

**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. 33

DATE OF DECISION: 01/2018  
3 JAN 2018

**IN THE MATTER OF:**

**Shri Bhavishya Pandya, Proprietor,  
M/s Harsh Indra Enterprise,  
430/B, GIDC Industrial Estate, Makarpura,  
Vadodara-390010, Gujarat.....PETITIONER**

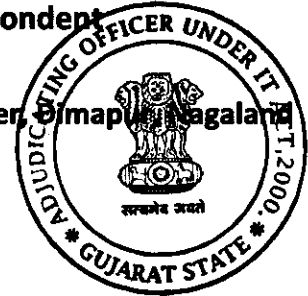
**Vs**

**The Branch Manager,  
M/s Indusind Bank Limited,  
Ground & First Floor, Gold Croft, Vishwas Colony,  
Jetalpur Road, Vadodara-390005,  
Gujarat.....Respondent**

**M/s Indusind Bank Limited  
Through Shri Rohan A. Shah, Advocate, M/s Indusind Bank Limited,  
806, Aakruti Complex, Near Stadium Circle,  
Ahmedabad, Gujarat.....Respondent**

**The Branch Manager, HDFC Bank Limited, Plot no #9, H & J Block, New Delhi  
Through Shri Gaurav D Nanavati, (Advocate of Respondent-HDFC Bank, New Delhi)  
201, Alankar Apartment, Dandia Bazar Crossing Road,  
Vadodara-390001,  
Gujarat.....Respondent**

**The Branch Manager, Axis Bank, Circular Road Near City Tower, Himmatnagar,  
Through Shri LalitKumar Paramar  
Senior Manager, Operation Head,  
Axis Bank, Gandhinagar Branch  
Plot No: 436, Sector-16, Gandhinagar,  
Gujarat.....Respondent**



Mr. Y VITO YEPTHOMI  
Viyito Village, HNO-52,  
P/s-Niuland, PO-Niuland  
District-Dimapur  
Nagaland-797112.....Respondent

Mr. Ashwin Sampang Rai  
Hyper Quality India Private Limited,  
34, Udyog Vihar Phase-IV,  
Gurgaon, Haryana.....Respondent

Mr. Ashwin Sampang Rai  
376, Godamdhura Pandhure  
St. Mary's II, Holy Cross, Darjeeling  
West Bengal.....Respondent

**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 or 66 of the Information Technology Act, 2000. The complainant is a resident of Vadodara and is authorized signatory of M/s Harsh Indra Enterprise. The complainant was maintaining an account with the Indusind Bank, Vadodara Building at Vadodara for his corporation. The complainant was maintaining a account with No. \*\*\*\*\*746. 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. \*\*\*\*\*4830, was used for the purposes of receiving alerts from the bank.

2. The Complainant has mentioned in this application that "On 15<sup>th</sup> Dec, 2013, the complainant had tried to log in his Net Banking of cash credit A/c No \*\*\*\*\*746 & has observed that there was some problem with Net Banking Password and hence the complainant had reset his password. After login, it was came to know that there were 2 fraudulent transaction in his account and also mentioned that those transactions were not done by the Complainant". Below are the details of the fraud transactions done in the complainant account:

- Rs 150000/- Transaction ID: INDBH13348283263  
Beneficiary: Mr. Ashwin Sampang Rai, Bank: HDFC Bank  
Branch: New Delhi-Saritavihar with a/ c no: 50100019145536



- Rs 250000/- Transaction ID: INDBH13348779972  
Beneficiary: YVITO YEPTHOMI, Bank: Axis Bank  
Branch: Dimapur (NAGALAND) with a/ c no: 912010037432020

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. 400000/- due to fraudulent transfer of money to beneficiary holding account with different banks and different branches.
4. The matter was heard on 03.03.2017, 20.04.2017, 30.06.2017, 21.07.2017 and 18.08.2017.
5. The Complainant during the course of hearings further submitted that Complainant is not in a position to add more parties without information regarding the bank accounts wherein complainant's money has been transferred.
6. Therefore, in the interest of justice, "on 21<sup>st</sup> April, 2017, an Interim Order has been issued; as per powers vested in Adjudicating Officer under IT Rules, 2003 notified by the Central Government on 17.03.2003, the Respondents (HDFC Bank Limited, Sarita Vihar, New Delhi and Axis Bank Limited, Dimapur, Nagaland ) were hereby asked to freeze the accounts (A/c No: \*\*\*\*\*145536-HDFC Bank Limited, Sarita Vihar, New Delhi and A/c No: \*\*\*\*\*432020-Axis Bank, Dimapur, Nagaland) and provide said bank account details where the money of the transaction got transferred , including Name of Bank, Address of the Bank Manager, Account Holder Name, Account Number, Address of the Account Holder and it was also asked if there is balance and amount of such balance in any / each of accounts to this office within 15 days from the date of issue of the Interim Order."
7. On 30.06.2017, "M/s Indusind Bank was asked to confirm whether transaction OTP sent to Complainant's registered mobile number or no. And if sent, the necessary log files details must have to submit this office." Also It was asked to " M/s HDFC Bank and M/s Axis Bank was asked to provide the following details to this office with respect to this case:



- Policy applied for daily withdrawals.
- Submit KYC documents for both the accounts where money got transferred.
- What action did you take on the complaint of the petitioner by email.

8. During the hearing held on 21.07.2017, M/s Axis Bank was asked to submit KYC information of Y VITO YEPTHOMI and also asked to send him notice to remain present in this court. M/s Axis Bank has informed about daily withdrawal policy of Priority account where there limit of this type of account is Rs 1 Lakh. Adjudicating Officer has also asked M/s HDFC Bank to submit KYC information of Shri Ashwin Sampang Rai and also decided to send him notice to remain present in this court.

9. M/s HDFC Bank has informed about daily withdrawal policy of account is Rs 50000/-. Also on 21.07.2017, M/s HDFC Bank was asked to provide issuer and adders for CHQ DEP-MICR-15-NOIDA WBO (000000002871, deposited dated on 07/12/13) and CHQ DEP-MICR-15-NOIDA WBO (000000002908, deposited dated on 07/12/13) with reference to the documents submitted by M/s HDFC to this office dated 15.05.2017."

10. M/s Indusind Bank vide its written reply submitted that:

*"I state that Answering Respondent has shown his bona fide at each and every stage by co-operating with the complaint. It is stated that the complainant visited Manjalpur Branch of the Answering Respondent on 15.12.2013 and lodged the complaint. Pursuant thereto, the account of the complainant was immediately blocked in order to avoid further fraudulent transaction. Thereafter, on receipt of the complaint, the Answering Respondent's on 16.12.2013 informed the HDFC Bank and Axis Bank upon which the subject account were blocked while in the meantime the funds were already withdrawn by the respective customers on credit. Therefore, since the complainant being our customer, the Answering Respondent was ready and willing to help and support the Complainant at every stage.*

*I state that after coming to the knowledge of the police complaint, the Answering Respondent tried to serve a letter and help the complainant. However, the Complainant refused to accept the delivery of the said letter from the Answering Respondent. Therefore, the allegations made against the Answering Respondent Bank are baseless, false and frivolous.*

*I state that the after aforesaid fraud, the internal team of the Answering Respondent observed that NET Banking Transactions are done after two levels authentications i.e. Log in Password and One Time Password which are only known to the customers.*



*In this case the transactions were successful and authorized through OTPs. The said*

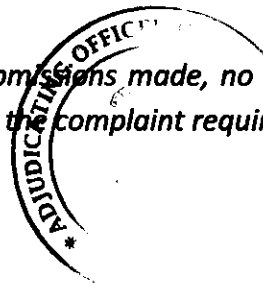
*OTPs were sent to the registered mobile number and also on the e-mail id of the customer. In the present case, the OPT for creation of the above beneficiaries was sent to the customer's registered cell number 9426514830 which is used by the Complainant's wife and e-mail for the same was sent to his registered id i.e. bhavishya4u@hotmail.com .*

*The Answering Respondent submits that the present case is a clear case of phishing. Phishing means luring an unwary customer of a Banking or Financial Institution to pass on sensitive information pertaining to their account. These data much more. Scammers then use this information to siphon off funds or, undertake transactions that are billed to the original customer. Moreover, Phishing is an act which is also carried out by hacker y using false and fraudulent websites, URL links to deceive people into disclosing valuable personal data, phishing schemes which is used latter to swindle money from victim account. There is also a criminal conspiracy between the person who opens the beneficiary account or who receive the funds in their account in conspiracy with the fraudster. In view of what is stated hereinabove, the complainant might have been victim of the phishing because of which the fraud is committed with him and therefore, in such circumstance, the complaint against the Answering Respondent is nothing but malicious attempt to harass the Answering Respondent in order to extort money.*

*The Answering Respondent submits that the complainant has suppressed the material fact before this Hon'ble Authority. The Complainant has intentionally suppressed the fact that the registered mobile number is used by his wife whereas the complainant himself uses other mobile number being 9227135383. Therefore, it is clear that the OTPs would have been received by the Complainant's wife and not by the Complainant. Under such circumstances, the Answering Respondent Bank cannot be held liable and be allowed to*

*The Answering Respondent submits that the Complainant has also filed a complaint before the Office of Banking Ombudsman. However, the said complaint was rejected vide order dated 07.02.2017 as it does not satisfy the ingredients of section 9(3)(g) of the Banking Lokpal Yojna, 2006.*

*I state that in view of the aforesaid facts and the submissions made, no relief as prayed for in the complaint deserves to be granted and the complaint requires to be dismissed in limine."*



ACT, 2000

11. With reference to the above para (9), on 24.07.2017, this office has issued the notice to Mr. Y. VITO YEPTHOMI and Mr. Ashwin Sampang Rai to remain present in the hearing to be scheduled on 18.08.2017. But both the parties were absent on the hearing held on 18.08.2017. The details asked on 21.07.2017 (as mentioned in the above para 9), the same has been submitted to this office by Bank.
12. A perusal of the record shows that to the applicant's account on 14 December, 2013, at 2.08 AM and 2.15AM two beneficiaries were added. Subsequently, at 12.23 and 12.27 vide two transactions Rs. 1.5 lac and Rs. 2.5 lac have been transferred from the applicant's account to the two beneficiaries. The applicant has alleged that, both, for adding the beneficiaries as well as for carrying out transaction the mandatory OTP for authenticating the transactions, OTP were not received by him and, therefore, the said transactions being unauthorized, he may be compensated by directing the Indusind Bank to compensate the applicant.
13. The Indusind Bank in their reply has submitted a statement indicating the transactions as well as the OTP generation, the OTP verification date and time. The statement provided indicates the sending as well as authentication by using OTP of two transactions pertaining to adding the beneficiaries and other two transactions pertaining to authentication of the fund transfer.
14. Therefore, it cannot be said that the Indusind Bank did not send the OTP necessary for authenticating the transaction or for negligence in any way in maintaining the adequate security standard. To that extent, the beneficiary's contention against the Indusind Bank is not sustainable.
15. It appears that of the two accounts to which the money was transferred, the HDFC Bank, Sarita Vihar, New Delhi Branch with IFC Code HDFC 0000480, MICR Code 110240072 in customer account number 50100019145536 still has a balance of Rs. 11,480/-. This is the same account to which the amount of Rs. 1.50 lac was transferred from the applicant's account. The account holder was given notice to appear before the undersigned but he has not responded. A perusal of the transactions also indicates that after 16-12-2013 when the transferred money was withdrawn in tranches of Rs. 10,000 each, the account holder concerned has not carried out any further transaction.



The balance amount in that account of Rs. 11,480/- can be used to part refund to the aggrieved applicant. Accordingly, it is directed that the manager concerned of HDFC Bank Branch at Sarita Vihar, IFSC Code HDFC 0000480 will remit to the applicant Shri Harsh Indra Enterprise, Makarpura, Vadodara, the amount of Rs. 11,480/- within a period of 15 days.



**(Dhananjay Dwivedi)**  
**Adjudicating Officer under Information  
Technology Act, 2000 for the State of Gujarat.**

