

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

No: SCA/10/2010/45794/IT

Date: 10 FEB 2011

**By R.P.A.D.**

**To,**

- ✓ 1) **Shri Manan Thakker,**  
**Advocate & Cyber Law Consultant**  
**2<sup>nd</sup> floor, Asha Complex,**  
**Bh. Navrangpura Police Station, Navrangpura,**  
**Ahmedabad – 380 009**
- 2) **Shri Nainesh Dharmeshbhai Modi**  
**13, Sunita Apartment, Haridarshan Society,**  
**Opp. Gaytri Hospital, Bhimjipura,**  
**Nava Vadaj, Ahmedabad**
- 3) **Shri Darshan Ganeshbhai Rajput**  
**E-1/11, Vishram Park,**  
**Nr. Bhavsar Hostel,**  
**Nava Vadaj, Ahmedabad – 380 013**

**SUB: Judgment in the matter between:**

**Pooja Chandrakant Darooka (Petitioner)**

**Vs.**

**Shri Nainesh Dharmeshbhai Modi (Respondent 1)**  
**Shri Darshan G. Rajput (Respondent 2)**

**Sirs,**

As directed, I am enclosing herewith the copy of judgment in the above mentioned matter dated 03.02.2011 for necessary action of your end, as per the Judgment.

**Yours faithfully,**



**(Mukesh Ved)**

**Deputy Secretary (IT),  
Science & Technology Department.**

**Copy to:-**

- **Hon'ble Justices Rajesh Tandon, Chairperson, Cyber Appellate Tribunal (CAT),**  
**Ministry of Communication & Information Technology, Department of Information Technology, Jeevan**  
**Bharti (LIC) Building, Ground floor, Outer Circle, Connaught Place, New Delhi-110 001**





**OFFICE OF THE ADJUDICATING OFFICER**  
**GOVERNMENT OF GUJARAT**  
**DEPARTMENT OF SCIENCE & TECHNOLOGY**  
**BLOCK NO.7, 5<sup>TH</sup> FLOOR,**  
**SACHIVALAYA, GANDHINAGAR**

**CASE NO-2/2010**

**Pooja Chandrakant Darooka**

**.... Petitioner**

**Vs.**

**Mr. Nainesh Dharmeshbahi Modi**

**..... Respondent 1**

**Mr. Darshan Ganeshbhai Rajput**

**..... Respondent 2**

**JUDGEMENT**

1. This is the proceedings of an application filed by the petitioner for adjudication under section 43 read along with section 46 of the Information technology act,2000. In a follow up to IT act,2000, under powers conferred by the Act, the Govt. of india have issued IT (Qualification and Experience of Adjudicating officers and manner of holding enquiry) Rules,2003 including notification No.GSR 220(E) dated 17.03.2003 and 240(E) dated 25.03.2003 by which the secretary to Information Technology of each state is notified as the Adjudicating officer under I.T.Act,2000. Further section 46 sub section (5) of the I.T.Act also states the every Adjudicating Officer shall have the powers of the civil court and all proceedings before the Adjudicating officer shall be deemed to be judicial proceedings within the meaning of section 193 and 228 of Indian penal code. In keeping with basic principles of justice, detailed hearings were held in which both the parties were provided equal and adequate opportunities to present and defend their case. Following the completion of hearing and submission of affidavits and confessing statements, the conclusion is being arrived at and the judgment being delivered herein.
2. Adjudicating Officer of State of Gujarat received a complaint from Petitioner Pooja chandrakant darooka against Respondents Nainesh Dharmeshbhai Modi and Darshan ganeshbhai rajput under section 43 of Information Technology Act, 2000 on 13.01.2010. Office of Adjudicating Officer issued show cause notices to both the parties along with copy

of complaint as to why the civil complaint be not admitted on 04.05.2010 for the hearing on 24.05.2010 at 3:00 pm at the Office of Adjudicating officer, Science & Technology Dept., Block no.7, 5<sup>th</sup> floor, New sachivalaya, Gandhinagar.

3. Advocate & Cyber law Consultant Mr. Manan thakker representing the petitioner appeared before the Office of Adjudicating Officer at Gandhinagar at 3:00pm on 24.05.2010. Respondents remained absent for the first hearing.
4. Advocate for the petitioner stated the facts of the matter to the Adjudicating Officer by mentioning contravention details, sections under which complaint is filed, power to adjudicate such matters, damages claimed and fees deposited.

### **Facts of the case**

Both the respondents misguided the applicant for approving a car loan from various banks.

Respondents misguided the applicant that credit card and debit card details are must for income tax return filing and for the faster processing of a car loan.

They played various social engineering techniques with Applicant and collected credit cards, debit cards and related confidential details of the applicant and performed below mentioned unauthorized transactions. (Contravention no.1 to 4)

Later both respondents realized the seriousness of cyber frauds they committed and Respondent 2 had provided a cheque of Rs.80,000 on behalf of both the respondents. Later Applicant presented the same cheque 4 times to the bank for clearing but it was returned every time. **Contravention details**

### **Regarding 1<sup>st</sup> Contravention.**

Access of credit card and online payment system without the permission of the owner or person in charge of a system and charging of services to the account of Complainant on 22-04-2009.

**Unauthorized transaction details:** Respondents had performed unauthorized transaction from the Axis bank credit card of the applicant amounting Rs. 15506 on 22-04-2009 from Kataria Automobiles, Ahmedabad for purchasing car accessories. (Axis Bank Credit Card Number: 4718 6100 0110 1683. (Annexure-1 of the complaint) Statement of Axis Bank Credit Card).

**Losses suffered due to unauthorized access and unauthorized**

**charging of services:**

Actual amount: Rs. 15,506

Bank Charges: Rs. 5,582 (Interest & penalty charges @ 36% p.a)

Total: Rs. 21,088

**Regarding 2<sup>nd</sup> Contravention.**

Access of credit card and online payment system without the permission of the owner or person in charge of the system and charging of services to the account of complainant on 23-04-2009.

**Unauthorized transaction details:**

Respondents again performed unauthorized transaction from the ICICI Bank credit card of the applicant amounting Rs. 10,000 on

23-04-2009 from K AMIT TEXTILES, Ahmedabad.

Later applicant came to know that K AMIT TEXTILES allowed such fraudulent credit card transactions for fake purchase and provided cash to the Respondents by keeping its commission. (ICICI Bank Card Number: 5176 5382 2574 7001 and Customer ID: 4729435. (Annexure-2 of the complaint)Statement of ICICI Bank Credit Card).

**Losses suffered due to unauthorized access and unauthorized**

**charging of services:**

Actual amount: Rs. 10,000

Bank Charges: Rs. 3,600 (Interest & penalty charges @ 36% p.a)

Total: Rs. 13,600

**Regarding 3<sup>rd</sup> Contravention.**

Access of ATM cum Debit card and online payment system without the permission of the owner or person in charge of the system and charging of services to the account of complainant on 22-05-2009.

**Unauthorized transaction details:**

Respondents had then performed unauthorized transaction from the ATM cum debit card of the applicant amounting Rs. 20,000 on 22-05-2009 from HDFC ATM Centre, Ashram Road, Ahmedabad. (HDFC Bank ATM cum Debit Card Number: 4214 2405 0571 0224

Account Number: 00691000144296 Customer ID: 27965038 (Annexure-3 of the complaint) Statement of HDFC Bank ATM cum Debit Card).

**Losses suffered due to unauthorized access and unauthorized charging of services:**

Actual amount: Rs. 20,000

Interest Loss: Rs. 1,600 (8% interest p.a)

Total: Rs. 21,600

**Regarding 4<sup>th</sup> Contravention.**

Access of ATM cum Debit card and online payment system without the permission of the owner or person in charge of the system and charging of services to the account of complainant on 31-05-2009

**Unauthorized transaction details:** Respondents had then performed unauthorized transaction from the ATM cum debit card of the applicant amounting Rs. 15,000 on 31-05-2009 from ICICI Bank ATM Centre, Shahibaug branch, Ahmedabad. (HDFC Bank ATM cum Debit Card Number: 4214 2405 0571 0224

Account Number: 00691000144296 Customer ID: 27965038 (Annexure-4 of the complaint) Statement of HDFC Bank ATM cum Debit Card).

**Losses suffered due to unauthorized access and unauthorized charging of services:**

Actual amount: Rs. 15,000

Interest Loss: Rs. 1,200 (8% interest p.a)

Total: Rs. 16,200

Also Applicant is facing a huge reputation loss because of delay in payments to the concerned banks. Such delay is due to lack of funds in various accounts which were targeted and defrauded by Respondents for committing cyber frauds.

**OTHER OVERHEADS:**

**Legal charges and court fees:**

1) Legal notice charges	Rs.2,000
2) Legal Consulting	Rs.8,000
3) Court fees.	Rs.5,000
4) Vakil fees.	Rs.10,000
5) Telephone and internet expenses	Rs.500
6) Commutation & petrol charges.	Rs.1,000

**Total: Rs.26,500**

**Complaint under Section/Rule/Direction/Order**

**Section 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,--

- (a) accesses or secures access to such 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;
- (h) charges services availed by a person to the account of another person by tampering with or manipulating any computer, computer system or network,

he shall be liable to pay damages by way of compensation to the person so affected. (Compensation matters Upto Rs.5 crore claim fall under the jurisdiction of Hon'ble Adjudicating Officer under I.T (Amendment) Act, 2008) .

**Power to adjudicate for the complaint**

Section 46(1A)

The adjudicating officer appointed under sub-section (1) shall exercise jurisdiction to adjudicate matters in which the claim for injury or damage does not exceed rupees five crore.

**Damages claimed**

**Damages Claimed** : 1,00,000Rs.

**Fees Deposited** : Rs. 5,000Rs.

5. Office of Adjudicating Officer issued second notice for the hearing to both the parties to appear before the Office on 29.06.2010 at 3:30pm. Advocate & Cyber law Consultant Mr. Manan thakker representing the petitioner appeared before the Office of Adjudicating Officer at Gandhinagar on the said date and time. Respondents again remained absent for the second date.
6. Office of Adjudicating Officer issued summon through the commissioner of police to both the Respondents for appearing before the Office on 26.08.2010 at 3:00pm.
7. Advocate & Cyber law Consultant Mr. Manan thakker representing the petitioner appeared before the Office of Adjudicating Officer at Gandhinagar. Both the Respondents remained present before the Office on 26.08.2010 at 3:pm. Adjudicating Officer provided opportunity to keep a lawyer to both Respondents for representing them in the office. Both the Respondents denied for such requirements and requested to carry out the proceedings.
8. Advocate & Cyber law Consultant Mr. Manan thakker representing the petitioner narrated charges under section 43 of I.T.Act,2000 to the office for misuse of credit cards and ATM cum debit cards of the Petitioner by the Respondents. He has also produced requisite evidences for such charges and asked for the compensation of Rs. 1,00,000 before the office. (annexure no. 1 to 4 of the complaint)
9. Advocate for the petitioner stated that Credit card and ATM cum debit card facilities are covered under the definition of Computer under section 2(i) of the I.T.Act,2000 and any access without the permission of the owner or person in charge of such facilities shall be covered by section 43(a) of I.T.Act,2000.



10. He further submitted that charging services from Credit card and ATM cum debit card facilities by Respondents to the account of Petitioner by tampering with or manipulating any computer shall be governed by section 43(h) of I.T.Act,2000.
11. Adjudicating Officer conveyed such charges to the Respondents and provided them opportunity of being heard.
12. Respondent no.1 Mr. Nainesh Modi confessed misuses of credit cards facilities and ATM cum debit card facilities of the petitioner without any permission from the petitioner and agreed that he contravened the provisions of section 43(a) and 43(h) of I.T.Act,2000 as mentioned in the complaint. Respondent no.2 Mr. Darshan Rajput also confessed misuses of credit cards facilities and ATM cum debit card facilities of the petitioner without any permission from the petitioner and agreed that he contravened the provisions of section 43(a) and 43(h) of I.T.Act,2000 as mentioned in the complaint.
13. Both the respondents confessed assistance to each other for misuses of credit cards facilities and ATM cum debit card facilities and agreed that they contravened the provisions of section 43(g) of the I.T.Act,2000 as mentioned in the complaint.
14. Both the respondents submitted statements of confessing the contraventions under section 43 of I.T.Act, 2000 and signed the same before the Office of Adjudicating officer. **(Copy of Confess statements attached herewith as Annexure-1 A & B)**
15. Advocate & Cyber law Consultant for the petitioner Mr. Manan thakker requested Adjudicating Officer to consider factors as per section 47 of I.T.Act, 2000 for declaring the quantum of compensation to the Petitioner.
16. Compensation of Rs. 85,000 for the Petitioner is granted considering the financial losses, opportunity losses, business relation and reputational losses with banks, legal expenses and other overheads mentioned in the complaint based on the confessing statements of both the respondents by the Office of Adjudicating officer. Both the Respondents agreed to pay equal amount of the aforesaid compensation to the Petitioner. Advocate for Petitioner also agreed to receive Rs.85,000 as a compensation under section 43 of I.T.Act,2000. Both the parties provided their consents on the aforesaid amount of compensation and decided to put a complete end to the matter before the office of Adjudicating officer and every other authority.
17. Respondents requested the office for some installment facilities for the payment of aforesaid compensation amount. Advocate & Cyber law Consultant for the petitioner agreed for the same and accordingly Adjudicating officer allowed 5 monthly installments for the respondents starting from the month of September to the month of January. Both the respondents are informed to deposit 10 cheques in the favour of petitioner in the office of



Adjudicating Officer, gandhinagar on 27.08.2010. Both the parties have deposited the 5 number of cheques as under in favour of the complainant.

Sr No	Cheque No. and Ammount	Name of the Bank and Account Number and Name.
1	879231, Rs.8500/-	Central Bank of India,Nava vadaj branch ,Naranpura,Ahmedabad.  A/C No-3063351433  D G Rajput.
2	879232, Rs.8500/	Central Bank of India,Nava vadaj branch ,Naranpura,Ahmedabad.  A/C No-3063351433  D G Rajput.
3	879233, Rs.8500/	Central Bank of India,Nava vadaj branch ,Naranpura,Ahmedabad.  A/C No-3063351433  D G Rajput.
4	879234, Rs.8500/	Central Bank of India,Nava vadaj branch ,Naranpura,Ahmedabad.  A/C No-3063351433  D G Rajput.
5	879235, Rs.8500/	Central Bank of India,Nava vadaj branch ,Naranpura,Ahmedabad.  A/C No-3063351433  D G Rajput.

Sr No	Cheque No. and Ammount	Name of the Bank and Account Number and Name.
1	010354, Rs.8500/-	IDBI Bank,Hitek Building,Paladi,Ahmedabad.  A/C No-54910200001540  N D Modi.
2	010355, Rs.8500/-	IDBI Bank,Hitek Building,Paladi,Ahmedabad.  A/C No-54910200001540  N D Modi.
3	010356, Rs.8500/-  Additional Chief Secretary Science & Technology Department Government of Gujarat	IDBI Bank,Hitek Building,Paladi,Ahmedabad.  A/C No-54910200001540  N D Modi.
4	010357, Rs.8500/-  Block No. 2, 2nd Floor Dept. of Science & Technology Paladi, Ahmedabad Gandhinagar-382010	IDBI Bank,Hitek Building,Paladi,Ahmedabad.  A/C No-54910200001540  N D Modi.
5	010358, Rs.8500/-	IDBI Bank,Hitek Building,Paladi,Ahmedabad.  A/C No-54910200001540  N D Modi.

(Photocopies of the cheques is attached at Annexure 2(A) (B)

AND ACOORDINGLY IT HAS BEEN DIRECTED TO HAND OVER THE ORIGINAL CHEQUES AS ABOVE WORTH OF RUPEES STATED IN THE ABOVE STATEMENT TO THE PETITIONER FOR FURTHER ENCASHMENT AS AGREED BY THE RESPONDENTS.

**ORDER**

The application for the adjudication is ordered with the above direction.

Dt. 3<sup>rd</sup> Feb. 2011

Gandhinagar



(Ravi S. Saxena)

Adjudication Officer

Government of Gujarat.

**Additional Chief Secretary  
Science & Technology Department  
Government of Gujarat**

**Block No.7, 5th Floor,  
Dept. of Science & Technology  
Sardar Patel Bhavan,  
Gandhinagar-382010**

મૌદી નૈનેશ દર્મશ કુમાર મોદી  
13 સુનાલા એપાર્ટમેન્ટ  
હરીદશનિ સોસાયટી  
ગાયત્રી હોસપાટલ ની સામે  
ભામનપુરા, ગલાવાડજ  
અમદાવાદ  
ઉંમર : 22

અમોને સિવિલ કમ્પલેન ની કોપી મળેલ છે. અમોએ તે બરાબર વાચેલ છે અને સમજેલ છે. એ કમ્પલેન મુજબ પૂર્વજોન દરુકી એ અમારી સામે આદારી એકર 2000 ફેકલ એક લાખ રૂપિયા નુ કમ્પેન્સેશન માંગેલ છે.

અમે કલુલીએ દીએ કે જોડગાન 43 મુજબ અમે ફેક્ટોરકાંડ કેલેક્ટર્સ નો દૂર ઉપયોગ કરી પૂર્વજોન ને કાઈનાન્સીયલ લાગલ રેજુરેશન ~~અને~~ ~~માન્ય~~ લોશ કરેલ છે. 42. અમે કલુલીએ દીએ કે 42500 રૂપિયા કમ્પલેશન પેટે મુકવાયુ આ રકમ અમારી સર્ફકા સમજદારી અને સમેલી વી આપવા બદાયેલ છે. અમે ઉપર જગાવેલ રકમ પાચ મહીનામાં સરખા માત્રે મુકવાયુ, જે વેલી અગાવડ અગ્રહન બનશે તો અમે આ રકમ પાચ મહીના પેલા પકા મુકવી દઈશું.

1	સપ્ટેમ્બર 2010	8500
1	ઓક્ટોબર 2010	8500
1	નવેમ્બર 2010	8500
1	ડિસેમ્બર 2010	8500
1	જાન્યુઆરી 2011	8500

મોદી નેનેશ દર્મશા કુમાર મોદી

13 મુનાલા એપરિમેન્ટ  
હરીદશન સોસાયટી  
ગાયત્રી હોસપાટલ ની સામે  
ભામનપુરા, ગલાવાડજ  
અમદાવાદ

ઉમેર : 22

અમોને સિવિલ કમ્પલેન ની કોપી મળેલ છે. અમોએ તે બરાબર વાચેલ છે અને સમજેલ છે. એ કમ્પલેન મુજબ પૂનાબેન દરુકી એ અમારી સામે આદારી. એકર 2000 ફેફલ એક લાખ રૂપિયા નુ કમ્પેન્સેશન માગેલ છે

અમે કલુલીએ દીએ કે જોડગાન 43 મુજબ અમે ફેફલકાઈ ફેલાઈડ નો દૂર ઉપયોગ કરી પૂનાબેન ને કાઈનાન્સીયલ લાગલ રેજુરેશન ~~અને~~ ~~માનવસિક નુકસાન~~ લોશ કરેલ છે. 42.

અમે કલુલીએ દીએ કે 42500 રૂપિયા કમ્પલેન્સેશન પેટે ચુકવીશુ આ રકમ અમારી સર્જકા સમજદાર અને સમોલી થી આપવા બદાયેલ છે.

અમે ઉપર જમાવેલ રકમ પાચ મહીનામાં સરખા માગે ચુકવીશુ, જો વેલી અગાવડ અનુકળ બનશે તો અમે આ રકમ પાચ મહીના પેલા પકા ચુકવી દઈશુ

1	સપ્ટેમ્બર 2010	8500
1	ઓક્ટોબર 2010	8500
1	નવેમ્બર 2010	8500
1	ડિસેમ્બર 2010	8500
1	જાન્યુઆરી 2011	8500

71-25/7/2020

સોનપુત દર્શન ગાંધીભાવ

၂-၂-၃၃ ဂျပန် ၄၂၈  
တရားရုံး အမိန့် အမိန့်  
အမိန့် ၁၃.

Q17: 25

ଅଧ୍ୟାୟ - ଦଶମ

ਮਰਦਾਨਾ ਕਾ ਰੰਗ ਜੀ,

આમાને સપ્લિન કમ્પાનિ ની કોપી આજ રોજ મળી  
 ૦૨ અગીકી આજ રોજ એ કોપી વાંચી અને સમજીને એ  
 કાનિન મંજુર પુનઃકરે દારૂકી આમાની કાનિ કાઠરી એક  
 ૨૦૦૦ રૂપિયા, ૬૦૦૦,૦૦ રૂપિયાનું કમ્પાનિન માગીને દી

[illegible]

၄၄၃၂ - ၂/၅/၂၀၇၀, အကျိပ်, ၈,၅၀၀

1/10/2010 8,500

1/11/2010 8,500

1/12/2010 8:50

2/1/2011 8,500

આને ઉપરાંત ૨૧ રકમ નં. ૫૬ પુનર્બિંદુ ના નામની  
 ૧૧-૨૭/૪/૨૦૧૦ રાજધારી ના ધોરણ સંધારી ૯૨,૫૦૦ આ, ૦ નીચે  
 ના કોર્ટમાં જમાં કરાવીને

ଆଜି ଶୁଭକାଳୀ ସମୟରେ ପ୍ରାର୍ଥନା କରିବା।  
ଶୁଭକାଳୀ ଦିନ।

Before one -

מח. שמואל שניר  
D.R. Rupp

26/05/2010

Pres. v. der G.P. Th. Schuler  
Dahlem  
26/8/2010

## Advocate for Petitioners

Manan Thekkel.

Manan [Received Copy]



Attachment 2(A)

AC Pay

Payable at par at all CBS Branches

दिनांक / Date 1/9/2010

PAY Pooja C. Darooka

रुपये RUPEES Eight thousand Five Hundred only

या धारक को OR BEARER

अदा करें रु. Rs. 8,500/-

खाता नं. A/C NO. 3063351433

सेन्ट्रल बैंक Central Bank  
ऑफ इंडिया Of India

नवा वाडज ब्रांच, नारनपुरा, अहमदाबाद, गुजरात - 380013  
Nava Vadar Branch, Naranpura, Ahmedabad, Gujarat - 380013  
NAVAWA / A IFSC : CBIN0280548

879231 3800160221

10

AC Pay

Payable at par at all CBS Branches

दिनांक / Date 1/10/2010

PAY Pooja C. Darooka

रुपये RUPEES Eight thousand Five Hundred only

या धारक को OR BEARER

अदा करें रु. Rs. 8500/-

खाता नं. A/C NO. 3063351433

सेन्ट्रल बैंक Central Bank  
ऑफ इंडिया Of India

नवा वाडज ब्रांच, नारनपुरा, अहमदाबाद, गुजरात - 380013  
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अदा करें ₹.Rs. 8500/-

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NAVAWA / A IFSC: CBIN0280548

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सेन्ट्रल बैंक  
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Central Bank  
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नवा वाडज ब्रांच, नारनपुरा, अहमदाबाद, गुजरात - 380013.  
Nava Vadaj Branch, Naranpura, Ahmedabad, Gujarat - 380013.  
NAVAWA / A IFSC: CBIN0280548

*Pb Kumar*

879235 380016022

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Annexure 2(3)

1-9-2010

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Hitek Building, Opp. Museum Paladi,  
Ahmedabad-380 007

IFSC : IBKL0000549

N.D. modi

⑈010358⑈ 380259008⑈ 549000⑈ 29

1-10-2010

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या धारक को OR BEARER

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रु. Rs. 8,500/-  
अदा करें

खाता सं. A/C No. 549102000001540

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IFSC : IBKL0000549

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