

TELECOM DISPUTES SETTLEMENT & APPELLATE TRIBUNAL

NEW DELHI

Dated 2nd December 2025

Cyber Appeal No. 8 of 2021

With

MISC APPLICATION 413/2021

Vodafone Idea Limited

... Appellant

Vs.

Krishan Lal Nain & Anr

... Respondents

BEFORE:

HON'BLE MR. JUSTICE RAM KRISHNA GAUTAM, MEMBER

Appellant

: Mr Meet Malhotra, Sr. Advocate alongwith
Mr Mansoor Ali Shoket, Mr Nitin Kala, Mr
Kunal Singh, Mr Tanmay Jain & Ms
Kanishka Rawat, Advocates.

For Respondent

: Mr. Vakul Sharma & Dr Nisheeth Dixit
Advocates for Respondent No.1

Mr Krishan Kumar, Mr Hitesh Choudhary &
Mr Seemant K Garg, Advocates for
Respondent No.2

JUDGMENT

1. This Appeal, under Section 57(1) of Information Technology Act, 2000, read with Rule 3(1) of the Cyber Appellate Tribunal (Procedure) Rules, 2000, has been filed by Vodafone Idea Limited, Appellant, against Krishan Lal Nain, Designated Partner, Kaytele Infracon LLP, and one other, against Impugned Judgment, of Learned Adjudicatory Authority, State of Rajasthan, Jaipur, dated 06.09.2021, passed in Cyber Complaint No.1 of 2020, with a prayer for allowing this appeal and setting aside Impugned Judgment.
2. In brief, the memo of appeal contends, that the complaint was filed before Learned Adjudicatory Authority, by Shri Krishan Lal Nain S/o Shri Bhiya Ram Nain, Designated Partner Kaytele Infracon LLP, Head Office at C-28, Keshav Nagar, Civil Lines, Jaipur, against Telephone Service Provider, Vodafone Idea Limited, earlier known as Vodafone Mobile Service Limited, for damages in the tune of Rs. 34,50,000/- (Rupees Thirty Four Lakhs Fifty Thousand only) under Section 43A of IT Act, 2000 as amended by Act of 2008, read with Information Technology (Reasonable Security Practices and Procedures and Sensitive Personal Data or Information) Rules, 2011, for a cause of

action, alleged to have arisen on 01.06.2017, with this contention that the complainant is designated Partner in Kaytele Infracon LLP, having its Head Office at C-28, Keshav Nagar, Civil Lines, Jaipur, which has an OD Account bearing No. 0373651100003605 with IDBI Bank Limited, for Net Banking and the said account was linked with his mobile number 9413377307, issued by Respondent No.1 and this number was erstwhile with previous Telephone Service Provider, and was subsequently, ported out in year 2012, to Respondent - Vodafone Idea Limited. The SIM issued by Vodafone Idea Limited bore No. 404602747239710 and the same was being used by the Complainant, in his Apple Mobile Handset bearing IMEI No. 13540004996840.

3. That on 25.05.2017, the Complainant was not able to have a call by its mobile number at around 7.20 P.M. and it was also not able to receive any call on above cell phone, because of non-activity of Network on account of SIM having become non-operational. On 26.05.2017 Complainant visited the nearby Vodafone Store near Junction Bus Stand, Hanumangarh, at about 1.30 P.M and made a complaint with regard to this non-operational Network. The Store Employee told the Complainant that the SIM had got corrupted and asked to apply again. The Complainant after completing all formalities, got another SIM bearing No. 404602787975142. But it was also not operational. On the

same day, in the evening, the Complainant informed about non-operational and non-functional status by this new SIM, to the Store Employee, wherein, assurance about activation was given. But it was not active till next date. Again, an approach to above Vodafone Store was made. On 30.05.2017, Complainant visited Vodafone Store at Ajmer Road, Jaipur and made the similar request for activation of above SIM. Then after, it could be got activated at about 12 Noon, on 31.05.2017.

4. On 01.06.2017 morning, Complainant's son Akshay Nain, who too is a Designated Partner in above LLP, visited IDBI Bank Limited, where he came to know about series of withdrawals, between 25.05.2017 to 29.5.2017, during non-operational status of SIM, amounting to syphoning of Rs.68,50,000/- (Rupees Sixty Eight Lakhs Thousand Only) from OD Account of Kaytele Infracon LLP. This was instantly complained with no such transaction by above firm. A request by Letter, dated 01.06.2017, having the mention of above fraudulent transaction, was made to Manager of IDBI Bank Limited, Hanumangarh, and Bank Statement, dated 01.06.2017 revealed, the details of above fraudulent transactions, having withdrawn and transferred in six series, given in above chart. It came to knowledge that somebody had hacked the Net Banking of the Complainant, and

after having OTP on the Registered Mobile Number 9413377307, had effected those fraudulent transactions.

5. A complaint, at Police Station, was got registered as Cyber Crime No. 13 of 02.06.2017 and during investigation, it came to notice that old SIM of Mobile connection, was replaced with new SIM, on 25.05.2017, from Vodafone Store at Alwar, Rajasthan, by some Bhanu Pratap S/o of Vishwanath R/o Faizabad, by way of a fake driving Licence and forged Election Commission's Identity Card to the Customer Care Executive of Vodafone, and without verifying the same with the original CAF form, this duplicate SIM was got issued and activated, resulting this fraudulent transaction, totalling about Rs. 68,50,000/- (Rs. Sixty Eight Lakhs Fifty Thousand Only). And this entire fraud was outcome of above act of conspiracy and duplicate SIM card. After investigation, Charge Sheet No. 3 dated 07.12.2017, was got filed against accused Manish Mittal, Ashok Singh Chandel, Shailendra Singh Thakur and Rakesh Ashok Patil, wherein, other accused persons were also got arrested. During the course of Trial, the money syphoned, by way fraudulent transaction in question, was recovered as Rs. 11,00,000/- (Rupees Eleven Lakhs Only) from Manish Mittal, Rs. 10,00,000/- (Rupees Ten Lakhs Only) from Shailendra Singh Thakur, Rs. 16,44,000/- (Rupees Sixteen Lakhs Forty Four Thousand Only) from

Premchand Babu, Rs.2,14,000/- (Rupees Two Lakhs Fourteen Thousand Only) and Rs.14,30,000/- (Rupees Fourteen Lakhs Thirty Thousand Only), two bank drafts with a return of Rs. 6,56,000/- (Rupees Six Lakhs Fifty Six Thousand Only) by Premchand Babu. The accused Rakesh Ashok Patil was also deposited Rs. 19,50,000/- (Rupees Nineteen Lakhs Fifty Thousand Only) but it was subsequently withdrawn after the dismissal of Bail Application. Rs.5,00,000/- (Rupees Five Lakhs Only) were said to be syphoned by one Vishal Singh, but that is yet to be recovered. Hence, a total of Rs.44,00,000/- (Rupees Forty Four Lakhs only) has been recovered from a Sum Total syphoned amount of Rs. 68,50,000/- (Rupees Sixty Eight Lakhs Fifty Thousand Only) resulting a balance of Rs. 24,50,000/- (Rupee Twenty Four Lakhs Fifty Thousand Only), yet not recovered.

6. This unauthorised fraudulent syphoning of money was owing to undeniable direct nexus between blocking of SIM card of the Complainant, and issuance and use of duplicate SIM card by the fraudster, with unauthorised financial transactions from the account of Complainant, and it was the negligence of Telecom Service Provider -Vodafone, in issuing duplicate SIM to a fake person, without following the procedure laid down by Government of India. The guidelines, relating to proper and effective subscriber verification, was also not

taken in account. SIM card is with sensitive personal data of its user, with financial and personal information, and there are clear guidelines, issued by DOT, regarding issuance of SIM card, as well as duplicate SIM Card. The IT Act and Rules made therein, are also with a relief forum, in case of those fraudsters syphoning money by Cyber Fraud.

7. Hence, this complaint with above prayer. Wherein, reply was filed by Telecom Service Provider with specific contention that there was no nexus in between Telecom Service Provider and alleged fraudsters. The present Complaint is not maintainable, as the Complainant has neither approached the forum with correct fact. It has not suffered any loss as such, without there being any loss, he is not liable to prosecute against the answering Respondent. This Telecom Service Provider had committed no irregularity, or is neither involved in the commission of this alleged occurrence. The present Complaint is not maintainable, without being impleaded, the Bank of the Complainant, as necessary Party. Complainant and the Bank have their own relationship, and without being shown as to whether any loss has been suffered by the Complainant, or there was no involvement of the Bank or the Complainant himself in the commission of offence, the present Complaint cannot be held maintainable. There is a

contributory fraud/negligence, deficiency on the part of Bank, irrespective of whether or not the transaction is reported by the customer. Third party breach were deficiency lien, neither with the Bank, nor with the customer, but lies elsewhere in the system, and the customer notifies the Bank within three working days of the receiving of the communication from bank regarding the fraudulent transaction. The money has been deducted from the Bank Account of the Complainant and the role of the Telecom Service Provider, at max, was limited to delivery of message on the mobile phone, while the Banking Account are being operated by using user ID and Password or through Banking application, which are neither known to the Telecom Servicer Provider, nor it is responsible, nor it carried, nor able to know. Hence, the OTP are information for transaction which used to be delivered on the email ID of the person user, is also an alternative mode for making information. But in present case, no such precaution was there. Moreso, the Complainant is the individual person. But the account is being said to be of limited liability partnership, which is entirely a different personality, under Limited Liability Partnership Act, 2008. The Complainant has filed the present Complaint in his own personal individual capacity. Whereas, the account from which the fraud transaction happened, was in the name of Kaytele Infracon LLP

and further the mobile connection was taken, in the capacity of executive on behalf of Sunlight Computer and therefore, the Complaint could be filed in the capacity of executive of Sunlight Computer. Accordingly, the present Complaint is suffering from non-joinder/ mis-rejoinder of necessary party. The Complainant has no locus to file i.e., the present case in his personal capacity, for the fraud transaction, which happened from the account of LLP firm. There is alternative efficacious remedy available to Complainant. Hence, this Complaint was not maintainable. The jurisdiction of the Adjudicatory Authority was also not there, because the subscriber's verification, while activating SIM, falls within the jurisdiction of Department of Telecommunications (DoT), Government of India, and the DoT is the appropriate authority to decide and adjudicate upon the issue on failure in the verification and imposing consequential Penalties.

8. As per settled proposition of law, the Sensitive Personal Data is also not with Telecom Service Provider, nor the issuing of duplicate SIM card, or its activation, comes within the purview of Information Technology Act. Section 43 and 43A of Information Technology Act, 2000, does not include this act of issuing of duplicate SIM, by a Telecom Service Provider. The Sensitive Personal Data, Reasonable Security Practices, and Procedure of such Sensitive Personal Data, or

information under the Rule of 2011, is also not attracted in present case. Hence, the prayer was to dismiss the Complaint.

9. The Adjudicatory Authority, after hearing both side, passed the Impugned Order, whereby the award of Rs. 27,53,183/- (Rupees Twenty Seven Lakhs Fifty Three Thousand One Hundred and Eighty Three Only) has been made against Telecom Service Provider, Vodafone Idea Limited, present Appellant, within a month of Judgment, in the account of Complainant, with 10% cumulative interest, over above amount, with a specific mention of non-realisation of Rs. 24,50,000/- (Rupees Twenty Four Lakhs and Fifty Thousand Only), after deducting Rs. 44,00,000/- (Rupees Forty Four Lakhs Only) from total amount of Rs. 68,50,000/- (Rupees Sixty Eight Lakhs Fifty Thousand Only). The amount of fee paid for this adjudication in the tune of Rs.72,000/- (Rupees Seventy Two Thousand Only) and the interest accrued from the due, till order, in the tune of Rs. 2,31,183/- (Rupees Two Lakhs Thirty One Thousand One Hundred Eighty Three Only) and against this judgment, present appeal.
10. To make and precise and the arguments, advance by Learned Senior Counsel, Mr Meet Malhotra as well as Learned Mr Vakul Sharma, it

had been fairly admitted that the liability of Telecom Service Provider vis-à-vis jurisdiction u/s 43 and 43A of Information Technology Act, 2000, the issuance of duplicate SIM card, and the security practices for issuing and activating the same etc., etc., which were the legal objections made before Learned Adjudicatory Authority has been settled by this Tribunal, in many previously decided Appeals mentioned below :

CYBER JUDGMENTS

<u>Cyber Appeal No.</u>	<u>Name of parties</u>	<u>Date of disposal/ judgment</u>
CA 1 of 2010	ICICI Bank Vs Umashankar Sivasubramanian	10.01.2019
CA 5 of 2013	ICICI Bank Vs Saurabh Ravi Shankar Jain	24.09.2019
CA 16 of 2015	Vodafone Idea Vs UOI	25.09.2024
CA 18 of 2015	Dhanlaxmi Bank vs Rajesh Aggarwal	25.09.2024
CA 33 of 2015	Punjab National Bank vs Suhas Enterprises	16.05.2024
CA 7 of 2019	Vodafone India Vs Mrs. Harshada Bindu Dholepatil	25.09.2024
CA 6 of 2014	Vodafone India Ltd. Vs Mr. Prashant Mahadeorao	12.09.2024

	Buradkar	
CA 8 of 2014	The Branch Manager, SBI Vs Managing Director Nakoda Chemicals	21.01.2020
CA 14 of 2015	State Bank of Patiala Vs Suhas Enterprises	25.09.2024
CA 10 of 2019	Indusind Bank Vs Amos Corporation	07.02.2025
CA 11 of 2019	Mohit Rajpal Vs My Taxi India	15.05.2019
CA 10 of 2018	Vodafone Idea Limited Vs. Rajkumar Shreelal Singhee & Ors	28.11.2025

11. Hence, those propositions are settled one, as precedent. Hence, they need not to be further reiterated and written in present Appeal.

12. But, the main point which makes the present Appeal different with those decided Appeals, is that this Complaint has been filed by a designated Partner in its own name for the account, being maintained by LLP Partnership firm, and as per LLP Partnership Act, 2008, Sections 3,4,5 and 14, the LLP Partnership is a distinct juristic Personality, other than its Partners. And this has been propounded by Hon'ble Mumbai High Court in 2016 SCC Online Bombay 1404, Wind World (India) Limited, a Company incorporated under the laws of India and having

its registered office at Wind World Tower, Veera Industrial Estate, Veera Desai Road, Andheri (West), Mumbai and Another Versus Enercon GmbH, a Company duly incorporated and existing under the laws of Germany and having its registered office at Dreekamp 5, D26605, Aurich, Germany and Another as well as by Hon'ble Apex Court in Dhanasingh Prabhu Versus Chandrasekar and Another (2025) 10 SCC 1996.

13. Hence, the present Complaint was not maintainable and it was raised before Learned Adjudicatory Authority. But it was not taken in the note, nor discussed in the Judgment.

14. The other is the liability of the Bank, wherein, account was being operated and from where no OTP was generated, as per Call Detail Record, summoned on the instance of Appellant, for perusal by this Appellate Tribunal. Hence, Telecom Service Provider was with no liability.

15. From the very perusal of those two judgments, it is apparent that those two judgments have been on the facts, which are entirely different, from the present one. The Bombay High Court Judgment, is with regard to arbitration proceeding, wherein, liability for the fault of one partner was imposed on other Partner, in accordance with the old provision of Indian Partnership Act, wherein Partners were

responsible for the liabilities of Partnership firm, as well as misconduct of their partners. And it was observed that in LLP partnership firm registered under 2008 Act, the situation is entirely different. The designate Partner of any LLP firm are distinct than the firm itself and they will be with limited liability, agreed by them towards the misconduct of any other designate Partner or Firm i.e., the situation or matter in issue, in present Appeal, was not even in ratio decendi or stare decises of above proposition of law.

16. The Judgment of Hon'ble Apex Court is also with regard to liability in Criminal Jurisdiction u/s 138 of NI Act, with regard to dishonour of a cheque, issued for and on behalf of a LLP firm, and subsequently, dishonoured. Hence, the designate partner, being of independent capacity than the LLP firm, having notice if not Director or acting for that firm, will not be treated as a notice to that LLP firm. Hence, the entire aspect in above judgment, is also not in consonance with present fact in issue.

17. In present case, no doubt, the Judgment of Learned Adjudicatory Authority is cryptic, with no specific mention in the correct name of the Complainant. Whereas, the Complaint itself is with a very precise mention that Complainant is a designate Partner of Limited Partnership Firm, having its account in above Bank. And this was the

fraudulent transfer and syphoning of money from the account of that firm. The signature of the designate Partner at every page of the Complaint, is with a specific mention of firm Kaytele Infracon Company and the signature is in authority of designate Partner. Hence, in all form and favour, the Complaint, was for and on behalf of LLP firm, and the award of compensation was to be in that account of LLP firm itself. Hence, it can never be held that this designate Partner was with no authority to file this Complaint, for and on behalf of above LLP firm. Hence, this argument is not supported with the fact of present Complaint, as well as Appeal.

18. So far as Bank is concerned, though there is not a party to whom or against whom, adjudicatory order was passed, but it was a party in the array of party and notices to it was issued, its version was also heard. Hence, the nexus and the activation of SIM card issued, by way of documents, not in consonance with the CAF form, previously filed at the time of taking of SIM card, was there and activation too was made, resulting this fraudulent transactions. Hence, in view of the settled proposition of law written and propounded in those previously decided cases, the Appellant-Telecom Service Provider has been rightly ordered to make the payment of those remaining syphoned amount.

19. So far as interest is concerned, this Tribunal, in many previously decided cases, have held, that in present fiscal scenario and commercial transactions, the award of simple interest @9% per annum from pendente lite, till actual payment is right, just and fair interest to be awarded, other than the cumulative interest of 10%, as has been awarded by Learned Adjudicatory Authority. Hence, for this point only, the Judgment is to be intervened and for others, the Appeal merits to be dismissed.

20. Appeal is being disposed of with an amendment in the operative portion of Impugned Judgment with regard to interest. The operational order is being amended as below:

“Telecom Service Provider, Vodafone Idea Limited, is being directed to make payment of Rs. 24,50,000/- (Rupees Twenty Four Lakhs Fifty Thousand Only), with cost of this litigation Rs. 72,000/- (Rupees Seventy Thousand Only), and interest pendente lite and future, with a rate of simple interest @ 9%, per annum over above amount, within two months of this Judgment, if already not deposited, if already deposited, then remaining excess amount is to be refunded to appellant, after its calculation, by the Office of this Tribunal.”

Formal decree/order be got made by office, accordingly.

(Justice Ram Krishna Gautam)
Member

02.12.2025
/NC/

