

**BEFORE THE ADJUDICATING OFFICER
UNDER THE INFORMATION TECHNOLOGY ACT, 2000**

Principal Secretary to Government,
Department of Information Technology, Government of Karnataka
6th Floor, 5th Stage, M S Building, Dr. B R Ambedkar Road, Bangalore 560 001
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No. ITD 17 PRM 2011

27th December, 2011

Complaint u/s 43 of the IT Act 2000

Complaint No.017/2011

Between:

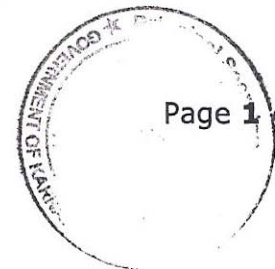
Complainant:

Gujarat Petrosynthese Ltd
No. 24, 2nd Main,
Doddanekkundi Industrial Area,
Phase I, Mahadevapura Post,
Bangalore 560 048

And

Respondent:

1. Axis Bank Ltd,
Body Corporate,
Mumbai.
2. Branch Manager,
Axis Bank, Marathahalli Branch,
Bangalore.
3. Branch Manager,
Axis Bank, Kharghar,
Navi Mumbai.
4. Branch Manager,
Axis Bank Dahisar East,
Mumbai.



5. Branch Manager,
Axis Bank, Karol Bagh,
New Delhi.
6. Branch Manager,
Axis Bank,
Tirunelveli Town.
7. Branch Manager,
Axis Bank,
Noida.
8. Branch Manager,
ING Vysya Bank Ltd,
Agra - 282 002.
9. Branch Manager,
Indus Ind Bank,
Agra - 282 002
10. Branch Manager,
Standard Chartered Bank,
Noida - 201 301.
11. Branch Manager,
HDFC Bank,
Chandni Chowk,
New Delhi.
12. AGM,
Information Security,
Axis Bank Limited.
13. Shikha Sharma,
Managing Director and CEO,
Axis Bank Limited.
14. Dr. Adarsh Kishore,
Chairman,
Axis Bank Limited.
15. Manoj Kumar,
A/c. No. 599010064315,
C/o. ING Vysya Bank Ltd,
Unit No. 5&6, Friends Center,
Block 38/4B, Sanjay Palace,
Agra - 282 002.



16. Manoj Kumar,
A/c. No. 0064DH0964010,
C/o. IndusInd Bank Ltd,
Block 48/6, Ground Floor,
Puneet Vrindavan Building,
Sanjay Palace,
Agra - 282 002.
17. Parvesh Khan,
A/c. No. 0064DH0963010,
C/o. Indus Ind Bank,
Block 48/6, Ground Floor,
Puneet Vrindavan Building,
Sanjay Palace,
Agra - 282 002.
18. Anurag Kumar
A/c. No. 53010644924,
C/o. Standard Chartered Bank,
Plot No. K-3, Brahm Datt Tower,
Ground and 1st Floor, Sector 18,
Noida - 201 301.
19. Abdul Kadir,
A/c. No. 02171000078934,
C/o. HDFC Bank,
Chandni Chowk Branch,
Delhi - 110 006.
20. Piraram Chaudhary,
Flat No. 302, Rose Tower,
Sec 35(E), Near CIS, 61,
Kharghar, Navi Mumbai,
Maharashtra - 410 210.
21. Sairam Enterprise,
Shop No. 3,
Banwari Pandey Chl Ganesh Nagar,
Highway Rawalpada,
Dahisar East,
Mumbai - 400 068.
22. Das International,
Room No. 39, 944/3,
Naiwala Faiz Road, Karol,
New Delhi - 110 005.



23. J. Muthurakesh,
No. 76, Parvathi Amman Kovil Street,
Palayam Kottai, Tirunelveli,
Tamilnadu – 627 002.

24. CC Traders,
Shop No. 18, 1st Floor,
Munshi Market Village,
Hiyarpur Sec 51,
Noida, UP – 201 307.

25. Shruthi Maintenance Service,
A/c. No. 015201000634,
C/o. Canara Bank,
HAL Road, Marathahalli,
Bangalore – 560 037.

This Complaint has been filed for adjudication under Section 46 of IT Act, seeking compensation by way of damages from the Respondents on the ground that there is a contravention of Section 43 of IT Act, causing loss to an extent of Rs.39,00,550/-. The Complainant has claimed damages to the tune of Rs. 52,44,400/-, which includes interest and out of pocket expenditure etc,. The Complainant has deposited the requisite fee before this Authority, as required under Rule 8 of the IT (Qualification and experience of adjudicating officers and manner of holding enquiry) Rules 2003.

The averments of the Complainant are that the Complainant-company is 34 years old, incorporated in 1977, having its Head Office in Mumbai and a production unit in Bangalore. The company maintains 2 current accounts with the Respondent - Axis Bank in Marathahalli, Bangalore. On 21/06/2011, the Complainant-company observed that there were 13 transactions indicating transfer of money from the current account of Complainant's account to unknown beneficiaries and that the said transactions were not authorized by the Complainant-company. The 13 fraudulent transactions / transfer of money amounted to wrongful withdrawal of Rs. 39,00,550/-. The Complainant-company filed a complaint with the Respondent / Axis Bank and also followed with a police complaint.



The Respondent-Bank acknowledges that the fraud had occurred but not made good the loss to the Complainant-company. The alleged fraudulent transactions and transfer of money were made electronically. The transfer of money to other banks have been effected through RTGS and within the Axis bank through NEFT system and the amounts are stated to be as under:-

Beneficiary Bank	No. of disputed transactions	Amount (in Rupees)
Axis Bank	7	13,50,540
Indus Ind Bank	2	14,00,000
ING Vysya	1	3,00,000
SCB	1	8,00,000
HDFC Bank	1	50,000
Canara Bank	1	10
Total	13	39,00,550

The contention of the complainant is that the electronic space which was accessed for inflicting loss to the Complainant-company was owned and controlled by the Respondent - Axis Bank, which had powers to grant access to any person. The Respondent Bank should, therefore, own up the responsibility for any unauthorized access to the account of the client.

In their defence, Respondent No. 2 - Axis Bank has stated that the complaint is not maintainable under section 43 of the IT Act as the provisions of section 43 are not applicable to the Respondent Bank. Further, Respondent is of the view that this Authority has no territorial jurisdiction to entertain this complaint as the location of the computer network system and server is in Mumbai. Further, contention of the Respondent is that since the complaint of the Complainant is also under investigation by the Police, this Authority cannot adjudicate in the matter till the investigation is completed.



The contentions of both the Complainant and Respondent-Bank have been taken into consideration. With respect to the arguments of the Respondent that this Authority has no territorial jurisdiction, it is concluded that the contention of the Respondent-Bank is incorrect. The territorial jurisdiction of the Authority to adjudicate arises from the place of offence where the cause of action has arisen. In this case, the offence originated in the Marathahalli Branch of Respondent Bank in Bangalore and therefore the cause of action has arisen in Bangalore which is the territorial jurisdiction of this Adjudicating authority.

However, the contention of the Respondent that the Complainant has wrongly invoked Section 43 seeking adjudication and compensation under Section 46 of IT Act does hold water. Section 43 of the IT Act relates to a person and not a body corporate. The IT Amendment Act of 2008 has made a separate provision for a body corporate to seek compensation. In the instant case both the Complainant company and the Respondent Bank are body corporates.

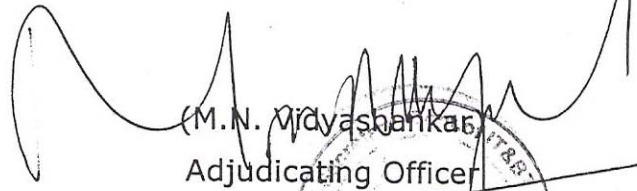
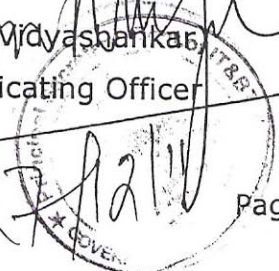
ORDER

In view of the facts and circumstances explained above, the complaint of the Complainant Company is, therefore, not sustainable and adjudicable invoking provisions of section 43 of IT Act.

Hence, the Complaint is not maintainable.

Dictated to Stenographer and postscript edited.

Order pronounced in the open Court on this day, the 27th December, 2011.


(M.N. Vidyashankar)
Adjudicating Officer

27/12/11