

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

Special Civil Complaint No: 2020/04

Date of Decision: 17/5/2023

IN THE MATTER OF:

1) Mr. Jaydeep Vrujlal Depani

Rajendra Agro Storage, Plot No-G 539, GIDC Metoda,
Kalawad Raod, **Rajkot-360021, Gujarat**

2) Mr. Manish Jamnadas Depani

Rajendra Agro Storage, Plot No-G 539, GIDC Metoda,
Kalawad Raod, **Rajkot-360021, Gujarat**

3) Mr. Vrujlal Haribhai Depani

Rajendra Agro Storage, Plot No-G 539, GIDC Metoda,
Kalawad Raod, **Rajkot-360021, Gujarat**

Vs

1) M/s Vodafone Idea Limited

Vodafone Idea House,
Corporate Road, Off S.G. Highway, **Prahladnagar, Ahmedabad-380015**

2) M/s Vodafone Idea Limited

Through Mr. Kartikeya M. Paneri, Advocate.
Off: 308, Aaron Spectra, Behind Rajpath Club, Rajpath Rangoli Road, **Ahmedabad-380054**

3) M/s Dena Bank (Bank of Baroda)

The Branch Manager,
Parabajar Branch, Toral Building, 1st Floor, Subhash Road, **Rajkot-360001, Gujarat**

4) M/s Allahabad Bank

The Branch Manager,
Gomti Nagar, 4 / 4, Vivek Khand Ujariyawan, **Lucknow-226010**

5) M/s Federal Bank

The Branch Manager, Don Bosco School Park Circus, **Kolkata-700017**

6) M/s Anita Group

Through The Branch Manager, M/s Allahabad Bank
Gomti Nagar, 4 / 4, Vivek Khand Ujariyawan, **Lucknow-226010**



7) Mr. / Ms. Gobinda Biswas

Through The Branch Manager, M/s Federal Bank,
Don Bosco School Park Circus, **Kolkata-700017**

**MR. VIJAY NEHRA
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 complainants namely Mr. Jaydeep Vrujlal Depani, Manish Jamnadas Depani and Vrujlal Depani are partners of Rajendra Industries as well as Rajendra AgroStorage.
 - b) The complainant are having a few post-paid corporate calling user group connections in the name of their establishment Rajendra Industries and these corporate connections were provided by Idea Cellular now Vodafone Idea Limited.
 - c) Complainants are using mobile number-9099020502 for last many years and are paying all the bills regularly. Complainants are based in Rajkot and having their various business activities in name and style of Rajendra Industries / Rajendra AgroStorage collectively known as Rajendra Group.
 - d) The complainant is operating bank account with Dena Bank (now Bank of Baroda after merger) having account no-003013023787 for the above said business unit and account is regularly operated by complainant.
 - e) On Saturday, 17th Feb 2018 around evening 6 pm onwards complainant noticed that mobile with mobile no: 9099020502 was not operating and also showing no network sign.
 - f) Since Complainant I, using the mobile number, was busy in his office work and was closing his business day he thought of visiting mobile communication service provider while leaving the office. As he was late to leave office and next day being Sunday, a holiday, he visited mobile service provider's office on Monday 19th February 2018 and submitted the complaint / application for new sim card.
 - g) The complainant was issued new sim card but it was not working for the whole day of 19th February 2018 and also complainant observed that only outgoing calls were possible from the sim provided to him and there were no incoming calls receiving on the mobile neither he received any message on the mobile. So complainant again enquired about this problem with the Vodafone Idea Limited, who assured to look into the matter and resolve the same.
 - h) On 20th February again complainant called Idea representative several times for resolving the problem but he was always informed that problem will be resolved shortly.

- i) Since problem persisted till 21st February evening his sim started receiving incoming calls as well as messages properly.
- j) On 22nd February 2018, when complainant opened his net banking account of Dena Bank, he was unable to access the net banking and thereafter he realized that his accounts password was reset.
- k) Thereafter he contacted the Bank and reset his account login password and after resetting the password and checking the balance of his said account, he realized that Rs 20,00,000/- were unauthorized withdrawn / transferred from his account from 18th February 2018 to 21st February 2018 in four transactions of Rs 5,00,000/- each.
- l) The complainant immediately reported the matter to bank and the Commissioner of Police, Rajkot office on 22nd February 2018 vide complaint no-RC18100700835.
- m) During further queries / investigations the complainant was informed that new duplicate sim card was issued on the number of complainant (9099020502) on 17th February 2018 from Point of Sale / Service of Vodafone Idea Limited. This sim card was provided by POS at location G-2, World Trade Centre, Near 21st Century, Ring Road, Surat, Gujarat.
- n) The Complainant registered his protest about said unauthorized activation of his sim card without his consent and proper verification of documents with service provider and enquired about how duplicate sim card was issued by blocking his services without any due verification when he was rightful owner / user of the same?
- o) The complainant also issued one legal notice to mobile service provider in this regards on 10th May 2018.
- p) All the four fraudulent transfers amounting to Rs 20,00,000/- during 19th Feb, 2018 to 21st Feb 2018, were through NEFT / RTGS mechanism and was neither approved / authorized by the complainant nor carried out by the complainant.
- q) Being proactive person the complainant after getting knowledge of the fraud, lodged a written complaint with Commissioner of Police Rajkot on 22nd February 2018 and FIR at Rajkot Police Station vide FIR NO-1/8/2018 dated 22nd March 2018 was lodged.
- r) The complainant's mobile number (9099020502) associated with the bank account was deactivated without proper verification and without following due procedure by the service provider and due to which complainant has to suffer this huge loss of amount.

3. The matter was heard on 19th January 2021, 15th March 2022, 27th September 2022, 10th January 2022 and 24th January 2023.

4. In the hearing held on 15.03.2022, M/s Vodafone Idea Limited submitted the affidavit in reply. Federal Bank asked the time to file its reply. Dena Bank did not remain present. Subsequently, Federal Bank filed its reply on 27/9/2022. Further M/s Vodafone Idea Limited was asked to provide details of the SIM Replacement Process (EKYC I RV Customers). SIM Replacement



Process (Non-EKYC I RV Customers), SIM Replacement Process, and Service Centre Customer Validation Guidelines with validation parameters for service center for verification from the places other than the original place from which the SIM was issued in the first place and whether the same was carried out in the instant case.

5. The stand of the Banks was that they had taken all the necessary precautions. Fraudulent transfer of money from the complainant's account was entirely on account of lapses on the part of M/s Vodafone Idea Limited in issuing duplicate SIM to the fraudster without taking any precautions necessary for KYC. On the other hand, the stand of M/s Vodafone Idea Limited is that it had no knowledge or awareness about the mobile connection being used for the purpose of operating bank accounts opened by the complainant with the Bank. According to M/s Vodafone Idea Limited, it is not connected with the fraudulent withdrawal of money from the complainant's account, and it issued the duplicate SIM card to an imposter in good faith after complying with the necessary formalities for the issuance of another SIM card when it is reported to be lost.

6. Of the amount to be recovered which has actually been consumed through multiple ATM transactions, it would not be within the reasonable resources at the disposal of the Adjudicating Officer nor would be within the legal competence to chase the fraudster(s) and recover such amount. For this part, the complainant is at liberty to pursue alternate legal remedies available to him.

7. With the status in relation to the money transferred out of his account as above, the next question would be the responsibility of the Dena Bank, Federal Bank, Idea Cellular Ltd. (now Vodafone Idea Ltd.), and other banks to which the amount was fraudulently transferred and despite the banks having carried out KYC process, whereabouts of the account-holders are not available. This leaves the third party to the transaction viz. M/s Idea Cellular Ltd. and now M/s Vodafone Idea Ltd. In my capacity as Adjudicating Officer, this is not the first case wherein the complainant's sim card was inactivated and a duplicate card was issued which allowed the fraudster to breach the second layer of two-factor authentication. Incidentally for the sake of mentioning here, in all such cases, the sim cards were issued by M/s Vodafone Idea Ltd. I understand the possibility that people, which had sim, cards from other cell companies might have faced similar fraud and yet chose not to represent to the Adjudicating Officer. Nonetheless, given the gravity of the complaint in the present case and given the feedback in relation to other cases in which the sim provided by M/s Vodafone Idea Ltd. was either cloned or a duplicate sim was given, I felt it necessary to instruct, during the course of proceedings, M/s Vodafone Idea Ltd. to strengthen their internal processes in relation to the issuance of duplicate sims. I still cannot ignore the fact that it, issued a duplicate sim to the unauthorized person which resulted in all these unauthorized transactions causing a loss of Rs. 20 lacs to the complainant. If M/s Vodafone Idea Ltd. had been more diligent in verifying the identity of the person seeking the duplicate sim, this loss could have been avoided. I also consider the fact that this negligence on the part of M/s Vodafone Idea Ltd. has resulted in the compromise of the OTP-based authentication.

8. In several similar matters, it has been noticed that at the time of deactivating the original SIM and activating the duplicate SIM, the Telecom Service Provider or its authorized representative does not make any attempt to contact the original subscriber on the original SIM or alternative contact numbers, if for nothing else, only to ascertain the response from the other end. If the

original SIM is still with the subscriber, deactivation may be delayed by a few hours to enable the original subscriber to demonstrate that the applicant of the duplicate SIM card is an imposter.

In the present case, the details of the subscriber/complainant as contained in the KYC form available with the Telecom Service Provider contain his photograph and signatures. The documents submitted by the imposter who applied for duplicate SIM also contain photograph and signatures.

9. With reference to the letter dated 01-08-2016 of the Department of Telecommunications, Ministry of Communications, Government of India regarding instructions for issuing new SIM cards in case of swapping / replacement / up-gradation of SIM Cards, point no (iii) has mentioned that "Before activating of new SIM card, the employee of the Licensee who is activating the new SIM card shall verify that the details of Pol document submitted by the subscriber are matching with the records available with the Licensee and also record a declaration to this effect on the copy of Pol document under his / her name, designation, and signature with the date".

10. But a comparison of the documents reveals that the photograph, Date of Birth, and PAN Card of the subscriber are quite different. No expert is required to compare and come to the conclusion that the applicant for the duplicate SIM card was not the subscriber and such a claim was entirely bogus and fraudulent. Clearly, the claim of the Telecom Service Provider that the details were verified and checked is incorrect and unacceptable.

11. It now remains to be seen whether such fraudulent transfers or withdrawals of money from Banks due to lapses in following the procedure for KYC by the telecom service provider are covered by section 43 or 43 (A) of the Act so as to give jurisdiction to the AO to hold inquiry and award compensation. In order to appreciate the submissions and contentions on behalf of Vodafone, it will be useful to analyze the various relevant provisions of the Act as follows:

Section 43 (g) is as follows :

"43. [Penalty and compensation] for damage to computer, computer system, etc.-If any person without permission of the owner or any other person who is in charge of a computer, computer system or computer network,-

(g) provides any assistance to any person to facilitate access to a computer, computer system or computer network in contravention of the provisions of this Act, rules or regulations made thereunder;"

2[he shall be liable to pay damages by way of compensation to the person so affected.]

Clause (g) of section 43 adds a new dimension by extending the liability to pay damages by way of compensation even to those who provide "any assistance to any person to facilitate access to a computer etc. in contravention of the provisions of this Act, rules or regulations made thereunder." This is in addition to clause (a) which by itself makes unauthorized access unlawful so as to attract damages by way of compensation. Since the liability created by clause (g) is only civil in nature it does not require a particular motive or frame of mind to attract a penalty. The use of the word "any" before the word "assistance" further widens the net. The reach and scope are thus rendered quite wide. In addition to a person doing the acts prohibited by various clauses of section 43,

any person who provides any assistance to any person to facilitate unauthorized access is equally liable to pay damages by way of compensation.

Sector 43A is as follows:

"43A. Compensation for failure to protect

data. -Where a body corporate, possessing, dealing or handling any sensitive personal data or information in a computer resource which it owns, controls or operates, is negligent in implementing and maintaining reasonable security practices and procedures and thereby causes wrongful loss or wrongful gain to any person, such body corporate shall be liable to pay damages by way of compensation to the person so affected.

Explanation -For the purposes of this section –

- (i) -body corporate means any company; and includes a firm, sole proprietorship or other association of individuals engaged in commercial or professional activities;
- (ii) -reasonable security practices and procedures means security practices and procedures designed to protect such information from unauthorized access, damage, use, modification, disclosure or impairment, as may be specified in an agreement between the parties or as may be specified in any law for the time being in force and in the absence of such agreement or any law, such reasonable security practices and procedures, as may be prescribed by the Central Government in consultation with such professional bodies or associations as it may deem fit;
- (iii) -sensitive personal data or information means such personal information as may be prescribed by the Central Government in consultation with such professional bodies or associations as it may deem fit."

12. When a subscriber gives his Pol and other identification documents to the telecom service provider it gets attached to the mobile number and it is tagged with this personal data in its database. It is the telecom service provider to protect this data and ensure that such data is protected from unauthorized access. Here in this case gross negligence on the part of the service provider and failure or lapses in KYC verifications enabled the fraudster to access the mobile number and consequently other financial institutions attached to the number. Thereby the Telecom Service Provider has provided assistance to the wrongdoer to facilitate unauthorized access to the computer, computer system, or computer network leading to a violation of Section 43 (g) and Section 43 A and unlawful loss or damage to the person affected.

13. With a view to removing any doubt, it is made clear that in the facts of the case, the telecom service provider, M/s Vodafone Idea Limited is found liable under section 43(g) and section 43A of the Act.

Accordingly, the following orders:

ORDER

In the above context, I think a fair penalty under the provisions of section 43A of the Information Technology Act, 2000, of Rs. 20,00,000 on the respondent M/s Vodafone Idea Ltd. would be just and appropriate. Accordingly, M/s Vodafone Idea Ltd. is directed to pay Rs. 20,00,000 as a penalty to the complainant within a period of 30 days from the date of this order.



(Vijay Nehra)

Adjudicating Officer & Secretary,
Department of Science and Technology,
Government of Gujarat