130, Kirti Nagar, New Delhi.

.....Opposite Parties

<b>DATE OF INSTITUTION:</b>	<b>04.08.2010</b>
<b>JUDGMENT RESERVED ON:</b>	<b>14.12.2023</b>
<b>DATE OF DECISION:</b>	<b>18.12.2023</b>

**Ms. Sonica Mehrotra, President**  
**Ms. Richa Jindal, Member**  
**Mr. Anil Kumar Koushal, Member**

**Order passed by Ms. Sonica Mehrotra, President**

### Order

1. Complainant, sole proprietor of M/s Kailash Overseas, a proprietorship concern was maintaining a current account no. 600827100006073 with OP at Kirti Nagar, Delhi Branch and had been operating it since twenty years and was thus a consumer of OP being his service provider. On 10.05.2010, complainant had applied for a fresh cheque book with OP through a requisition Slip and was told by official of OP that he would receive the same after two weeks once his name and account number are printed on the cheque book. However, when the complainant visited OP on 24.05.2010 to collect the cheque book, he was told that his records are not traceable and was asked to visit OP again a day later when he again was not given the cheque book and was rather informed that the cheque book has been inadvertently issued to some other person which shocked the complainant. He immediately checked his account statement and came to know that through two cheques from the new cheque book, a sum of Rs. 1,26,500/- has been transferred from complainant's account

out of which sum Rs. 1,20,000/- was taken out on 24.05.2010 and Rs. 6500/- on 25.05.2010. Complainant suspecting connivance and collusion between unknown persons and OP bank officials regarding forgery of his signature and allowing the cheques without verifying his signatures, immediately brought this incident to the knowledge of AGM of OP vide letter dated 25.05.2010 urging that this act of handing over a cheque book to an unauthorised person is clearly an act of deficiency of service and negligence on the part of OP Bank which act is not possible without active connivance/collusion of Bank officials and due to this act of omission/commission by OP, complainant had suffered business loss to the tune of Rs. 1,26,500/- and shortage of funds for which OP is liable to indemnify him. Complainant also lodged a police complaint with PS, Kirti Nagar Delhi on 27.05.2010 in this regard. The complainant also got sent a legal notice dated 12.06.2010 through his counsel to OP demanding to make good the losses suffered by complainant due to OP's negligence and deficiency of service. The OP vide reply thereto dated 07.07.2010 took the plea that the two encashed cheques belonged to one Rajesh Gupta, employee of the complainant

who was introduced to the OP Bank by Sh. Dhanpat Rai, father of complainant. However, complainant has submitted that Rajesh Gupta is neither employee of complainant nor was he introduced to OP by complainant's father and though OP had denied that the subject cheque book in question was handed over to some unauthorised person, OP did not disclose the name of the person it was handed over to. Therefore, vide the present complaint, complainant has prayed for issuance of direction against OP to repay the wrongly debited sum of Rs. 126500/- with interest @ 18% per annum to the complainant's account held with it along with compensation of Rs. 1,00,000/- and cost of litigation. Complainant has attached copy of bank account statement highlighting disputed entries of 1,20,000/- and Rs. 6,500/- debited from his account between 24.05.2010-25.05.2010, copy of complaint letter dated 25.05.2010 to OP, copy of police complaint dated 27.05.2010 with PS Kirti Nagar, Delhi, copy of legal notice dated 12.06.2010 by complainant's counsel and reply thereto dated 07.07.2010 by OP.

2. Notice was issued to OP on 04.08.2010 for appearance on 24.09.2010. OP entered appearance and filed its written

statement taking preliminary objection that the complaint has been made on the basis of alleged fraud committed by an employee/ex-employee of complainant and has been fabricated by complainant to achieve ulterior motive of illegally pressuring the OP to make good the losses suffered by him due to his sheer negligence and there is no deficiency of service on the part of OP as both the cheques in question bearing no. 196307 dated 24.05.2010 & cheque no. 196005 dated 25.05.2010 were actually issued by complainant himself and payments were made against them by the OP in due course without any negligence. Further, the cheque book in question too was issued by OP in due course as per instructions received from the complainant. The amounts were transferred to savings bank account no. 600810310001150 of Sh. Rajesh Gupta who was reported to be an employee/ex-employee of complainant and was introduced to OP by complainant's father and therefore connivance, if any is between complainant and said employee and not OP, who have played the alleged fraud and there is no role of OP or its officials /employees with respect to cheque book issuance after tallying the complainant's specimen signature with his signature on the

requisition slip. OP while admitting that the funds from complainant's account had been transferred to Rajesh Gupta submitted that the two cheques in question were encashed at Rajouri Garden and Rajendra Place Branch of OP and not at its Kirti Nagar branch and therefore connivance of OP officials is ruled out as also any allegation of deficiency of service or fraud. OP urged in defence that on receiving complaint by the complainant, OP immediately lodged an FIR dated 26.05.2010 with PS Kirti Nagar Delhi, against Rajesh Gupta u/sec 408/420/468/471 IPC and it is under investigation. Therefore, the present complaint requires complete trial before Civil/Criminal Court for leading proper evidence /cross examination and such cases of fraud/forgery cannot be adjudicated by Consumer Forums. On merits, OP resisted the complaint by urging in contention that the subject cheque book was duly supplied to complainant between 13.05.2010 – 15.05.2010 on receipt of the requisition slip dated 12.05.2010 from him and claimed that it was not provided till 25.05.2010 as complainant has alleged. It was not handed over to any unauthorised person and proceeds of the cheque in dispute were

credited in account of Rajesh Gupta who was not only an employee/ex-employee of complainant but was also introduced to OP by complainant's father. OP denied alleged involvement of its officials in unauthorized delivery of cheque book or unauthorised transfer of funds from complainant's account or any negligence or deficiency of service on its part. Its defence has been duly explained to complainant vide reply dated 07.07.2010 to complainant's legal notice dated 12.06.2010. For defence so taken OP prayed for dismissal of the complaint. OP has attached statement of account of complainant highlighting debit entries of 24.05.2010 and 25.05.2010 with copy of specimen signature in account opening form, copy of account opening form of Rajesh Gupta with introducer mentioned therein as Dhanpat Rai, copy of cheques in question drawn in favour of Rajesh Gupta and cheque book requisition slip signed by complainant.

3. Rejoinder in rebuttal to defence taken by OP was filed by the complainant stating per contra that the subject cheque book was never handed over/issued by OP to the complainant and the disputed cheques do not bear signatures of the complainant nor did the complainant authorise any one to receive the cheque

book from OP bank and the cheque book was not delivered to the complainant. It rather reached the hands of an unauthorised person who forged the signatures of the complainant and transferred the money from complainant's account to his account with connivance of OP officials and OP officials never took due diligence in verifying signatures on the said cheques in question which on the face of it are forged but still OP allowed the said cheques to be debited from complainant's account is now trying to wriggle out its liability on account of deficiency of service and negligence. Complainant further submitted that it is immaterial at which Branch the subject cheques were encashed as there were cleared without verifying the signatures of the complainant. The present case is purely based upon allegation of deficiency of service and negligence on the part of OP which resulted into a forgery and fraud. Complainant urged that OP be put to strict proof of its continuous action supplying of subject cheque book to complainant between 13.05.2010 – 15.05.2010 and receipt /acknowledgement of delivery/handing over thereof to the complainant. The complainant therefore prayed for relief claimed against OP.



4. Evidence by way of affidavit was filed by complainant.
5. Evidence by way of affidavit filed by OP sworn by its Asstt. General Manager, Kirti Nagar Branch Delhi exhibiting documents filed/relied upon as Ex OP -1/1 to Ex OP -1/7.
6. Written Arguments were filed by both parties in reassertion of their respective grievance/defence alongwith judgements compilations to buttress their respective stands.
7. Pleadings were complete by 2015 and matter was posted for oral arguments 2016 onwards and were heard and order reserved in January 2020. However, due to worldwide outbreak of corona virus pandemic March 2020 onwards and the erstwhile Bench demitting office in 2021, the order could not be passed. On the present Bench taking over November 2021 onwards directions were issued to the OP in hearing held on 14.09.2022 to produce original cheques. However, no appearance was entered into by OP after February 2023 despite having been made clear by the Bench that non-submission of the cheques in question before the court would imply drawing adverse inference against it.
8. We have heard the arguments heard by Counsel for Complainant and had given our anxious consideration to the documentary

evidence placed on record by both sides with their respective pleadings and judgments in support to buttress their stands. It is not disputed that complainant is a consumer of OP by virtue of holding current account No. 600827100006073 with OP and is also an admitted fact that Rs 1,26,500/- was debited from this account of complainant between 24-05-2010 and 25-05-2010. The dispute is that as complainant he was never issued or never receipt of the cheque book from which the two cheque no. 196307 dated 24.05.2010 & cheque no. 196005 dated 05.05.2010 were encashed nor had he given these cheques to anyone for encashment whereas contrary stand has been taken in this regard by OP that the cheque book was handed over to complainant between 13.05.2010 to 15.05.2010 and cheques from this cheque book were issued by complainant to his employee/ex-employee one Rajesh Gupta for the said sums between 24.05.2010 and 25.05.2010 which person was also an account holder with OP and was in fact introduced by complainant's father to OP in the Account Opening Form placed on record. The complainant during the course of arguments admitted that though this Rajesh Gupta was introduced to OP

Bank by his father at the time of account opening but the person is not known to the Complainant nor were the cheques were issued by the Complainant in this person's favour. The complainant thus alleged fraud and forgery and connivance between the person who wrongly encashed the cheques and bank officials of OP for facilitating such fraudulent act. This dispute has given rise to the present complaint.

9. The Cheque Transacting System(CTS) Scheme was introduced by RBI in Financial year 2010 vide which scheme payment processing is done on the basis of images of cheques of the onus due diligence therefore is on the presenting Bank under Clause 3.1 Preliminary Verification Scheme in CTS Scheme where it is clearly mandated that the banks have to enforce KYC Norms in letter in spirit and should observe all precautions for eg. to check the apparent tenor of instrument, its physical feel and any tampering visible to naked eye and the presenting bank shall take full responsibility for collecting on behalf of the intended payee and exercise due diligence as per conditions laid down in Negotiable Instrument Act 1881(as amended up-to-date). Since the cheque book/ cheques in the present case pertain to period

of post- CTS, as per the scheme the original cheques therefore should be deemed to be in possession of OP and OP therefore vide order dated 14.09.2022 was directed to place on record the original cheques alongwith verification report signature thereon whether genuine or not in comparison to the specimen signature of complainant in OP records/ account opening form. However OP failed to appear thereafter February, 2023 onwards let alone comply with the directions which has compelled us to draw adverse influence against OP for wilful disobedience/ compliance of directions of this Commission as was observed vide order dated 11/09/2023.

10. Notwithstanding the fact that Complainant was holding a current account with OP, his case is not of any commercial transaction/dealing with OP for any business purpose or Over Draft limit or term loan etc. The present complaint against OP is twofold complaint of firstly issuance of a cheque book to an authorised person and secondly wrongful encashment of cheques from the said book by a third person who complainant denies to have issued cheques too. OP has not been able to place

on record any cogent documentary evidence as to who was the person to whom the cheque book was handed over between 13.05.2010- 15.05.2010 under receiving and it has also failed to proof whether signatures of the complainant were verified on the disputed cheques or matched with specimen signature. For all the above reasons we hold the OP Bank guilty of deficiency of service for his act of error and omission and non- compliance of CTS Norms as the presenting Bank for failure to prove to whom the cheque book was issued/handed over and no due diligence exercised to establish or confirm the genuineness of the cheques in question and allowing encashment there against. The issue in this case is identical in the judgment of **Hon'ble National Commission in Abdul Razak Vs South Indian Bank III(2003) CPJ 20 (NC)** decided on 21/11/2003 dealing with identical facts in which Hon'ble National Commission held the bank guilty of deficiency of service and "double default" of not verifying signatures on cheque or comparing them with specimen signatures and the act of handing over the cheque book which is not a mere "blank Stationery" and directed the bank to pay back fraudulent amount with interest to complainant. However in a

subsequent judgment of **Hon'ble NCDRC in Canara Bank Vs Sudhir Ahuja I (2007) CPJ 1(NC)** decided on 04.12.2006, Hon'ble NCDRC relying upon its previous decision in **State Bank of Patiala Vs Rajendra Lal & Anr. IV (2003) CPJ 53(NC)** passed after Abdul Razak(SUPRA), it observed that erring bank cannot be made to pay the entire amount of cheque value to make good deficiency of service and can at best be burdened with payment of some compensation to the customer and not the entire amount of cheque and therefore reversed the decision of SCDRC (directing refund of cheque value) as legally unsustainable and granted compensation to the complainant payable by bank.

11. Guided by the principles/criteria laid down by Honb'bel NCDRC in the aforementioned case lodged, we hold the OP guilty of deficiency of service and failure to put its best evidence forward and allow the present complaint with directions to OP to pay compensation of Rs. 50,000/- alongwith Rs. 25,000/- as cost of litigation to the complainant. Let the order be complied with OP within 30 days of receipt of copy of this Order.

12. Let a copy of this order be given to both parties free of cost on proper application to the President of this Commission as per Regulation 21 of the Consumer Protection Regulations, 2005.

13. File be consigned to record room.

14. Announced on 18.12.2023.

**(Richa Jindal)**  
**Member**

**(Anil Kumar Koushal)**  
**Member**

**(Sonica Mehrotra)**  
**President**