

## **Before the Arbiter for Financial Services**

**Case ASF 092/2021**

**IS (The Complainant)**

**vs**

**SataBank p.l.c. (C 66993)**

**(The Bank)**

### **Sitting of 14 June 2022**

#### **The Arbiter**

Having seen the complaint<sup>1</sup> whereby the Complainant declares that it is a micro-enterprise and therefore entitled to lodge the complaint before the Arbiter.

It further submits that it had opened deposit accounts with the Bank after a careful due diligence had taken place. On the 15 October 2018, the MFSA issued a public notice in terms of Art 29(1)(b) of the Banking Act (Cap 371) and appointed Ernst and Young *'as a competent person to advise and monitor the Bank in the proper conduct of its business'*.

During the same month, the MFSA authorised the Competent Person to take charge of all the assets of the Bank and assume the control of the Bank's business.

By means of a notice published on the 24 October 2018, the MFSA informed the public that the Authority had directed the Competent Person to *'initiate a controlled process for the return of customer deposits over a period of time'*.

By a notice of the 23 January 2019, the public and complainants were informed:

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<sup>1</sup> P. 7-12

*'Further to the previous communications issued by the MFSA and as part of the ongoing controlled release of funds, the MFSA have directed the competent person to contact corporate customers of Satabank to initiate the return of funds.'*

On the 1 July 2020, a public notice was further issued by the MFSA giving notice that the licence of Satabank was withdrawn on the 30 June 2020, and that *'the process for the return of deposits which was being carried out will not proceed further'*.

The notice proceeded to explain that:

*'The Competent Person will continue to process customer files where complete information required for the return of funds process has been received by the 30 June 2020 ... Customers who have been requested to provide payment instruction details by the Competent Person are to submit this information at their earliest but not later than 15 July 2020'.*

The Complainant had submitted all documents requested by the Competent Person way before the notice of the 1 July 2020 was issued and the Competent Person had processed all documents and, in fact, the Competent Person requested the Complainant to submit the final Payment Instructions Form through its online portal so as for Satabank to finally effect payment as per instructions and agreement.

The Payment Instruction Form (App. D) was completed and uploaded to the Portal on the 2 July 2020 (App. E) being in line with the timelines imposed by the MFSA Notice.

On the 30 October 2020, Dr Richard Galea Debono was appointed Liquidator by the MFSA.

To date, and further to numerous requests to the Competent Person and to Dr Galea Debono, including the letter of the 13 April 2021 (App. F), requesting for the payment to be made in terms of the Complainant complying with all requests of the Competent Person, with the deadlines and timelines issued by the MFSA, the Complainant has not received the return of its funds.

Therefore, the Complainant notes that although it fulfilled all the requests made by the Competent Person and provided all the information and documents within the required time frame and had also provided the payment instruction to the Competent Person, the funds have not been sent to the Complainant by SataBank as per instructions delivered.

These delays have caused the Complainant great financial difficulty and putting it in a position where it could not even comply with its regulatory obligations of completing its financial audits, given the delays caused by the Competent Person and the Liquidator.

### *The Remedy Sought*

The Complainant requests the Arbiter to:

1. Declare that SataBank is unreasonably and/or unlawfully withholding funds belonging to the Complainant and acting in breach of its contractual and legal obligations towards the Complainant.
2. Declare that the Complainant has suffered damages as a result of this unreasonable and unlawful behaviour of the defendants.
3. Order the defendants to immediately and without further delay release the Complainant's Funds as stated in various correspondence, together with the payment of interest at the maximum rate permissible at law.
4. Order the respondents to pay all costs relating to this case.

### **Having seen the reply of the Controller whereby he states that:**

In response to the claim at hand Satabank p.l.c. represented by Richard Galea Debono Av, Controller, enters the following defences.

### **In law**

That the Controller is bound by the provisions of Cap. 383 of the Laws of Malta and may only proceed to the liquidation of assets and release of funds after the due process of the law shall have been fulfilled. The company in question is in

liquidation under the same law, and in a liquidation, all creditors are paid according to a scheme of distribution which is prepared after all the pending matters have been clear, accounts prepared, and debts fully ascertained.

Furthermore, under the provisions of Cap. 383, any complaint against the Controller of a Controlled Asset shall be directed to the Board of Appeal set up under the said act as per art. 7 thereof.

Any order to pay any creditor before the process of liquidation under the said law, would be void.

Without prejudice to the above, it rests within the discretion of the Malta Financial Services Authority to order the transfer of all depositor assets to the Residual Balances Fund set up under 618 of the Laws of Malta, and in such case the matter of fund release will be dealt with by this fund which is a legal entity set up exactly for these purposes.

Therefore, the complaint is premature and cannot be entertained.

### **Having heard the parties**

### **Having seen all the documents**

### **Considers**

The first plea raised by the Controller is that the Arbiter does not have the competence to decide the case because under the provisions of Chapter 383 of the Laws of Malta (the Act), any complaint against the Controller of a Controlled Asset shall be directed to the Board of Appeal set up under Article 6 of the same Act.

The Arbiter has to deal first with this plea.

Under Article 22(2) of Chapter 555 of the Laws of Malta, the Arbiter has to decide on his jurisdiction.

This Article states:

*'Upon receipt of a complaint, the Arbiter shall determine whether the complaint falls within his competence.'*

Therefore, in view of the above-mentioned Article of Chapter 555 of the Laws of Malta and, also, in view of the fact that the Controller has raised the question of competence of the Arbiter, the Arbiter will decide this issue.

The Complainant itself states that the Bank and its assets were under the control of the Regulator; its licence had been withdrawn, and a Competent Person and Liquidator were appointed. Moreover, on the 24 October 2018, the MFSA informed the public, including the Complainant, that:

*‘The Authority has directed the Competent Person to initiate a controlled process for the return of customer deposits over a period of time’.*<sup>2</sup>

The Complainant itself is aware that the MFSA had also directed the Competent Person to contact Corporate customers of Satabank to initiate the return of funds. After further developments, as also highlighted by the Complainant in its complaint,<sup>3</sup> the MFSA appointed Dr Richard Galea Debono as Liquidator.

The Controller is specifically bound by Chapter 383 of the Laws of Malta, which provides the procedure under which the Controller has to act, to guarantee transparency and fairness in the whole process of liquidation and distribution of assets.

Chapter 383 of the Laws of Malta, or the *Controlled Companies (Procedure for Liquidation) Act*, makes provision for the liquidation and the distribution of assets belonging to controlled entities.

Article 5 of the Act stipulates *inter alia* that:

*‘The Controller shall proceed to determine any claims and objections made, to wind up and liquidate any controlled asset, to appoint an independent auditor to audit his accounts, and to draw up a scheme of distribution and make a report thereof to the Minister’.*

Moreover, Article 6 of this Act establishes a specific mode of appeal procedure against the Controller.

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<sup>2</sup> P. 7

<sup>3</sup> P. 8

In fact, Article 6 provides that:

*'(1) Any person who feels aggrieved by the report and scheme of distribution made by the Controller shall have a right to appeal to the Appeals Board constituted under this Act by an application made within a period of one month from the date of publication in the Gazette of the extract of the report mentioned in article 5'.*

Since the legislator established a specific mode of appeal for grievances against the Controller of Controlled Entities, on this basis, the Arbiter does not have the competence to determine this complaint.

Consequently, the Arbiter cannot decide the merits of the case.

Due to the particular nature of this complaint, each party is to pay its own costs of this procedure.

**Dr Reno Borg**

**Arbiter for Financial Services**