

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

**Special Civil Complaint No: 56**

**Date of Decision:15/ 11/ 2018**

**IN THE MATTER OF:**

**To**

**M/s Amos Corporation (A Division of Amos Enterprise), Ahmedabad,**  
Through Shri Arjun Sheth / Ms. Gopi Sisodiya, (Advocate & Solicitor)  
106-A, 1<sup>st</sup> Floor, Block-C, Ganesh Meridian,  
Opp. Gujarat High Court,  
S.G. Highway, Ahmedabad-380060.

**Vs**

1. **The Branch Manager,**  
M/s Union Bank Ltd,  
Vastrapur, Harimanju Dr. V. Sarabhai Road,  
Nr. Ketav Petrol Pump, Polytechnic, Ahmedabad-380015.
2. **The Branch Manager,**  
M/s HDFC Bank Ltd,  
5<sup>th</sup> Floor, Tower-B, Peninsula Business Park, Ganpatrao Kadam Marg,  
Lower Parel West, Mumbai-400013.
3. **The Branch Manager,**  
M/s IndusInd Bank Ltd,  
World Business House, Nr. Parimal Garden, Ellisbridge, Ahmedabad.
4. **M/s Idea Cellular Limited,**  
2<sup>nd</sup> Floor, Venus Atlantis, 100 ft Road,  
Prahladnagar, Ahmedabad-380015.
5. **The Branch Manager,**  
M/s IndusInd Bank Ltd,  
Pooja Plus Complex, Parasia Road,  
Chhindwara, Madhya Pradesh-480001.
6. **The Branch Manager,**  
M/s IndusInd Bank Ltd,  
Shop No-5, Mahatma Phule Road, Plot no-66, Sector-17,  
Vashi, Navi Mumbai, Maharashtra-400705.
7. **The Branch Manager,**  
M/s HDFC Bank Ltd,  
Parasia Road, Opp. Asaram Bapu Mahila Ashram,  
Chhindwara, Madhya Pradesh-480001.



**8. Shri Sameer Suren Singh**

Parasia Road P4 CPH6,  
Page-58, Opp-ICICI Bank,  
Chindwara-480001, Madhya Pradesh.

**9. Shri Arvind Verma**

H/O SUDAMA BAI DEHARIYA  
Behind Tirumala Construction-Bhayde Colony Chhindwara IN  
CHHINDWARA-480001, Madhya Pradesh

**10. Shri Manoj Kumar**

Divya Darshan Flat-302, Sec-6, Plot No-110,  
NERUL (w), Navi Mumbai-400706,  
Maharashtra

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

1. This matter has been filed by the petitioner under Section 43-A of the Information Technology Act, 2000.
2. The brief of the case as mentioned by the petitioner is as follows:

- a) The complainant is a public limited company incorporated under the provisions of the Companies Act, 1956, being M/s Amos Corporation, a division of Amos Enterprise Ltd ("**Petitioner**") who is the owner and operator of the current account no: \*\*\*\*\*11121 ("**Account**") with UBI ("**Respondent no:1**") with its branch office located at Vastrapur, Ahmedabad. That the complainant is engaged in the business of trading in chemicals, inks and technical grade fertilizers having its office at Gulbai Tekra, Panchvati Second Line, Ellisbridge, Ahmedabad, Gujarat.
- b) The Complainant inter alia uses the net banking facility / service provided by the bank. That the account being a current account is used daily by the complainant in relation to the commercial transactions carried on by the complainant. That the complainant keeps with him and in secrecy the username and password to such net banking account.
- c) The complainant along with the accountant of the complainant being one Mr. Alpesh K Shah are the only two persons who are aware of the username and password for the use of the said net banking facility. Mr. Alpesh K Shah has been working with the complainant and in his organization for last 24 yrs.
- d) On 13.01.2014 at about 10:30 hrs in the morning, the mobile no 9824032110 belonging to the complainant went out of service. On 13.01.2014 funds to the tune of Rs 14,26,000/- were transferred from the petitioner's account to accounts of persons unknown to the complainant and in an unauthorized manner via the net banking facility provided by the Bank.
- e) That following are the details of the transactions by which monies in an authorized manner were transferred from the account to accounts of unknown persons via net banking facility.





<u>Sr No</u>	<u>Transfer Account Holder</u>	<u>Transferee Account No.</u>	<u>Transferee Bank</u>	<u>Amount (Rs.)</u>
1	Arvind Verma	100026081914	Indusind Bank, Chhindwara	200000/-
2	Arvind Kumar	100026081914	Indusind Bank, Chhindwara	200000/-
3	Manoj Kumar	250008080808	Indusind Bank, Vashi	100000/-
4	Sanjay Pal	12511230002303	HDFC Bank, Jamnagar	200000/-
	Sammer Singh	50100014354557	HDFC Bank, Chhindwara	126000/-
	Nawabuddin	3446602010085455	UBI, Delhi	200000/-
7	Nawabuddin	344602010085455	UBI, Delhi	200000/-
8	Nawabuddin	344602010085455	UBI, Delhi	100000/-
<b>Total</b>				<b>14,26,000/-</b>

- f) That out of the total amount of Rs. 14, 26,000/- transferred from the petitioner's account to the accounts of unknown persons in an authorized manner set out in the table herein above, transaction totalling an amount of Rs 10,00,000/- were returned bank to / re-credited to the account. That only balance of Rs 4,26,000/- ("Outstanding Amount") remained to be returned back / re-credited to the account. The amount and transfers which were not returned back (could not be intercepted during process) are as follows:

<u>Sr No</u>	<u>Transfer Account Holder</u>	<u>Transferee Account No.</u>	<u>Transferee Bank</u>	<u>Amount (Rs.)</u>
1	Arvind Verma	100026081914	Indusind Bank, Chhindwara	200000/-
2	Manoj Kumar	250008080808	Indusind Bank, Vashi	100000/-
3	Sammer Singh	50100014354557	HDFC Bank, Chhindwara	126000/-
<b>Total</b>				<b>4,26,000/-</b>



- g) The Mobile service of the Complainant of the said mobile resumed at about the late evening on 13.01.2014 pursuant to representative of the complainant having paid visit on learning about the transaction on 13.01.2014 to the office of Air Net who is an agent of the telecom service provider being Idea Cellular Ltd. (Resp. 4) which revealed that some unauthorized person had made forged applied for the change of sim card in the morning of 13.01.2014 for the said mobile number due to which the mobile phone of the complainant had gone out of service as stated above.
- h) That for the purpose of such insurance claim to succeed, the bank's insurance company had sought for the copy of (a) account statement, and (b) KYC documents, of said Mr. Arvind Verma, Mr. Manoj Kumar and Mr. Sameer Singh, (c) and FIR copy, so as to enable the said insurance

company to process the claim. That the bank informed the Complainant that the bank had requested HDFC Bank Ltd., Chhindwara and Indusind Bank Ltd., Chhindwara to share with them the aforesaid documents so as to enable the bank to process the said insurance claim. However, the bank has made the Complainant understand that HDFC Bank Ltd and Indusind Bank Ltd have not shared such documents and hence said insurance claim has not been processed.

3. This matter has been filed by the petitioner under Section 43-A of the Information Technology Act, 2000 to this office for the aforesaid case.

4. The petitioner has prayed for ordering the Union Bank of India, HDFC Bank (Resp. 2) IndusInd Bank (Resp. 3) and Idea Cellular Ltd. (Resp. 4) jointly or severally paying damages of Rs. 4,26,000 along with interest @ 24% per annum to the petitioner

5. The matter was heard on dated 03.03.2017, 21.07.2017, 18.08.2017, 11.09.2017, 02.02.2018, 16.03.2018, 06.07.2018 and 31.08.2018.

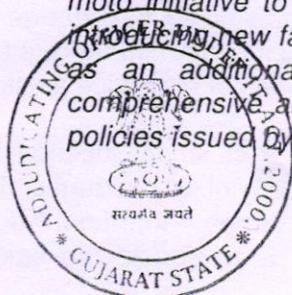
6. In the hearing on 3-3-2017, the 3 individuals namely Shri Arvind Verma, Shri Manoj Kumar and Shri Summer Singh were joined as parties.

7. In the hearing held on 21.07.2017, it was decided that M/s Indusind Bank-Chhindwara, M/s Indusind Bank-Vashi and M/s HDFC Bank were to submit the KYC documents of Shri Arvind Kumar, Shri Manoj Kumar and Shri Sameer Singh respectively. Based on the hearing held on 21.07.2017, the respective banks had submitted the KYC documents of the Shri Arvind Kumar, Shri Manoj Kumar and Shri Sameer Singh.

8. In the hearing held on 18/08/2017, M/s Idea Cellular Limited was asked to provide due diligence policy and what due diligence they did while changing SIM of the applicant, M/s Idea Cellular Limited vide its affidavit in reply dated 25/09/2017, has denied all averments made by the Petitioner and has submitted that *"A bare reading of the provision makes it clear that the duty was cast upon the franchisee owner to handle and protect the data. The Franchisee was the only person who communicate with the sim card owners (Complainant herein), and were alone responsible for handling all the data that is being entrusted to them. A copy of the agreement between the respondent and Franchisee owner is annexed in the affidavit."*

9. Also during the hearing dated 03.11.2017 and subsequent hearing, the Petitioner has requested certain adjournments to accommodate the medical conditions of the main advocate of the Petitioner which were granted.

10. During the hearing held on 02.02.2018, M/s Idea Cellular Limited was asked to provide the details of i) What due diligence done and if they, as principal, endorse that diligence by their authorised retailer. ii) Policy for (a) New Sim and (b) Change of Sim. Further during the hearing held on 16.03.2018, M/s Idea Cellular was asked to file a written reply on policy plus what they did in the instant case. M/s Idea Cellular Limited filed additional affidavit in reply dated 24.04.2018 and informed that *"That due to the rise in cyber-attacks and fraudulent practices, the Respondent company has taken a suo-moto initiative to make the process of issuance of duplicate sim cards stringent by introducing new factors of authentication, which along with the previous polices, will act as an additional firewall against such fraudulent practices. The policies are comprehensive and in-line with the highest of industry standards. A copy of the new policies issued by Idea since March 2017 are annexed in the affidavit."*



11. IndusInd Bank has mentioned following details in its Affidavit in reply dated 16.03.2018:

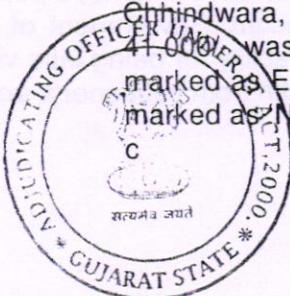
- a) "It is the cause of the Complainant that the cause of action took place on 13.01.2014 at about 10:30 am in the morning where the funds to the tune of Rs 14,26,000/- were transferred from the account of the complainant to the accounts of persons unknown to the complainant and in an unauthorized manner via net banking facility provided by the Union Bank of India. It is pertinent to note that out of Rs 14,26,000/-, Rs 1,00,000 were credited into the account of Mr. Arvind Verma and Rs 2,00,000/- is credited into the account of Mr. Manoj Kumar held with the Respondent Bank."
- b) "The aforesaid two beneficiaries are having account with the Answering Respondent Bank wherein the former is having account with M/s Indusind Bank-Chhindwara whereas the latter is having account with M/s Indusind Bank-Vashi. Upon receiving the complaint, the Answering Respondent transferred the amount of Rs 3,00,000/- vide pay order no 106315 dated 05.06.2014 to the Union Bank of India. In view thereof, the Answering Respondent Bank has discharged its duty successfully and has transferred the amount to Union Bank of India who is holding an account of the Complainant. "

12. During the hearing held on 31.08.2018, the Petitioner filed a affidavit in rejoinder and raised the issues regarding KYC process carried out of the M/s Indusind Bank limited and alleged suppression of facts, malafied intentions along with other submission in response to the affidavit of the M/s Indusind Bank. During the hearing held on 31.08.2018, M/s Idea Cellular Limited requested Franchise to be joined as party which was not agreed. Also M/s Idea Cellular Limited submitted that reasonable security policy as on 2014 were adhered to, for the SIM issuance.

13. From the records of the case, it comes out that one recipient of unauthorized transaction Shri Majoj Jagdish Kumar withdrew entire Rs. 1.00 lakh in 10 cash withdrawal transactions of Rs. 10,000 each on same day in transactions marked as 'NFS CASH TXNINSHOP 7 .....'. This totals to withdrawal of Rs. 1.00 lakh, which has been defended by IndusInd Bank as allowable for 'INDUS GOLD' A/c holder. As per IndusInd Bank Policy, as available on their webportal, Indus Gold current A/c holder can do free cash withdrawal up to Rs. 50,000/- per day from any ATM.

14. In relation to Arvind Verma holding account with IndusInd Bank Chhindwara Branch, the transferred amount of Rs. 2.00 lakh was withdrawn the same day in 20 ATM withdrawal transactions of Rs. 10,000/- each in transactions which are marked as "NFS CASH TXNINKAILASH HOTEL GORAKHPUR .....". The account is marked as Indus Maxima Account. From the same account, additionally transferred amount of Rs. 2.00 lakh was returned (202557.78 Rs.) in entry marked as "TRF TO SUNDRY OAB AS PER EMAIL CONFIRMATION". As per information available on website of IndusInd Bank, daily limit set for ATM Cash withdrawals on Indus Maxima Savings account platinum debit card holder is Rs. 1.00 lakh per day.

15. In relation to Mr. Sameer Suresh Singh, held account with HDFC Bank Branch at Chhindwara, of the Rs. 1,26,000/- transferred without authorization, a cheque of Rs. 41,000/- was paid at Kamlanagar; 5 transactions of Rs. 10,000/- each were made marked as EAW-\*\*\*\*-AGRA and the account still holds balance of Rs. 34,771/- and is marked as 'No Debit Dormant' account.



16. The Respondent No.3, Union Bank, in its submission dated 6-10-2017 submitted details of SMS alerts for transactions that took place on 13-1-2014, specific to the question, if the bank intimated the account holder through SMS alerts – a service that he had applied and availed.

17. On overall perusal of the matter, it comes out that, specifically in relation to the three transactions of Rs. 1.00 lakh, Rs. 2.00 lakh and Rs. 1.26 lakh under consideration, the amount was transferred and immediately withdrawn, barring Rs. 34,771/- with HDFC Bank Chhindwara Branch. The 3 alleged beneficiaries, despite issuing notices, have not remained present and don't appear to be persons who can be traced either by respective banks or by this office. Accordingly, it becomes apparent that the details provided by such applicants, were not true in relation to KYC declaration.

18. In case of Mr. Manoj Jagdish Kumar, IndusInd Vashi branch, KYC does not mention details of introducer or salary A/c and on the basis of enclosed PAN Card and print out of savings account passbook, KYC is completed and he has been made entitled for Gold (Platinum) Card.

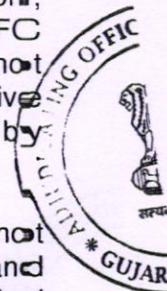
19. In relation to Arvind Verma, A/c with IndusInd Chhindwara Branch, on the basis of BSNL Telephone bill and PAN Card, KYC was completed and Indus Maxima Savings A/c was opened.

20. In relation to Sameer Suresh Singh, HDFC Bank completed KYC on the basis of PAN Card and resident proof on the basis of lease agreement.

21. On the face of it, the three branches followed KYC requirements and no negligence therein is seen at branch level for KYC.

22. However, in relation to daily withdrawal limits, it comes out that IndusInd Bank, in relation to A/c of Arvind Verma, allowed withdrawal in a day of Rs. 2.00 lakh against the ir policy defined limit of Rs. 1.00 lakh. Likewise in relation to amount of Manoj Jagdish Kumar, IndusInd Bank allowed withdrawal in a day of Rs. 1.00 lakh against their policy defined limit of Rs. 50,000/-. Had the bank adhered to their policy, an amount of Rs. 1.5 lakh could have been saved, as the petitioner has, through Union Bank alerted respective branches on 13<sup>th</sup> evening itself.

23. Idea Cellular was asked to explain what KYC and due diligence requirements did its franchisee follow in issuing duplicate SIM card. The contention of idea that franchisee is responsible for lapses if any is not tenable because customer buys service of Idea and does not care about the interface – that is franchisee. It is responsibility of Idea Cellular to ensure that all its franchisee's follow Idea's policy in relation to KYC and other aspects of customer management. The application for issuance of duplicate SIM card is made on letterhead of AMOS Corporation, carries signature of one 'Sanjay Sindhi' as HR Head and is signed with stamp 'For AMOS Corporation, Authorized Signatory'. The application is accompanied with PAN Card of 'Sanjay Sindhi', though the phone is not in name of Sanjay Sindhi. While use of letterhead and stamp do create bias in relation to the identity and to some extent create an impression of legitimacy of request made, however considering the importance of phone number in day to day life for 2 factor authentications used in Banking, Aadhaar, Admission, Recruitment related transactions require more diligence. Idea Cellular during the course of hearing has come up with revised policy for KYC compliance and is also driven by Department of Telecom, Government of India, driven directive for the same, but that would not reduce to liability for being less vigilant in KYC related diligence which resulted in loss of Rs. 4.26 lakh from petitioner's account plus the agony, time and effort that he has to suffer.



24. Having said that, no online transaction is possible without user ID and Password. Primary responsibility of protecting such lies with the user (i.e. petitioner) himself. If he is not diligent in protecting his own user ID and Passwords, he cannot shift blame on other people or agencies who have only supplemental role in this connected world. Therefore, though lapses are seen on part of IndusInd Bank in allowing larger than daily limit withdrawal, on part of Idea Cellular in issuing duplicate SIM without proper due diligence, significant responsibility for unauthorized transaction will lie on the petitioner himself.

25. Accordingly, the following Order:

**ORDER**

- a. HDFC Bank, Chhindwara, Branch Manager is directed to return Rs. 34,771/- in account of Mr. Sameer Suresh Singh to the petitioner within 15 days.
- b. For failure in adhering to their own policy in relation to daily withdrawals, IndusInd Bank allowed excess withdrawals beyond their set limit of Rs. 50,000/- and Rs. 1.00 lakh, i.e. a total of Rs. 1.5 lakh. This amount could have been saved to the petitioner, if IndusInd Bank had followed its policy. Accordingly, IndusInd Bank, through its Branch Manager at World Business House, Near Parimal Garden, Elisbridge, Ahmedabad, is directed to reimburse the petitioner an amount of Rs. 1.5 lakh along with a penalty amount of Rs. 50,000/- in one month's time.
- c. For failure in being diligent with KYC requirements, Idea Cellular is imposed a penalty of Rs. 50,000/-. M/s Idea Cellular (pursuant to its scheme of arrangement – the new entity) is directed to pay the amount of Rs. 50,000/- to the petitioner in one month's time.



(Dhananjay Dwivedi)  
Adjudicating Officer & Secretary,  
Department of Science and Technology,  
Government of Gujarat.



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