

IN THE OFFICE OF THE ADJUDICATING OFFICER

**SH. RAJESH AGGARWAL,
SECRETARY, (INFORMATION TECHNOLOGY),
GOVERNMENT OF MAHARASHTRA**

Complaint No. 4 of 2011 dated 09/11/2011

IN THE MATTER OF

1. Poona Auto Ancillaries Pvt. Ltd., Pune

..... **Complainant**

Versus

1. Punjab National Bank, Head Office, New Delhi
2. Branch Manager, Punjab National Bank, Kirkee, Pune
3. Branch Manager, Punjab National Bank, Kathua, J&K
4. Branch Manager, Punjab National Bank, Mulund, Mumbai
5. Branch Manager, Punjab National Bank, Bhavnagar, Gujarat
6. Branch Manager, Punjab National Bank, Vyara, Gujarat

..... **Respondents**

This is proceedings of a complaint filed by the complainant for Adjudication under section 46 of the Information Technology Act, 2000. In keeping with the basic principles of natural justice and reasonable opportunity, detailed hearings were held in which both parties i.e. the Complainant and the Respondent(s) were presented with equal and adequate opportunities to present and defend their case. Following the completion of hearing and response of both the parties, conclusion has been arrived at and the judgment is being delivered herein.



ORDER

1. The Complainant in this case is a Private Limited Company, having its registered office in Pune. Manmohan Singh Matharu is the authorized representative and Managing Director of the Complainant Company. On 23/08/2011, Rupees 80,10,000/- was fraudulently transferred from the current account of the Complainant with PNB to PNB's, Jammu and Kashmir Kathua Branch in the account of M/s Sutlej Textiles, which is a K.K. Birla group firm. The amounts were transferred in 40 transactions of Rs. 2 lakh each and one transaction of Rs. 10,000/- in quick successions. Out of the Total Rs. 80.10 lakh transferred into the account of M/s Sutlej Textiles, Rs. 40 lakh was transferred to a PNB, Mulund a/c of Maxima Trading Company Private Ltd owned by James Pulikotti, Rs. 20 lakh was transferred to PNB, Bhavnagar, Gujarat a/c no. 0051002100049723 of Imran Kalva of Samudra Trading Company in and Rs. 20 lakh was transferred to PNB, Vyara, Gujarat a/c 6698002100000235 of Dalvirsingh Khurana.
2. From the Rs. 40 lakh transferred to PNB, Mulund a/c of Maxima Trading Company Private Ltd, Rs. 60,000/- was transferred to account of Zeenat Mansoori in Syndicate Bank branch of New Marine Lines, Mumbai and Rs.38 lakh was transferred to an account of M/s Ascent Global Consultant of Rambharosh G. Safi in Shyamrao Vitthal Co-operative Bank.
3. The Complainant filed a complaint with PNB immediately, and also filed a complaint with police on 25/08/2011.
4. According to Sutlej Textiles, they issued a letter to the PNB on 24/08/2011 regarding some unauthorized debits and credits in the account on 23/08/2011. Police complaint was also filed regarding hacking of the account in Kathua Police station on 25/08/2011 and letter was sent to the Bank to deactivate their a/c. They claim that their



password etc. were hacked and not leaked. The Bank has subsequently found out that the account was logged in from various places, and Bank has written to Sutlej Textiles on 29/02/2012 that their account was accessed from January 2011 to May 2011 from IPs traced to Delhi, Mumbai and Hyderabad. Vide their reply dated 01/03/2012, the company has replied that officially they never accessed the account from these places, and this indicates hacking of the account. The IP addresses used in the online transactions do not belong to the Sutlej Textiles and the company official claimed to not have travelled to Hyderabad, Delhi or Bangalore during the period the aforementioned transactions took place. In his statement to Pune police on 4/4/2012, the concerned official from the company, Shri Pareek has also mentioned that before the big amount of Rupees 80 lacs came into their account, an amount of Rupees 1000 had been withdrawn from their account and transferred fraudulently to account number 1277002100020819.

5. An interesting fact in this case is that Police investigation report in this case suggests that none of the holders of the Punjab National Bank accounts in which money was transferred from Sutlej Textiles could be traced at the address provided by their respective Banks.
6. According to the Police report, the account of Imran Kalva was opened with Introducer Pratik Gandhi of M/s Vitarag Impex and both the account holder and introducer could not be traced. The account of Dalvirsingh at Vyara Branch was opened by the Branch Manager without following any procedure. The account was opened was "Known to the Branch Manager", however the account holder is now absconding.
7. Another important fact in the case is that the Complainant had shared its password and account details with the accountant of the Complainant Company and with his son, which according to the PNB, is against the terms and conditions of the PNB. Further, the Complainant has also accepted responding to a phishing mail. Police has investigated the IP



addresses and the phishing mail received by the Complainant. The mail was sent from kishorshah52@usa.net mail id of US based service provider. The IP address used in online fund transfer was initiated from Andheri ISP In2Cable, ISP Tata Teleservices and ISP Reliance. It is also placed on record that the Complainant had NOT registered for mobile alerts from the PNB.

8. According to the Respondents, PNB, the complaint is not maintainable under Sec 43 of IT act. Their contention is that the Adjudicating officer has neither territorial nor subject matter jurisdiction in the matter as the in the Banking Service terms and conditions that the complainant has signed clearly states Governing Laws and jurisdiction to be of courts and tribunals of New Delhi.
9. They allege that the Complainant fell prey to an email sent by some unknown source. PNB claims that they have all policies and checks in place and that penetration testing has been done by KPMG. They also state that RBI guidelines on KYC have been complied with. In their defense, PNB also claims that the Complainant had also not availed of the banking facilities for corporate account like monitoring and management of a/c, workflow and authorization levels user profiles etc and was using only single user id.
10. They state that PNB has responded actively and helped customer to freeze money in a/c of 3 banks Rs. 34.04 lakh. Vide interim order 9/12/2011, this office had asked PNB to transfer this frozen amount of Rupees 34.04 lacs to the Complainant, which was subsequently done by the Bank. In fact, the Investigation Report submitted by Chief Manager, Cyber Crime Monitoring Cell, IT Division, Head Office of PNB says that the Bank has reversed funds to the tune of Rs. 37,64,675/- to the customer. This office appreciates this pro-consumer step taken by the Bank.
11. I must also put on record, that during the case before me, the Bank officials have really taken some good steps in trying to help the customer, and to do their internal investigations. Their additional/supplementary



written statement dated 14/02/2012, 14/06/2012 and 17/09/2012 give detailed description of security scenario, the RBI guidelines, and Bank's internal investigations in the matter. The Bank has also approached the Finance Intelligence Unit (FIU-IND) which is a Central National Agency of the government of India for receiving, processing information related to suspect financial transactions.

12. I will start with the objection of the Respondent that the adjudicating authority does not have either subject matter jurisdiction or territorial jurisdiction in this matter. Regarding territorial jurisdiction, I am of the view that since the Complainant held account in State of Maharashtra, the adjudicating officer has the territorial jurisdiction. Though the Banking Service terms and conditions that the Complainant had signed stated that Governing Laws and jurisdiction would be of courts and tribunals of New Delhi, since such terms and conditions are standard and the customers do not have a negotiating power with respect to such terms and conditions, it would be unfair to deny the Complainant an opportunity to file a complaint in the state in which he is residing and has his account. Besides, the Respondent also has branches in State of Maharashtra and the fraudulent transactions originated from Maharashtra. Thus, I would not deny the Complainant an opportunity to be heard on pleas of lack of territorial jurisdiction by the Respondent.
13. With respect to the subject matter jurisdiction, according to me, under Section 46 of the Information Technology Act, 2000 (IT Act), if there is any contravention of provisions of IT Act, then the adjudicating authority has the authority to admit a complaint and award damages or penalty as per the provision of the IT Act. It needs to be examined whether, in the present case, any provision of the IT Act was contravened or not to determine if the adjudicating authority has any jurisdiction in this matter. In this regard, I am of the view that provisions of Section 43 of the IT Act certainly get involved as there has been an unauthorized access to data of not only the Complainant but also of Sulej Textiles. What needs to be



examined is whether the Respondents are liable for the contravention of Section 43A of the IT Act.

14. It is clear from the facts of the case that Sutlej Textile was not involved in the fraudulent transaction. Rather, it was also at the receiving end of the fraudsters. It is evident from the police report that the transactions were not undertaken by Sutlej Textile itself and that their account was used by fraudsters for accomplishing the fraud. Thus, no case is made out against Sutlej Textiles.
15. Investigation Report submitted by Chief Manager, Cyber Crime Monitoring Cell, IT Division, Head Office of PNB, and Police Report dated 21/08/2012 bring some interesting things to light:
 - (i) Account of Sutlej Textiles had been compromised since a few months, and was also "tested" with a Rupees 1000 transfer before the big crime.
 - (ii) Regarding Bhavanagar account, where Rs. 20 lacs were transferred, the customer visited the branch on 29/08/2011 to withdraw money, but raised suspicion. He never came again. The Police report says that someone in the bank "alerted" the criminal. The Bank report also says that high value transactions were frequently seen in this account, where majority of funds were instantly drawn after receipts. I am intrigued why this never raised alarm bells in the bank's system.
 - (iii) In Mulund account transactions, one James George speaks about his 3.5% commission. This angle should have been further investigated by the police.
 - (iv) In Vyara, Gujarat account of Dalvirsingh Khurana, the customer withdrew Rs. 17.70 lacs on 24/08/2011 in six self-favouring cheques. That so much cash withdrawal went unnoticed is a telling commentary on the laxity in the banking system. Also, Rs. 50,000 was withdrawn from various ATMs. Neither PNB nor the Pune Police has taken any steps to get CCTV footage and try to identify the criminal.
 - (v) Regarding the account of Michelle Maxima trading company, the Bank report says that MD of the account, Ms. Kanupriya got the RTGS



transaction of Rs. 38 lacs done. I am surprised why the Pune police have taken no steps to apprehend Ms. Kanupriya.

(vi) In Samudra Trading Company account at Bhavnagar, Gujarat, Rs. 20 lacs was withdrawn around 1 pm on 23/08/2011 through 3 self-cheques. The fact that so much cash withdrawal went unnoticed is a telling commentary on the laxity in the banking system.

16. In light of the foregoing discussions, in my considered view:

- a) The Complainant held a current account with PNB. For such corporate accounts, I understand that the PNB has stricter and more effective security services. However, these services were not availed by the Complainant. The Complainant had not even subscribed to the SMS alert services available with PNB for such accounts. Further, he responded to a phishing email. Hence, the complainant has to share part of the blame.
- b) Criminals used accounts of PNB opened on fake papers to defraud the complainant. This indicates that PNB has generally been very lax with the KYC norms. Also, major cash withdrawals were allowed at various bank branches, which is a major contributing factor to the crime. This was the fundamental reason that criminals were able to defraud the complainant.

I have carefully gone through the "*Master Circular – Know Your Customer (KYC) norms / Anti-Money Laundering (AML) standards/ Combating of Financing of Terrorism (CFT)/Obligation of banks under PMLA, 2002*" dated 2nd July 2012, and find that PNB has violated para 2.8 of the circular regarding Money Mule Accounts by not taking sufficient precautions in this regard.

I have also carefully gone through the "*Guidelines on Information*



security, Electronic Banking, Technology risk management and cyber frauds” issued by RBI on 29/04/2011. It has detailed instructions to Banks on Fraud Risk Management; need of strong KYC norms to prevent cybercrimes; Transaction monitoring; Dedicated email ID and phone number for reporting suspected frauds; Mystery shopping and reviews; reporting of frauds as indicated in the RBI circular, dated July 1, 2010; Filing of police complaints (Banks should readily share data and documents requested by the police even in cases where the bank in question is not the victim of the fraud but has been a receiver of fraudulent monies into its accounts); customer awareness etc. It is very clear that PNB falls short on many of these counts, which has contributed to its customer getting cheated of his hard earned money. Chapter 6 on Cyber Frauds in the RBI notification dated 29/04/2011 clearly mentions that ***“... the response of most of the banks to frauds in these areas needs further improvement, thereby avoiding putting the entire onus on the customer ...”***.

I firmly conclude, based on these discussions and as detailed in para 15 above, that PNB Bank has failed to prevent the offence under Section 43 of IT Act, by its wilful negligence on multiple counts as indicated above, and is thus guilty of offences in Section 85 read with sections 43 and 43A of IT Act 2000 (as amended in 2008), and should shoulder responsibility in making good the losses incurred by the complainant. I order the Respondent i.e. **PNB to pay damages to the tune of Rupees 45,00,000 (Rupees 45 lacs)** by way of compensation to the Complainant, to partially cover his loss and costs. This will practically cover the original loss, but will not cover the Interest lost, which alone would come to not less than Rupees 20 lacs if calculated at about 15% per annum interest. The complainant must bear this Interest loss, as he was careless as mentioned in previous para (a).

c) I must also comment on the investigation by the Police. After lot of prodding by me, the police teams went to Gujarat, Kathua etc. and



recoded the statements. But as detailed in para 15 above, they had many leads (IP addresses, ATM CCTV footage, bank branches footage, some persons in the whole crime chain etc.) which could have been further pursued, but has not been done. The crime committed is not a one person act, but well planned conspiracy by many persons. That all of them are roaming free, robbing other innocent citizens, is a scary thought. That such a big cybercrime was not even reviewed by the Pune Police commissioner, or even the DCP, indicates that the Pune police is still not sensitised to cybercrimes. A majority of credit card and net banking fraud cases in Maharashtra are from Pune city.

As per powers vested in Adjudicating officer under Rule 12 of the "Information Technology (Qualification and Experience of Adjudicating Officers and Manner of Holding Enquiry) Rules, 2003" notified by the Central Government on 17th March 2003, I hereby ask Police Commissioner Pune to immediately review this crime at his level, and put a DCP rank officer in charge of this investigation. Director General of Police, Maharashtra should organize special training classes for all the personnel posted in cybercrime cells across the state, and to ensure that sufficient manpower is available to investigate cybercrimes.

d) No separate orders as to costs.



Rajesh Aggarwal
Secretary (Information Technology)
Government of Maharashtra,
Mantralaya , Mumbai- 32