

**OFFICE OF THE ADJUDICATING OFFICER,
GOVERNMENT OF GUJARAT,
DEPARTMENT OF SCIENCE & TECHNOLOGY,
Block No: 7, 5th Floor, Sardar Bhavan,
Sachivalaya, Gandhinagar.**

SPECIAL CIVIL APPLICATION NO. 12

DATE OF DECISION: 19th January 2016.

IN THE MATTER OF:

**Shri Parimal Manharlal Patel
Through Shri Manan Thakker, Advocate for Petitioner:
Advocate & Cyber Law Consultant, 2nd floor, Asha Complex,
B/h. Navrangpura Police Station,
Navrangpura, Ahmedabad – 380 009, Gujarat**PETITIONER

Vs

**The Branch Manager, Dena Bank (Surat, Gujarat)
Through Shri JAYANT PREMSHANKAR BHATT
Advocate for Respondent:
Plot No-754, Vastunirman Society, Panchsheel Park,
Sector-21, Gandhinagar– 382021, Gujarat** ...RESPONDENT NO.1

**Idea Cellular Limited (Gujarat)
Through Shri JAL S UNWALA Advocate for Respondent:
Chamber no. 332, Gujarat High Court Advocate Chamber,
Sola, Ahmedabad** ...RESPONDENT NO.2

**The Branch Manager, Standard Chartered Bank, Civil lines, Allahabad
Through Shri Yogesh G. Dev Advocate for Respondent:
C/7, Goyal Plaza, Judges Banglows Road, Vastrapur,
Ahmedabad- 380015, Gujarat** ...RESPONDENT NO.3

**The Branch Manager, Axis Bank Limited,
Through Branch Manager, Civil Lines, Allahabad
Axis Bank Limited, Gandhinagar Branch,
Plot No: 436, Gandhinagar Milk co-op Union, Sector-16,
Gandhinagar-382016, Gujarat** ...RESPONDENT NO.4

**Shri Abhinav Kumar Singh,
171, Chakhari Baran, Lilapur Road, Jhunsi,
Allahabad, Uttar Pradesh-211009** ...RESPONDENT No.5



**HON'BLE MR. DHNANJAY DWIVEDI
ADJUDICATING OFFICER UNDER
INFORMATION TECHNOLOGY ACT, 2000**

This matter has been filed by the petitioner under sections 43(g), 43-A and 85 of the Information Technology Act, 2000. The complainant is a resident of Surat and is authorized signatory of M/s Riddhi Corporation. The complainant was maintaining an account with the Dena Bank, Reshmawala Building at Surat for his corporation, for over 12 years. The complainant was maintaining a current account with No. ****0136 for the last 4 years. At the time of making complaint, the complainant was using internet banking facility for the account for which the Cell Number of the complainant bearing No. ****6643, was used for the purposes of receiving alerts from the bank.

2. The complainant has alleged that on 18th December, 2013, two transactions were made on-line without authorization from the complainant. On 20th December, 2013, the complainant's Accountant received a message from the bank branch for insufficient balance in the account and when the Accountant went to the bank, he came to know about the two unauthorized transactions, as alleged. The complainant has alleged that he tried to ascertain details for the transactions and on 23rd December, 2013, in his e-mail account in the junk folder an e-mail from Idea Cellular was found which mentioned that the complainant's request for SIM exchange had been successful on 18th December, 2013, while the complainant alleges that he never made such a request. Subsequent thereto, the complainant made first information report with Salabatpura Police Station in Surat on 28th January, 2014, made a complaint to the bank on 23rd December, 2013 and made written complaint to Idea Cellular on 15th February, 2014.
3. The complainant has alleged that in grave contravention and deficiency in service of following reasonable security practices under the provisions of the Information Technology Act, 2000 by the Respondent, the complainant has suffered huge financial loss of Rs. 2,80,000/- due to fraudulent transfer of money to beneficiary holding account with different banks and different branches. The fraudulent transactions, as alleged, are as follows:

Sr. No.	Date	Particulars	Withdrawal amount
1.	18 th Dec., 2013 via RTGS	Mr. Abhinav Kumar Singh, A/c *****4357 Standard	Rs. 2,00,000/-



2.	18 th Dec., 2013 via NEFT	Mr. Amar Verma A/c *****8938 State Bank of Patiala – Aligunj, Lucknow, UP.	Rs. 80,000/-
TOTAL			Rs. 2,80,000/-

The complainant has alleged that the Respondent No.2 Idea Cellular Ltd. issued a duplicate sim card without proper authorization and without following reasonable security practices and got it activated with the same mobile number as was owned by the complainant immediately before the fraudulent transactions took place. The complainant has alleged that the beneficiaries of such unauthorized transactions are two different persons than the bank and Idea Cellular but it is due to the negligence and lack of adherence to the Know Your Client (KYC) as well as reasonable security practices norms that has caused the happening of two unauthorized transactions causing loss to the complainant.

4. The complainant has prayed for a direction against the respondent to pay to complainant full amount towards damages incurred of Rs. 2,80,000/- with the interest at the rate of 24% p.a. from the date of happening of the unauthorized transactions, to pass order directing respondent to pay compensation to complainant for the legal charges and court fees amounting to Rs. 1,20,000/- with interest at the rate of 24% p.a. from the date of referenced transactions.
5. Before this complaint was filed, police authorities undertook investigation at their end in the process for finding out the trail for the transactions money. The matter forming part of the police complaint and subsequent criminal proceedings are separate proceedings under the Criminal Procedure Code and various penal codes. The current matter being brought under the provisions of the Information Technology Act falls within the jurisdiction of the Adjudicating Authority.
6. Pursuant to the receipt of the complaints, notices were issued to the Branch Manager, Dena Bank as well as to M/s Idea Cellular Ltd. Subsequently, during the course of the proceedings Shri Abhinav Kumar Singh, resident of 17, Chakhari Baran, Lilapur Road Jhunsi, Allahabad, UP, who is alleged to have account to which the transaction trail in relation to withdrawals was tracked, and the Branch Manager of Standard Chartered Bank, Civil Lines, Allahabad and Branch Manager, Axis Bank, Civil Lines, Allahabad - both the banks where money trail was traced by the police authorities and where amounts of Rs. 1,49,809.76 with Standard Chartered Bank and Rs. 2,05,285/- with Axis Bank Ltd. were frozen were joined as parties.



7. The Respondent No.2 M/s Idea Cellular Ltd. has challenged the jurisdiction of the Adjudicating Officer under section 46 of the Information Technology Act to the case raised by the complainant. It has referred to the relevant provisions in section 43 as well as section 43A to drive home the point that –
- (i) The complainant has not shared any sensitive personal information with the company to attract the provisions of section 43A;
 - (ii) The services provided by the company cannot be said to be falling within the definition of either computer, computer system or computer network or a computer resources under section 2-k or a communication device.
8. The argument of Respondent No.2, as to jurisdiction of the Adjudicating Officer, is not tenable. Section 43A cast responsibility on the body corporate possessing, dealing or handling any sensitive personal data or information in computer resources which it controls or operates to be vigilant in implementing and maintaining reasonable security practices and procedures to prevent causing of the wrongful loss or wrongful gain to any person. It also makes such body corporate liable to pay damages by way of compensation for failing to do so. Thus, a body corporate who possesses a sensitive information and such information, if not kept with reasonable security practices and procedures to give protection from unauthorized access, use, modifications, disclosure or impairment and if such lack of security practices and procedures cause wrongful loss or gain to any person, then within the ambit of section 43A, such body corporate is liable to pay damages by way of compensation. The documents forming part of Know Your Client Norms (KYC) which result in grant of SIM card are important sensitive personal information. The provision of One Time Password (OTP) is a feature supported by a cellular phone which allows processing of financial transactions pertaining to financial network of a bank and resulting in on-line transaction affecting money at disposal of individual. On-line transactions amount to access to computer database as well as computer network of the bank providing on-line banking services and thus the cellular phone becomes an important component as a tool in relation to access to a computer network. A service provider for such cellular operations - the cellular operator - essentially gets covered under the clause (g) of section 43 and section 43A.



money trail unearthed for the transaction undertaken through the police officer's report under section 173 of Criminal Procedure Code to Judicial Magistrate First Class, First Court, Surat. The investigating officer has reported that an amount of Rs. 1,47,429/- was seized in the bank account number ****4357 with Standard Chartered Bank, Allahabad in the name of Abhinav Kumar Singh. The additional amount which was transferred to the State Bank of Patiala, was consumed after making cash withdrawals.

10. In the course of proceedings, notices were issued to Standard Chartered Bank, Axis Bank and to Shri Abhinav Kumar Singh. Notices to Shri Abhinav Kumar Singh have returned without delivery as person not known. The Standard Chartered Bank has furnished information in relation to the NEFT transactions for Rs. 80,000 and other particulars in relation to customer who had kept the account with the bank. The Axis Bank has also furnished information in relation to the account kept by Shri Abhinav Kumar Singh for the period during 1-12-2013 to the current date.
11. Perusal of the case papers and the information provided by the complainant, report of the Investigating Officer reveal that the current account of the complainant was operated on 18th December, 2013, to undertake two transactions out of the account of the complainant, which are reported as unauthorized. Using RTGS facility in the first transaction, an amount of Rs. 2,00,000/- was transferred to account No. *****4357 kept with Standard Chartered Bank, Allahabad, in the name of Mr. Abhinav Kumar Singh. It appears from the report of the Police Officer that the Investigating Officer has, with the approval of the competent court, seized an amount of Rs. 1,47,429/- with the concerned bank.
12. The second transaction amount to Rs. 80,000/- was undertaken by NEFT transaction to account No. *****8938, State Bank of Patiala, Lucknow Branch in the name of Mr. Amar Verma. The report of the Investigating Authority brings out that from this account with State Bank of Patiala, Lucknow, the money was taken out through multiple cash transactions. Based on the input provided by the complainant, Axis Bank was also issued notices whereupon it has submitted information of two accounts kept by Mr. Abhinav Kumar Singh, alleged to be the same person to whose account the RTGS of Rs. 2,00,000/- was made and thereafter withdrawn. The Axis Bank has intimated that both the accounts ending with No. *****49258 and *****25581 are frozen. The bank has reported that there is a cash balance of Rs. 2,05,285.98 in the account No. ***** 49258 and Rs. 2,91,105/- in the account No. *****25581. It appears that both the transactions in Standard Chartered Bank and State Bank of Patiala were made by same set of persons, acting in concert,



who had access to user ID, password of net banking account of complainant and access to duplicate SIM issued. Based on report of Police investigation, the money has been tracked to accounts mentioned above. It has also come out that Amar Verma as well as Abhinav Kumar Singh was working in concert, and whether account kept and operated as owned by some person or as benaami account, the persons who operated the accounts were same set of persons.

13. The on-line banking operation requires three mandatory needs – (i) User ID, (ii) Password, (iii) Registered mobile number for verification of password.
14. In the instant case, the complainant has not brought out any information or allegation to reveal how the User ID and Password of the complainant was known to the person or persons, who made unauthorized transaction. This part of the information is not there on the record but it can be inferred that no blame can be put on the bank which manages Dena-i-Connect internet banking facility. However, perusal of the evidence in relation to the change of SIM card by the Idea Cellular brings out that SIM card was changed without request from the concerned person and new SIM card was issued to a person to whom it should not have been. To that extent, the Idea Cellular has failed in adhering to the reasonable security practices that it ought to have followed in accordance with the provision of section 43A.
15. The unauthorized transactions carried out amounted to accessing computer resource to alter the information residing in the computer resource owned by Dena Bank and has caused diminishment in its value. To that extent, the Respondent No.5 (not appearing but keeping the proceeds of the transaction) is guilty of the violation vested in section 43 (i) and is therefore liable to pay penalty and compensation.
16. Insofar as the lack of adherence to reasonable security practices by the Idea Cellular is concerned, it has not been countered that the issuance of duplicate SIM card has not contributed in the alleged transaction. In that context, that duplicate SIM card indeed became one of the tools in undertaking the transaction. However, in view of provision of section 43(g), it would not be appropriate to conclude that Idea Cellular or any other bank provided assistance to the person making unauthorized access to the computer network. The provision herein has a positive bias wherein either Mens-Rea of the person doing such or knowledge of the person that he is providing assistance to access to the computer or to the resource to facilitate transactions would be required. In this case, it cannot be said that Idea Cellular Ltd. while issuing duplicate SIM card, had any inkling of the improper use of the SIM card. To that extent, the petitioner's claim for compensation under clause (g) of section 43 against the



compensation for failure to protect data under section 43A for failing to maintain reasonable security procedures.

17. That said, the Police Investigating Authorities have reported seized amount of Rs. 1,47,429/- in the account No. 62510144357 with the Standard Chartered Bank, Allahabad and Rs. 2,05,285.98 in account No. 913020032049258 with the Axis Bank in the name of Respondent No. 5 with Allahabad Branch. The two amounts therein are enough to refund back to the complainant the loss that is suffered due to unauthorized transactions. However, as reported both accounts being under seizure, it is necessary to inform the appropriate court having jurisdiction for approval before effecting refund process.
18. To file the current complaint in accordance with the provisions of the Information Technology Act, the complainant was asked to deposit a fee of Rs. 11,000/-. In addition, the complainant has sought compensation of Rs. 1,20,000/- with interest from the Respondents.
19. In view of the above discussions, Dena Bank, Standard Chartered Bank and Axis Bank are not found to be in violation of any provision. On the contrary, as per the information furnished, all three banks seem to have co-operated with the Investigating Officer and during the current proceedings. For the transaction, mobile number was one of the three variable facilitating transactions. To that extent, issuance of the duplicate SIM card to a different person can be said to be negligence, for its part (one of the three variables besides using name and password) which has led to the alleged transactions. To that extent, M/s Idea Cellular Ltd has to bear a part of the burden and compensate the complainant for the loss as well as legal charges. The loss is being remedied through the recovery while the alleged legal charges claimed to be Rs. 1,20,000/- seem to be on the higher side and are not acceptable. It would suffice if the Idea Cellular Ltd. is ordered to pay Rs. 11,000/- fee for filing the complaint and an additional Rs. 10,000/- towards the legal charges i.e. a total of Rs. 21,000/- to the applicant.
20. Accordingly, following order:

ORDER

- A. I, therefore, by virtue of the powers conferred on the Adjudicating Officer under section 46 of the Information Technology Act, 2000, order as follows:

- (1) The amount of Rs. 1,47,429/- kept in account No. 62510144357, Standard Chartered Bank, Allahabad, kept under seizure be refunded to the complainant after taking approval of the Judicial Authority which has ordered the seizure.



- (2) An amount of Rs. 1,32,571/- kept under seizure with account No. 913020032049258 with Axis Bank, Allahabad – 211 001 be released and refunded to the complainant. The concerned bank shall before making the transfer take approval from the Judicial Authority which has issued the order of seizure on the account.
- (3) Respondent No. 2, the Idea Cellular Ltd. is directed to pay Rs. 21,000/- to the complainant as compensation for not following reasonable security practices in accordance with the section 43A of the Information Technology Act.

B. Of late, the society is seeing rise in the number of fraudulent transactions over on-line platform. The criminal intent and crime against property etc. is being taken through the criminal justice system. In all such cases, State being the prosecutor, the cases are taken through the criminal jurisprudence with police helping the criminal justice system. However, there seems to be a lack of awareness for the civil remedy available to the citizens in terms of penalty as well as compensation under provisions of the Information Technology Act. To ensure that citizens become aware of the provisions of the law and also become more vigilant in guarding personal information that is sensitive in nature and become aware about security practices to safeguard one's on-line space, there is a general need to increase awareness about the new legal framework introduced through the mechanism of Information Technology Act and Rules thereunder. Accordingly, it is ordered that decision in this case be put in public domain and be widely publicized.



(Dhananjay Dwivedi)

Adjudicating Officer under Information
Technology Act, 2000 for the State of Gujarat.