

BEFORE THE ADJUDICATING OFFICER

SH. S.V.R. SRINIVAS

PRINCIPAL SECRETARY, INFORMATION TECHNOLOGY

GOVERNMENT OF MAHARASHTRA

Complaint No. 48/2016 dated 16<sup>th</sup> November, 2016

IN THE MATTER OF

Mr. Nandkishor Panjabrao Gawarkar

..... Complainant

Versus

Adinath Enterprises/Vinod J. Chawade (Agent Code. 70904), Nagpur

..... Respondent No. 1

AT and T Services Ltd. (IDEA Cellular), Pune

..... Respondent No. 2

Saraswat Bank (Ajni Branch), Nagpur

..... Respondent No. 3

ING VYASA BANK, Kolkata

..... Respondent No. 4

Central Bank of India, Kolkata

..... Respondent No. 5

HDFC Bank Limited, Kolkata

..... Respondent No. 6

Subrata Vyas c/o ING Vyasa Bank, Kolkata

..... Respondent No. 7

Ratan Das c/o Central Bank of India, Kolkata

..... Respondent No. 8

S K Azizul c/o HDFC Bank, Kolkata

..... Respondent No. 9

Advocates:

1. For Complainant : Adv. Shri Mahendra Bhaskar Limaye
2. For Respondent No. 1 & 2 : Bharucha & Partners, Advocates & Solicitors
3. For Respondent No. 3 : M Mulla Associates, Advocates & Solicitors
4. For Respondent No. 4 : Adv. Amol Joshi
5. For Respondent No. 6 : Adv. Anita A. Marathe, Adv. Ashutosh M. Marathe and Alok N. Bhatt





## ORDER

The order pertains to loss on account of duplicate Sim Card given to a person who allegedly was not the real owner of the Mobile Sim Card. The complainant Mr. Nandkishor Panjabrao Gawarkar r/o 55, Parijat Apartment, LIC Colony, Khamala Road, Ajni Square, Nagpur 440015 avers that the monetary damage suffered by him on account of this in 2016 has not been compensated by the Respondents No. 1, 2, 3, 4, 5 & 6. It is alleged that the loss is caused by the action of these respondents.

The complainant is the proprietor of Abhijeet Intelligence Security and also is a Labor Supplier located at Nagpur. The complainant has an OD Account bearing No. 385500100000037 with Saraswat Bank for above said business units. The complainant's mobile number 9822565627 is registered with the bank. The complainant is using this mobile number since last 15 years, as stated by the complainant.

On August 25, 2016 evening, the complainant noticed that his mobile had no connectivity and hence reported the matter to IDEA Customer Care but received no satisfactory answer, as stated by the complainant. On August 26, 2016 noon, the complainant visited IDEA's office and was informed by the staff of service provider that Respondent No. 1 has issued a duplicated Sim Card for same number on August 25, 2016 on receipt of request for issuance of duplicate Sim Card. The complainant protested the said unauthorised activation of his Sim Card without his consent. After this the Respondent No. 2 activated the complainant's mobile on same Sim Card. On August 26, 2016 itself, the complainant issued instructions to all the banks with whom he was operating, to stop all the transactions.

On August 26, 2016 evening, on activation of complainant's mobile, the complainant checked balances of all the banks accounts and observed that his Saraswat Bank's balance showed discrepancy of Rs.12,00,000. It is claimed by the complainant that Rs.12,00,000 was fraudulently transferred from his Saraswat Bank's account on August 26, 2016 through NEFT and RTGS mechanism for which complainant had not authorised the bank.





A police complaint was lodged in this respect on August 26, 2016 at Dhantoli Police Station, Nagpur vide FIR No. 680/16. The matter was investigated by the police who went to the owner of Respondent No. 1, Vinod Chawade, and a description of the person who came to collect the Sim Card was provided by the owner. To investigate the matter, the police also went to Kolkata to Respondent Nos. 7, 8 & 9 house, but Respondent Nos. 7, 8 & 9 were not found.

The immediate reason for the occurrence of unauthorised transaction in the bank account of the complainant appears to be a duplicate Sim Card issued by Respondent No. 1 (Respondent No.1 is a franchise of Respondent No. 2) without properly verifying the KYC of the person requesting for a duplicate Sim Card. It was also alleged by the complainant that there is lack of reasonable security practices and procedures by the banks, i.e. Respondent Nos. 3, 4, 5 & 6 and the KYC norms were not followed by Respondent Nos. 4, 5 & 6, i.e. the beneficiary banks. Therefore, it is claimed that the financial loss suffered by the complainant be compensated by these respondents.

In response, the Respondent No. 2, on behalf of Respondent Nos. 1 & 2 (IDEA vide reply dated July 26, 2017) stated that they have implemented all security practices and layers mandated by the DOT and TRAI Guidelines and that the Respondent Banks have failed to verify the suspicious transactions of huge monetary value within a short span of time made from the account of the complainant and that the complainant has been negligent in keeping his account details safe. Respondent No. 2 stated that the documents given by the said fraudster for the issuance of duplicated Sim Card consisted of the request letter for Sim Card issuance on letter head of M/s. Abhijeet Intelligence Security Services, Pan Card copy with name of Nirmal Prasad Gowarkar and the request form signed by the said fraudster, were properly verified. An automatic email from Respondent No. 2 was sent to the complainant on his registered email address and also on the alternate number provided by the complainant, intimating him about the change of Sim Card. Respondent No. 2 also stated in their written response dated August 14, 2018 that the bank transfer cannot be completed without a Customer ID or Login ID, and the same cannot be recovered or changed using mobile number.





In response, the Respondent No. 3 (Saraswat Bank, vide reply dated August 6, 2018) stated that they have undertaken measures to mitigate the risks of unauthorised use of the customer's online banking and mobile banking facilities and have inbuilt codes in their software systems to avoid suspicious transactions. Respondent No. 3 stated that the person who accessed the online banking of the complainant was already aware of the login and passwords and the bank only generated the OTP when it was requested from the registered mobile number. They also said that they have taken all necessary actions in relation to complainant's online banking account as directed by him.

In response, Respondent Nos. 4 & 6 (ING Vyasa and HDFC Bank, respectively, vide respective reply dated August 6, 2018 and August 2, 2018) stated that the admitted cause of action is unauthorised issuance of duplicate Sim Card and all KYC norms were followed by them at the time of opening the accounts of their respective beneficiaries. Respondent No. 4 stated that the complainant has neither provided the account number in which the amount has been transferred nor has mentioned the amount which has been transferred due to which it is not possible for Respondent No. 4 to file a proper and complete reply and take any further action. Respondent No. 6 stated that pursuant to reporting of fraud, they marked the account with no debit on September 6, 2016.

Hearings were conducted for this matter on June 22, 2017, July 26, 2018 and final hearing on August 9, 2018. All the parties were given equal chances to be heard and submit their averments and written statements. All the parties were present in these hearings. No written statement has been submitted by Respondent No. 5, Central Bank of India.

On the basis of averments and the written statements submitted by the complainant as well as the respondents, it is clear that the loss was caused to the complainant due to the duplicate Sim Card issued to the alleged fraudster without following the KYC norms. The Respondent No. 1 should have thoroughly checked all the relevant documents before issuing a duplicate Sim Card, as per telecom guidelines.





The name and surname of Mr. Nandkishor Panjabrao Gawarkar on the Pan Card should have been properly tallied. This does not seem to have been done by the IDEA franchise. Because of this issuance of duplicate Sim Card, the money transfer was facilitated and as a consequence, a loss of Rs.12,00,000 was caused to the complainant. As far as the responsibility of Saraswat Bank and other beneficiary banks is concerned, they seem to have followed all the norms and security measures.

In the final analysis, the responsibility of Respondent No. 1 & 2 is quite serious and cannot be condoned. The undersigned, therefore, directs that the complainant be compensated Rs.12,00,000 as the loss was caused due to the issuance of duplicate Sim Card by Respondent No. 2 (Respondent No. 1 is a franchise of Respondent No. 2) without proper due diligence. Respondent No. 1 & 2 are directed to pay the said amount to the complainant within one month of the receipt of this order.

The case is disposed as of above. No order as to costs.



(S.V.R. Srinivas, IAS)

Principal Secretary (Information Technology)  
Government of Maharashtra,  
Mantralaya, Mumbai 400 032