

Locker Facility – Is it really safe?

In the era gone by, people would dig holes in their houses and hide their valuables in those holes to keep their valuables safe. But, with time the things changed and we were introduced to banking system. The banks not only offered the deposit or lending services of money but also provided the facility to keep the valuables in their lockers which were especially made to store things with safety. Some natural or man-made phenomena like theft, misappropriation or loss due to fire etc. proved that the locker facility was not 100% safe. But, the lawmakers and the RBI have been trying to fill these lacunae and to make the system more reliable by enacting laws, rules, regulations and guidelines from time to time. These guidelines and legal provisions have provided the process regarding the determination of liability and the compensation in case of breach of security and loss of valuables stored in lockers as well as the manner of determining succession in case of death of locker-holder. In 2015, the Government of India also provided a free of cost in-cloud electronic locker facility called “DIGI LOCKER” to store the documents which was only accessible to the Aadhar holders as they could use their Aadhar to login into the lockers and this service considerably enhanced the use of technology in locker services.

How the Locker works?

Bank lockers are located in the strong room of the bank which is specially built with thick impregnable walls, alarm system, fire-proof technology, and with a thick steel door. The Hirer of the locker has to pay a rent (this varies from place to place and bank to bank; in rural areas, the rent is low-priced) for using the locker. In a hired locker, a person can keep his valuables like documents, jewelry, Gold

coins etc. Every locker has two keys. One stays with bank and other with locker holder. The locker can be opened only after using both keys. One key cannot open the locker. In some banks, the electronic lockers are available which can only be opened by passwords or pins. The locker can only be operated by its holder. Even if, any other person gets the key, he would not be able to gain access to the locker. The bank employee leaves the room after assisting the bonafide hirer to open the locker using both keys and the locker holder is left free to operate his locker in private. There is no CCTV camera inside the Strong room to maintain the privacy. At the time of opening the locker, the banks also ask the customers to do a fixed deposit. This FD works as a security for the rent in case of non-payment by locker holder and to cover the charges of breaking the locker in case of eventuality. Generally in India, the locker facility, the structure of the Strong room and the terms present in Agreement between the Hirer and the bank are usually the same whether that is a Public Sector Bank, Private bank, Co-operative bank or a foreign bank.

Lease or Bailment

Section 105 of the Transfer of Property Act, 1882, provides that “a lease of immovable property is a transfer of a right to enjoy such property, made for a certain time, express or implied, or in perpetuity, in consideration of a price paid or promised, or of money, a share of crops, service or any other thing of value, to be rendered periodically or on specified occasions to the transferor by the transferee, who accepts the transfer on such terms. The transferor is called the lessor, the transferee is called the lessee, the price is called the premium, and the money, share, service or other thing to be so rendered is called the rent.

In a response to the RTI query made in 2017, 19 Public Sector Banks and RBI stated that the relationship of the Bank and the Locker Hirer is of lessor and Lessee. Banks are the lessor (Landlord) who receives the rent (premium) by the Locker Hirer as lessee (Tenant) for the hire of the Lockers (immovable property) which are embedded in the Strong Rooms of the banks. In such a relationship, Banks are not responsible for the valuables kept by the Hirer in the locker owned by them.

Usually, the agreements between banks and customers regarding the locker facilities also states that the relationship between locker hirer and bank is of lessor and lessee and that “The bank will not be responsible for any loss or damage of the contents kept in the safe deposit vault as a result of any act of war or civil disorder or theft or burglary and the contents will be kept by the hirer at his or her sole risk and responsibility”.

However, the courts were of different opinion in some cases and held that the relationship between the Bank and locker Hirer can be of bailor and bailee respectively if the transaction and the nature of business between them possess the features of bailment.

Section 148 of the Indian Contract Act, 1872, states that the ‘bailment’ is the delivery of goods by one person to another for some purpose, upon a contract that they shall, when the purpose is accomplished, be returned or otherwise disposed of according to the directions of the person delivering them. The person delivering the goods is called the ‘bailor’. The person to whom they are delivered is called the ‘bailee’.

The High Court of Punjab and Haryana in **National Bank of Lahore Ltd. Vs. Sohan Lal Saigal, AIR 1962 PH 534, on 11.10.1961** held that “ It may be that the person who hires a locker retains some control over it by having one key with himself but if the locker can be operated without any key, as was possible in the lockers which were rented out to the plaintiffs, then at once any impediment in the way of control and possession of the Bank to whom the locker of control and possession of the Bank to whom the locker belonged and in those strong-room it was to be found, would be removed and it could well be said that the bank was strictly in the position of a bailee. This is an additional ground for making the Bank liable but its liability has been properly and correctly determined by the trial Court on the other rule, namely, the liability of the master for the fraudulent and criminal acts of the servant committed in the course of his employment.”

In another judgment titled **Atul Mehra and Anr. Vs. Bank of Maharashtra, AIR (2003) P&H 11 on 22.03.2002**, the High Court of Punjab & Haryana held that “...The respondent-bank could only be fastened with liability on the contents of the locker being disclosed to it. In the absence of this information, it would have to be held that there was no entrustment of the goods to constitute bailment as required under Section 148 of the Indian Contract Act, 1872.”

“.....exclusive possession is sine qua non for bailment. Therefore, I have no hesitation in coming to the conclusion that mere hiring of a locker would not be sufficient to constitute a contract of bailment as provided under Section 148 of the Indian Contract Act, 1872. In order to constitute bailment, as provided in Section 148 of the Act, it is further necessary to show that the actual exclusive possession of the property was given by the hirer of the locker to the bank. It is only thereafter that the question of reasonable care and quantum of damages

would arise. In the present case, it is impossible to know the quantity, quality or the value of the jewelry that was allegedly kept in the locker at the time when the robbery occurred, The only evidence relied upon by the appellants is a statement made by DW-1, in cross-examination where it is stated that he cannot admit or deny that there was jewelry weighing 1273 grams worth Rs. 4,26,160/- are kept in the locker. This statement would not be sufficient to hold that the appellants have proved that there was entrustment of the jewelry to the respondent-bank. In all the authorities (supra) the common feature is that exclusive possession of known property was given by the bailor to the bailee. In the present case, the plaintiffs alone had the knowledge of contents of locker, therefore, the plaintiffs had to lead independent; evidence to prove that the jewellery was actually in the locker on the date of the robbery. Even if the plaintiffs had proved this peculiar fact; they would still have to prove the value of the jewelry. No evidence, except the bald statement of the plaintiffs, and the list Annexure-A, has been produced by the plaintiffs. Therefore, clearly the plaintiffs have failed to prove entrustment of the jewelry to constitute bailment as required under Section 148 of the Indian Contract Act, 1872” .

Hence, from these judgments it is quite clear that to recover the cost of the valuables from the bank, the hirer has to prove the presence of those valuables inside the locker and their value even before proving the liability of the bank. Precisely, on the basis of the afore-stated judgments, in case of loss of valuables kept inside the locker of the bank due to breach of security and safety, the locker hirer has to prove the below-mentioned facts:

1. Existence of Contract of Bailment between the bank and locker-hirer; or

2. Complete entrustment of goods with bank i.e. providing the exclusive possession or control of goods to the bank while making the clear disclosure of what is being delivered; or
3. Content of the locker just before the breach and the competence of any of the bank employee to unlock a locker even in the absence of the key of the Locker-Hirer; or
4. Content of the locker just before the breach and the negligence on the part of the bank leading to the breach of safety and security of the valuables.

Though, the civil action to recover the cost of the articles kept inside the locker is quite challenging in the present system even if the negligence on the part of the bank gets proved but that doesn't mean that the locker hirer is remediless. In recent judgment of **Amitabha Dasgupta Versus United Bank of India & Ors., dated 19.02.21**, the Apex Court of the country held that "As discussed supra, imposition of liability upon the bank with respect to the contents of the locker is dependent upon provision and appreciation of evidence in a civil suit for such purpose. However, this does not mean that the Appellant in the present case is left without any remedy. Banks as service providers under the earlier Consumer Protection Act, 1986, as well as the newly enacted Consumer Protection Act, 2019, owe a separate duty of care to exercise due diligence in maintaining and operating their locker or safety deposit systems. This includes ensuring the proper functioning of the locker system, guarding against unauthorized access to the lockers and providing appropriate safeguards against theft and robbery. This duty of care is to be exercised irrespective of the application of the laws of bailment or any other legal liability regime to the contents of the locker. The banks as

custodians of public property cannot leave the customers in the lurch merely by claiming ignorance of the contents of the lockers.”

“In the present case, it is undisputed that the Respondent Bank inadvertently broke the Appellant’s locker, without any just or reasonable cause, even though he had already cleared his pending dues. Moreover, the Appellant was not given any notice prior to such tampering with the locker. He remained in the dark for almost a year before he visited the bank for withdrawing his valuables and enquired about the status of the locker. Irrespective of the valuation of the ornaments deposited by the Appellant, he had not committed any fault so far as operation of the locker was concerned. Thus, the breaking open of the locker was in blatant disregard to the responsibilities that the bank owed to the customer as a service provider. The alleged loss of goods did not result from any force majeure conditions, or acts of third parties, but from the gross negligence of the bank itself. It is case of gross deficiency in service on the part of the bank. Thus, looking to the facts and circumstances of the case, we deem it appropriate to impose costs of Rs. 5,00,000/- on the Bank which should be paid to the Appellant as compensation.”

RBI’s guidelines on bank lockers

RBI has issued the following guidelines in its Master Circular numbered **RBI/ 2012-13/67, dated 02.07.12** for the locker facilities:

1. Banks can accept the cheque for due locker rent during the extended business hours at the counters.
2. Banks should not link the provisions of lockers facility with placement of fixed or any other deposit beyond what is specifically permitted.

3. Banks may obtain a Fixed Deposit which would cover 3 year's rent and the charges for breaking open the locker in case of an eventuality. However, banks should not insist on such Fixed Deposit from the existing locker hirers.
4. Banks should exercise due care and necessary precaution for the protection of the lockers provided to the customer.
5. Banks should carry out customer due diligence for both new and existing customers at least to the levels prescribed for customers classified as medium risk. If the customer is classified in a higher risk category, customer due diligence as per KYC norms applicable to such higher risk category should be carried out.
6. Where the lockers have not been operated for more than three years for medium risk category or one year for a higher risk category, banks should immediately contact the locker hirer and advise him to either operate the locker or surrender it. This exercise should be carried out even if the locker hirer is paying the rent regularly. Further, the bank should ask the locker hirer to give in writing, the reasons why he or she did not operate the locker. In case the locker hirer has some genuine reasons as in the case of NRIs or persons who are out of town due to a transferable job etc., banks may allow the locker hirer to continue with the locker. In case the locker hirer does not respond nor operate the locker, banks should consider opening the lockers after giving due notice to him. In this context, banks should incorporate a clause in the locker agreement that in case the locker is not operated for more than one year, the bank would have the right to

cancel the allotment of the locker and open the locker, even if the rent is paid regularly.

7. Banks need to draw up a procedure in consultation with their legal advisers for breaking open the lockers and taking stock of inventory.
8. In order to facilitate identifying the ownership of the locker keys, banks should introduce a system whereby the locker keys could be embossed with the Identification Code of the bank or branch. An arrangement for installation of necessary machinery at the branches with the help of the vendor company of the locker cabinet may be made for this purpose. The branches concerned may advise all the locker hirers about the embossing of the locker keys. It may also be ensured that the Identification Code is embossed on the locker keys in the presence of the locker hirer only. While Identification Code should be embossed on keys of all new lockers to be installed, in respect of keys of already hired out lockers, the Identification Code may be embossed whenever the hirer visits the bank to operate the locker.
9. Banks should give wide publicity and provide guidance to locker-hirers or depositors of safe custody articles on the benefits of the nomination facility and the survivorship clause.
10. Locker facility like any other bank facility is required to be invariably offered to the visually challenged without any discrimination. Banks may also advise their branches to render all possible assistance to the visually challenged for availing the various banking facilities.

Nomination facility regarding Lockers

Section 45ZC to Section 45ZF of the Banking Regulation Act, 1949 (hereinafter referred as “Act”) and the Co-operative Banks (Nomination) Rules, 1985 provide for the rules with respect to the nomination of the lockers in regard to

- a) to enable a co-operative bank to return the articles left by a deceased person in its safe custody to his nominee, after making an inventory of the articles in the manner directed by Reserve Bank.
- b) to enable a co-operative bank to release the contents of a safety locker to the nominee of the hirer of such locker, in the event of the death of the hirer after making an inventory of the contents of the safety locker in the manner directed by Reserve Bank..

The Co-operative Banks (Nomination) Rules, 1985, provide for:

- A. Nomination forms for articles kept in safe custody and the contents of safety lockers,
- B. Forms of cancellation and variation of the nomination,
- C. Registration of nominations and cancellation and variation of nominations, and
- D. Matters related to the above.

RBI has provided in its afore-stated Master Circular guidelines that “In the matter of returning articles left in safe custody by the deceased depositor to the nominee or allowing the nominee/s to have access to the locker and permitting him or them to remove the contents of the locker, the Reserve Bank, in pursuance of Sections 45 ZC(3) and 45 ZE(4) of Banking Regulation Act, 1949 (AACCS), has specified the formats for the purpose. In order to ensure that the amount of

deposits, articles left in safe custody and contents of lockers are returned to the genuine nominee, as also to verify the proof of death, co-operative banks may devise their own claim formats or follow the procedure, if any, suggested for the purpose either by their own Federation or Association or by the Indian Banks Association.”

Statutory provisions regarding Nomination

Section 45 ZC of the Act provided that in case of Nomination for return of articles kept in safe custody with banking company. —

- A. Where the nominee is a minor, the locker hirer should appoint any person to receive the article deposited in the event of his death during the minority of the nominee.
- B. The banking company shall, before returning any articles under this section to the nominee or the person appointed under sub-section (2), prepare, in such manner as may be directed by the Reserve Bank from time to time, an inventory of the said articles which shall be signed by such nominee or person and shall deliver a copy of the inventory so prepared to such nominee or person.
- C. Notwithstanding anything contained in any other law for the time being in force or in any disposition, whether testamentary or otherwise, in respect of such article, where a nomination made in the prescribed manner purports to confer on any person the right to receive the article from the banking company, the nominee shall, on the death of the person leaving the article in safe custody, become entitled to the return of the article to the exclusion of all other persons, unless the nomination is varied or cancelled in the prescribed manner: Provided that nothing contained in this

section shall affect the right or claim which any person may have against the person to whom the article is returned in pursuance of this subsection.]

Section 45 ZD and Section 45 ZF of the Act provide that Bank will not receive the Notice of claim of any person regarding the articles kept in safe custody of bank or bank lockers other than the person in whose name any article is held by the bank or the hirer of the locker. The bank shall not be bound by any such notice even though expressly given to it. However, if any Decree, Order, Certificate, or other authority from a court of competent jurisdiction relating to such article is produced before a banking company, the bank shall take due note of such decree, order, certificate or other authority.

Section 45 ZE of the Act provide that the banking company shall, before permitting the removal of the contents of any locker by any nominee or jointly by any nominee and survivors, prepare, an inventory of the contents of the locker which shall be signed by such nominee or jointly by such nominees and survivors and shall deliver a copy of the inventory so prepared to such nominee or nominee and survivors. On the removal of the contents of any locker by any nominee or jointly by any nominee and survivors as aforesaid, the liability of the banking company in relation to the contents of the locker shall stand discharged. No suit, prosecution or other legal proceedings shall lie against a banking company for any damage caused or likely to be caused, for allowing access to any locker, and liberty to remove the contents of such locker, as per the nomination made by the locker hirer/s.

Death of Locker holder with Nominee

A. Locker hired by single person. (Sole Locker Hirer)

As per Section 45ZE(1) of the Act, Where an individual is the sole hirer of a locker from a banking company, whether such locker is located in the safe deposit vault of such banking company or elsewhere, such individual may nominate one person to whom, in the event of the death of such individual, the banking company may give access to the locker and liberty to remove the contents of the locker.

Where the sole locker hirer nominates a person, banks should give to such nominee access to the locker and liberty to remove the contents of the locker in the event of the death of the sole locker hirer.

B. Locker hired by two or more person jointly. (Joint Locker Hirer)

As per Section 45ZE(1) of the Act, where any such locker is hired from a banking company by two or more individuals jointly and under the contract of hire, the locker is to be operated under the joint signatures of two or more of such hirers, such hirers may nominate one or more persons to whom, in the event of the death of such joint hirer or hirers, the banking company may give, jointly with the surviving joint hirer or joint hirers, as the case may be, access to the locker and liberty to remove the contents of such locker.

In case the locker was hired jointly with the instructions to operate it under joint signatures, and the locker hirer(s) nominates person(s), in the event of death of any of the locker hirers, the bank should give access of the locker and the liberty to remove the contents jointly to the survivor(s) and the nominee(s). Survivors are those persons who hired the locker jointly with the deceased and outlived the deceased.

RBI has provided that “In case the locker was hired jointly with survivorship clause and the hirers instructed that the access of the locker should be given over to ‘either or survivor’, ‘anyone or survivor’ or ‘former or survivor’ or according to any other survivorship clause, banks should follow the mandate in the event of the death of one or more of the locker hirers. However, banks should take the following precautions before handing over the contents:

- a) Banks should exercise due care and caution in establishing the identity of the survivor(s) or nominee(s) and the fact of death of the locker hirer by obtaining appropriate documentary evidence. (Usually banks ask for the Death Certificate for confirmation of the fact of death of the locker Hirer)
- b) Banks should make diligent effort to find out if there is any order from a competent court restraining the bank from giving access to the locker of the deceased.
- c) Banks should make it clear to the survivor(s) or nominee(s) that access to locker or safe custody articles is given to them only as a trustee of the legal heirs of the deceased locker hirer; such access given to them shall not affect the right or claim which any person may have against the survivor(s) or nominee(s) to whom the access is given.”

The survivor/s may be allowed to continue with the same locker without obtaining any fresh Agreement.

Death of Locker-holder without Nominee

RBI has advised the banks many times to adopt a customer-friendly procedure keeping in view the legal provisions, for giving access to legal heirs or

representative of the deceased locker hirer as there is an imperative need to avoid inconvenience and undue hardship in cases especially where the deceased locker hirer has not made nomination before death or where the joint hirers had not given any mandate that the access may be given to one or more of the survivors by a clear survivorship clause. Usually in these cases, banks are guided by the provisions of the Indian Contract Act and Indian Succession Act.

The General Procedure in case of death of Locker hirer (Sole/Joint), who dies with or without nomination, is usually the same except the fact that in case of death of locker hirer without nomination the legal heir or representative has to get his or her rights recognized by the competent court in the form of probate of will, Succession Certificate or Letter of Administration to acquire the articles of the locker or the right to operate the locker but in case of nomination, there is no need for such recognition and the nominee has the right to directly acquire the articles or operate the locker after showing the proof of death of the locker hirer.

Probate is the judicial process through which the legality and validity of a Will gets established inside the court and the court certifies the copy of the will. The certified copy of will is granted by the court only to the executor of the will nominated by the will-maker called Testator, for carrying out the process of succession as per the will. Letter of administration is granted to the legal heirs of the deceased for the succession of his properties in case he dies without will i.e. intestate or to the beneficiaries in will where he didn't nominate any executor in his will. Succession Certificate is a document which recognizes the right of a legal heir to collect the debts and the securities of a deceased. It protects the right of the debt-payer that he is paying the debt to the right person by making the

payment to the Certificate-holder. Probate, Succession Certificate or letter of Administration cannot be granted to a minor or a person of unsound mind.

As per Section 213 read with Section 57 and Section 264 of the Indian Succession Act, The Probate is mandatory where the deceased is a Hindu, Sikh, Jain, Muslim or Buddhist person and the will is executed in the local areas within the limits of the town of Calcutta, Madras and Bombay or of the state where the State Government has, by a notification in the official gazette, has made it mandatory. The probate is also mandatory regarding the wills executed outside these towns where the property involved in the will is situated in these towns. Hence, the probate is not required in every State, for recognizing the legal validity of will. But, usually even in the states, where the probate is not mandatory like Delhi, M.P, U.P, A.P. etc. the banks require the probate or letter of administration to protect their interest especially in case of unregistered will. As per the judgment of the Supreme Court in **Balbir Singh Wasu Vs. Lakhbir Singh and others (2005) 12 SCC 503**, Section 213 will not prohibit the executor from obtaining the Probate in any other part of the country not covered by Section 213. The executor can obtain the Probate of the will from any District Court or the High Court in India where the will has been executed or he has resided before death or the property is located as per the rules and regulations of such High Court.

Procedure on death of locker Hirer

1. On receipt of notice of death of Sole Hirer or of the last survivor of the joint Hirer(s), the locker shall be sealed with the Bank's seal and a note to this effect shall be made in all the respective records.
2. Branches shall at their discretion, on production of satisfactory evidence (for ex. Death Certificate), permit a legal representative of the deceased to inspect the contents of the locker to enable him or her to obtain the necessary succession certificate or any other legal representation.
3. Whenever claim is received from the Legal Heir(s), branches shall specify all the documentation requirements at one go and not on a piecemeal basis.
4. On grant of the succession certificate, probate of a will or letters of administration by the court, the successor, executor or the administrator respectively shall have power to deal with the contents of the locker.
5. Banks should prepare an inventory before returning articles left in safe custody or before permitting removal of the contents of a safe deposit in the prescribed format and should get the signature of the person who gets his or her right recognized by the competent authority to obtain those articles. Sealed or closed packets found in locker while releasing them to the legal heirs and surviving hirers shall not be opened. Description of the sealed or closed packet(s) shall, however, be mentioned in the inventory.
6. The contents of the locker, sometimes, are not of great value/ importance, hence, obtaining legal representation involves cost as well as time. The branches may, therefore, in appropriate cases, allow the heirs of the deceased hirer to have access to the locker and withdraw the contents against usual Affidavit cum Indemnity, subject to the following:

- A.** The claimants/heirs of the deceased hirer would be required to furnish necessary particulars in the claim format, which is ordinarily obtained in deposit accounts.
 - B.** A prescribed letter would be taken from all the heirs requesting the Bank to open the locker for the purpose of inventory.
 - C.** The branch would then fix up a date and time for making an inventory and accordingly an inventory may be taken in the presence of all the heirs or their duly constituted Advocates, two respectable witnesses known to the branch (witness cannot be employees or ex-employees of the Bank), the valuer, the Safe Deposit Vault Custodian and another officer. Two copies of inventory list would be prepared in the prescribed inventory record form. After making an inventory, contents would be redeposit in the said locker along with the inventory list so prepared and locker would be sealed. One copy of the inventory list should be given to claimants.
- 7.** The branches would forward the claim papers along with inventory papers to the delegated authority to enable them to consider delivering the contents against usual Affidavit cum Indemnity signed by the claimant/s and one or more surety or sureties considered good for the amount involved.
- 8.** On receipt of the approval, any dues payable to the bank to the Bank towards Locker rent etc. will be collected from the legal heir(s) or survivor(s), and thereafter the claimant(s) would be allowed to remove the contents from the locker after signing an Affidavit cum Indemnity and a letter of surrender together with the key.

9. Succession Certificate is not applicable in respect of articles such as jewelry or cash in a locker. Therefore, a Succession Certificate holder is not entitled to receive such contents in a locker on the strength of the certificate. The claimant may obtain Letter of Administration for the purpose. However, shares, securities or insurance policies lying in a locker and listed in the Succession Certificate can be delivered to the holder of the certificate, against a proper receipt and on completion of any other formalities required by the Bank in this regard. Letter of Administration can however cover the jewelry or cash as well as shares or securities or policies.
10. Where an inventory is required to be taken in terms of a Court order whether that is probate, succession certificate or letter of administration, it will be done in the presence of:
- A. The Court's representative,
 - B. The claimant(s) to the contents of the locker held by the deceased hirer,
 - C. The valuer and
 - D. Two officers of the branch.

The inventory shall enumerate the contents of locker and it shall be signed by those in whose presence the locker has been opened. The valuer's assessment of the value of each item of the inventory shall be recorded in triplicate, one copy to the Court, the second to the claimant and the third to be retained at branch for record purpose.

11.In case the nominee or legal heir(s) or survivor(s) is/are not in possession of the key, the nominee or legal heir(s) or survivor(s) shall give a letter to that effect and request the Bank to arrange for breaking open the locker. A suitable date for breaking open the locker shall be fixed and necessary charges for breaking open the locker shall be collected from the nominee or legal heir(s) or survivor(s). The locker would be broken in the presence of the nominee or legal heir(s) or survivor(s) and two witnesses who are well known and acceptable to the Bank.

12.After obtaining the receipt of the inventory duly stamped and signed by the nominee and survivor(s) or legal heir(s) if any the contents shall be handed over to the claimants.

13.Details of the closure of locker relationship shall be recorded in locker management software.

Liability and Compensation in case of theft, loss and misappropriation.

For theft, loss or misappropriation of articles stored in the locker by the employees of bank, or breaking open of the locker by the bank without any reason, the locker hirer has the remedy in terms of civil suit:

- A. To receive the cost of the articles;
- B. To get the liability of bank determined by the court in case of breach of security due to bank's own fault or by his employee(s);
- C. To receive the compensation in case of breach of security due to bank's or its employee(s) own act, mistake or negligence.

Usually in these cases, the banks deny the knowledge regarding the content of the locker and their liability for its loss. The Locker hirer has to prove the contents as well as banks' liability for the loss of contents as a bailee under the law of bailment by providing the evidence in court.

The locker hirer also has the right to receive the compensation from the bank for deficiency of services under the Consumer Protection Act, 2019. However as per the statement made by RBI in 2017 in response to the RTI enquiry, the banks would not be responsible in case of robbery, fire or natural calamity to reimburse the cost of the articles stored in the bank lockers to the locker hirer for the reason that bank do not have any insurance regarding the contents of the locker as well as for the reason that banks cannot take responsibility for compensating any loss as the extent of such loss cannot be assessed. Also, the banks usually have the term in their contract with the locker hirer that they will not be responsible in case of fire, robbery or natural calamities.

Supreme Court on locker facilities

The Supreme Court in **Amitabha Dasgupta Versus United Bank of India & Ors., dated 19.02.21**, held that "It appears to us that the present state of regulations on the subject of locker management is inadequate and muddled. Each Bank is following its own set of procedures and there is no uniformity in the rules. Further, going by their stand before the consumer for a, it seems that the bank are under the mistaken impression that not having the knowledge of the contents of the locker exempts them from liability for failing to secure the lockers in themselves as well. In as much as we are the highest Court of the country, we cannot allow the litigation between the bank and locker holders to continue in

this vein. This will lead to a state of anarchy wherein the banks will routinely commit lapses in proper management of the lockers, leaving it to the hapless customers to bear the costs. Hence, we find it imperative that this Court lays down certain principles which will ensure that the banks follow due diligence in operating their locker facilities, until the issuance of comprehensive guidelines in this regard.

Thus, we emphasize that irrespective of the value of the articles placed inside the locker, the bank is under a separate obligation to ensure that proper procedures are followed while allotting and operating the lockers:

- (a) This includes maintenance of a locker register and locker key register.
- (b) The locker register shall be consistently updated in case of any change in allotment.
- (c) The bank shall notify the original locker holder prior to any changes in the allotment of the locker, and give them reasonable opportunity to withdraw the articles deposited by them if they so wish.
- (d) Banks may consider utilizing appropriate technologies, such as block-chain technology which is meant for creating digital ledger for this purpose.
- (e) The custodian of the bank shall additionally maintain a record of access to the lockers, containing details of all the parties who have accessed the lockers and the date and time on which they were opened and closed.
- (f) The bank employees are also obligated to check whether the lockers are properly closed on a regular basis. If the same is not done, the locker must be

immediately closed and the locker holder shall be promptly intimated so that they may verify any resulting discrepancy in the contents of the locker.

(g) The concerned staff shall also check that the keys to the locker are in proper condition.

(h) In case the lockers are being operated through an electronic system, the bank shall take reasonable steps to ensure that the system is protected against hacking or any breach of security.

(i) The customers' personal data, including their biometric data, cannot be shared with third parties without their consent. The relevant rules under the Information Technology Act, 2000 will be applicable in this regard.

(j) The bank has the power to break open the locker only in accordance with the relevant laws and RBI regulations, if any. Breaking open of the locker in a manner other than that prescribed under law is an illegal act which amounts to gross deficiency of service on the part of the bank as a service provider.

(k) Due notice in writing shall be given to the locker holder at a reasonable time prior to the breaking open of the locker. Moreover, the locker shall be broken open only in the presence of authorized officials and an independent witness after giving due notice to the locker holder. The bank must prepare a detailed inventory of any articles found inside the locker, after the locker is opened, and make a separate entry in the locker register, before returning them to the locker holder. The locker holder's signature should be obtained upon the receipt of such inventory so as to avoid any dispute in the future.

(l) The bank must undertake proper verification procedures to ensure that no unauthorized party gains access to the locker. In case the locker remains

inoperative for a long period of time, and the locker holder cannot be located, the banks shall transfer the contents of the locker to their nominees/legal heirs or dispose of the articles in a transparent manner, in accordance with the directions issued by the RBI in this regard.

(m) The banks shall also take necessary steps to ensure that the space in which the locker facility is located is adequately guarded at all times.

(n) A copy of the locker hiring agreement, containing the relevant terms and conditions, shall be given to the customer at the time of allotment of the locker so that they are intimated of their rights and responsibilities.

(o) The bank cannot contract out of the minimum standard of care with respect to maintaining the safety of the lockers as outlined supra”.

Conclusion

The Supreme Court in afore-stated Judgment has directed the RBI to lay down comprehensive directions mandating the steps to be taken by banks with respect to locker facility or safe deposit facility management within 6 months of the judgment. During this 6 months period, the aforesaid guidelines will remain in force. The uniform directions for all the banks will not only bring uniformity in the system but will also increase the accountability of the banks towards their customer as in absence of the accountability; the service of lockers lacks its very main purpose which is safe & secure storage. The Customers can also get the personal insurance like Bank Locker Insurance Policy on the articles kept inside a locker to reduce the risk. Introduction of electronic or in-cloud lockers to keep the documents and certificates, like the DIGI Locker by ICICI in association with

Government, also establishes the imperative need for the standard parameters to ensure the reliable cyber-security services.