IN THE SUPREME COURT OF THE DEMOCRATIC SOCIALIST REPUBLIC OF SRI LANKA

Tanyo Haulage (Pvt) Ltd,
No. 23, Rodney Street,
Colombo 08.
Plaintiff

SC/CHC/APPEAL/25/2017
HC (Civil) 281/2009/MR

Vs.

1. Sri Lanka Ports Management &
Consultancy Services Ltd,
No. 19, Church Street,
Colombo 01.

2. Sri Lanka Ports Authority,
No.19, Church Street,
Colombo 01.
Defendants

AND NOW

Sri Lanka Ports Management &
Consultancy Services Ltd,
No. 19, Church Street,
Colombo 01.
1st Defendant-Appellant

Vs.

Tanyo Haulage (Pvt) Ltd,
No. 23, Rodney Street,
Colombo 08.
Plaintiff-Respondent

Sri Lanka Ports Authority,
No.19, Church Street, Colombo 01.
2nd Defendant-Respondent

Before: Hon. Justice Mahinda Samayawardhena
Hon. Justice Dr. Sobhitha Rajakaruna
Hon. Justice Menaka Wijesundera

Counsel: Faiszer Musthapha, P.C., with Shaheeda Barrie, Dananjaya Perera and Ilham Hassen for the 1st Defendant-Appellant.

Saa'di Wadood with Palitha Subasinghe, Hashane Mallawarachchi and Harish Balakrishnan for the Plaintiff-Respondent.

Avindra de Silva, S.S.C. for the 2nd Defendant-Respondent.

Argued on: 10.10.2025

Written submissions:

By the 1st Defendant-Appellant 07.06.2022 and 24.10.2024.

By the Plaintiff-Respondent 14.12.2022 and 24.10.2024.

Decided on: 09.02.2026

Samayawardhena, J.

Introduction

The plaintiff instituted this action in the District Court of Colombo against the 1st defendant, Sri Lanka Ports Management and Consultancy Services Ltd., and the 2nd defendant, Sri Lanka Ports Authority, seeking to recover a sum of Rs. 104 million for the period from 29.03.2004 to 29.05.2006, together with a further sum of Rs. 4 million per month from 30.05.2006 to 19.01.2009. The action was subsequently transferred to the Commercial High Court of Colombo.

Both the 1st and 2nd defendants filed separate answers praying for the dismissal of the plaintiff's action. Upon conclusion of trial, the Judge of the Commercial High Court, by judgment dated 06.03.2017, awarded the plaintiff a sum of Rs. 28,902,456.92 as damages for breach of contract marked P10, committed by the 1st defendant, and dismissed the action against the 2nd defendant.

Aggrieved by the said judgment, the 1st defendant has preferred this appeal.

Plaintiff's case

The plaintiff's case, in brief, is as follows.

The Port of Colombo comprises two principal terminals, namely the Queen Elizabeth Quay and the Jaya Container Terminal. By a written agreement entered into on 05.09.1999, the 2nd defendant and a company known as South Asia Gateway Terminals Ltd. agreed that South Asia Gateway Terminals Ltd. would operate and manage the Queen Elizabeth Quay for a period of thirty years. Thereafter, the Queen Elizabeth Quay came to be known as the South Asia Gateway Terminal. The operation and management of the Jaya Container Terminal, on the other hand, remained with the 2nd defendant.

The 2nd defendant is the majority shareholder of the 1st defendant, and the 1st defendant is engaged, *inter alia*, in activities relating to port management at the instance of the 2nd defendant.

In or around the year 2003, inter-terminal trucking services between the Jaya Container Terminal and South Asia Gateway Terminal, and vice versa, were provided by a company known as Sea Consortium Lanka (Pvt) Ltd. Thereafter, the defendants decided to appoint an alternative service provider for inter-terminal trucking and called for tenders for that purpose.

The tender was awarded to the plaintiff, and a written agreement dated 16.01.2004 marked P10, was entered into between the 1st defendant and the plaintiff, to be operative for the period from 20.01.2004 to 19.01.2007. Pursuant thereto, the plaintiff received orders to provide inter-terminal trucking services from 20.01.2004 to 05.03.2004.

On 05.03.2004, the operations of the plaintiff were suspended by the 2nd defendant in compliance with an interim order issued by the Supreme Court in Case No. SC/FR/105/2004. That interim order was subsequently vacated on 29.03.2004.

It is the case of the plaintiff that it entered into the agreement marked P10 on the basis of representations made by the defendants that 50% of the inter-terminal trucking business would be allocated to the plaintiff during the contractual period. However, according to the plaintiff, no orders were received after 29.03.2004. On that basis, the plaintiff claims that the defendants acted in violation of the agreement marked P10 and sought the aforesaid damages from the 1st and 2nd defendants jointly and/or severally.

Defendants' Position

The principal positions taken up by the defendants in their respective answers may be summarised as follows.

Firstly, it is pleaded that inter-terminal trucking services between the Queen Elizabeth Quay, which is operated and managed by South Asia Gateway Terminals Ltd., and the Jaya Container Terminal, which is operated and managed by the 2nd defendant, are administered by the Colombo Inter-Terminal Office. The Colombo Inter-Terminal Office, it is stated, was established pursuant to the Inter-Terminal Operations Agreement entered into between South Asia Gateway Terminals Ltd. and the 2nd defendant. On that basis, the defendants maintain that the 1st defendant was not responsible for placing or issuing orders for inter-terminal trucking services with the plaintiff.

Secondly, the defendants contend that, in any event, the agreement marked P10 does not contain any clause entitling the plaintiff to 50% of the inter-terminal trucking services during the contractual period.

Grounds of Appeal

Before this Court, the 1st defendant-appellant argued the appeal on three main grounds. They are as follows:

(a) that responsibility for the placement of orders for inter-terminal trucking services lay with the Colombo Inter-Terminal Office and not with the 1st defendant, and that the 1st defendant therefore cannot be held liable for the failure to order such services from the plaintiff;
(b) that the agreement marked P10 contains no term, express or implied, assuring the plaintiff of 50% of the inter-terminal trucking services during the contractual period; and
(c) that the award of damages made by the Commercial High Court is erroneous in law and in fact.

I now proceed to consider these grounds in turn.

Whether CITO was responsible

The contention advanced on behalf of the 1st defendant that inter-terminal trucking services between the two terminals were handled by the Colombo Inter-Terminal Office, and that the 1st defendant was therefore not responsible for ordering such services from the plaintiff, cannot be sustained having regard to the terms of the agreement marked P10.

There is no dispute that the agreement marked P10 was entered into exclusively between the 1st defendant and the plaintiff. It is not a tripartite agreement involving the 1st defendant, the plaintiff, and the Colombo Inter-Terminal Office. Further, the Colombo Inter-Terminal Office is

neither a natural person nor a juristic person. It is merely an administrative office established for operational convenience.

Clause 3 of the agreement marked P10, which delineates the scope of services, reads as follows:

> *3. Scope of the Services*
>
> *The Contractor [the plaintiff] shall provide for the benefit of the Sri Lanka Ports Authority [the 2nd defendant], SAGT [South Asia Gateway Terminals Ltd.] and SLPMCS LTD [the 1st defendant].*
>
> a. *Trucking of inter terminal containers from Sri Lanka Ports Authority terminal and SAGT and vice versa;*
> b. *Trucking of other containers between SAGT terminal and the Ports Authority terminal and vice versa as may be required from time to time;*
>
> *On a 24 hour basis for 365 days of any calendar year during the planned movement periods.*

The role of the Colombo Inter-Terminal Office is addressed in clause 4.3 of the agreement. Clause 4.3(a) provides that *"CITO will be the first point of contact the Contractor shall have with SLPMCS Ltd. and the Sri Lanka Ports Authority on all matters pertaining to this Agreement."*

Clause 4.3, read as a whole, provides as follows:

> *4.3 Compliance with Operating Procedures*
>
> a. *CITO will be the first point of contact the Contractor shall have with SLPMCS LTD and the Sri Lanka Ports Authority on all matters pertaining to this Agreement.*
> b. *Designated officers of CITO will be responsible for ordering the services to be provided on a day to day basis by way of Inter-Terminal Trucking and the Contractor shall ensure that such orders are followed efficiently and expeditiously without delay.*

c. *The Contractor shall ensure that its supervisory personal liaise with CITO at all times in carrying out the obligations under this Agreement.*

It is evident that the designation of the Colombo Inter-Terminal Office as the "first point of contact" was intended to facilitate coordination and communication for the smooth functioning of operations and does not attract contractual liability. Such delegation of coordinating and operational functions does not displace or dilute the contractual responsibility of the 1st defendant, who remains the contracting party bound by the terms of the agreement.

This conclusion is reinforced by clause 5 of the agreement, which stipulates that payments to the plaintiff shall be made by the 1st defendant in the manner set out in Schedule 1. No liability for payment is cast upon the Colombo Inter-Terminal Office or any other entity.

For these reasons, I reject the first ground of appeal.

Claim of 50% of inter-terminal tracking services

It is the case of the plaintiff that, at the time of entering into the agreement marked P10, both the 1st and 2nd defendants expressly represented and undertook that the plaintiff would be provided with orders amounting to approximately 50% of the inter-terminal trucking activities carried out within the Port of Colombo. The position of the 1st defendant, on the other hand, is that the agreement contains no such express term and no such representation was made at the time of signing the agreement.

The plaintiff responds by asserting that such an arrangement constituted an implied term of the agreement.

The learned High Court Judge, having examined the terms of the agreement and, in particular, the document marked P11, concluded that the intention of the parties at the time of entering into the agreement was

that the plaintiff would secure 50% of the inter-terminal trucking services, while the remaining 50% would be handled by Sea Consortium Lanka (Pvt) Ltd.

Before examining whether that conclusion is sustainable, it is necessary to state the legal position relating to implied terms in contracts. An implied term is one which, though not expressly stated, is read into a contract in order to give effect to the presumed intention of the parties or to ensure the business efficacy of the agreement. Such a term may be implied where it is necessary to make the contract workable, where it is so obvious that it goes without saying, or where it may be inferred from the conduct of the parties or the surrounding circumstances at the time of contracting. An implied term, once properly established, is as binding as an express term of the contract.

In *Amalgamated Investment & Property Co. Ltd. v. Texas Commerce International Bank Ltd.* [1982] QB 84, the English Court of Appeal recognised that the subsequent conduct of the parties may give rise to an estoppel by convention, thereby precluding them from resiling from a shared assumption as to the meaning of their agreement, even where that assumption does not accord with the true construction of the written contract. In explaining this principle, Lord Denning M.R. stated:

> *So here we have available to us, in point of practice if not in law, evidence of subsequent conduct to come to our aid. It is available, not so to construe the contract, but to see how they themselves acted upon it. Under the guise of estoppel we can prevent either party from going back on the interpretation they themselves gave to it.*
>
> *There is no need to inquire whether their particular interpretation is correct or not, whether they were mistaken or not, or whether they had in mind the original terms or not. Suffice it that they have by the course of dealing, put their own interpretation on their contract, and cannot be allowed to go back on it.*

A well-established test for the implication of a term in fact is that of "business efficacy". The leading early authority on this principle is *The Moorcock* (1889) 14 PD 64, where Bowen L.J., at page 68, articulated what has since come to be known as the business efficacy test in the following terms:

> *[W]hat the law desires to effect by the implication is to give such business efficacy to the transaction as much have been intended at all events by both parties who are businessmen; not to impose on one side all the perils of the transaction, or to emancipate one side from all the chances of failure, but to make each party promise in law as much, at all events, as it must have been in the contemplation of both parties that he should be responsible for in respect of those perils or chances.*

Closely allied to the test of business efficacy is the officious bystander test. The classic formulation of this test was articulated by MacKinnon L.J. in *Shirlaw v. Southern Foundries Ltd.* [1939] 2 KB 206 at 207, where it was held that a term may be implied only if it is so obvious that it goes without saying. He expressed the principle in the following terms:

> *Prima facie that which in any contract is left to be implied and need not be expressed is something so obvious that it goes without saying; so that, if, while the parties were making their bargain, an officious bystander were to suggest some express provision for it in their agreement, they would testily suppress him with a common 'Oh, of course!'*

Lord Wright in *Luxor (Eastbourne) Ltd v. Cooper* [1941] AC 108 at 137 described an implied term as one "*of which it can be predicated that 'it goes without saying' some term not expressed but necessary to give the transaction such business efficacy as the parties may have intended.*"

In *B.P. Refinery (Westernport) Pty. Ltd. v. Shire of Hastings* [1978] 52 ALJR 20, Lord Simon of Glaisdale set out five conditions for the implication of

terms in fact into a contract, stating that "*for a term to be implied, the following conditions (which may overlap) must be satisfied: (1) it must be reasonable and equitable (2) it must be necessary to give business efficacy to the contract, so that no term will be implied if the contract is effective without it; it must be so obvious that 'it goes without saying'; (4) it must be capable of clear expression; (5) it must not contradict any express term of the contract.*"

In *Reigate v. Union Manufacturing Co. (Ramsbottom) Ltd. and Elton Cop Dyeing Co. Ltd.* [1918] 1 KB 592, Scrutton L.J. observed:

> *A term can only be implied if it is necessary in a business sense to give efficacy to the contract; that is, if it is such a term that it can be confidently said that if at the time the contract was being negotiated someone has said to the parties "What will happen in such a case?", they would have replied: "Of course, so and so will happen; we did not trouble to say that; it is too clear"*

In *Trollope v. North West Metropolitan Regional Hospital Board* [1973] 2 All ER 260, Lord Pearson, at page 268, held:

> *An unexpressed term can be implied if and only if the court finds that the parties must have intended that term to form part of their contract: it is not enough for the court to find that such a term would have been adopted by the parties as reasonable men if it had been suggested to them: it must have been a term that went without saying, a term necessary to give business efficacy to the contract, a term which, although tacit, formed part of the contract which the parties made for themselves.*

What must be established is business necessity, not reasonableness or fairness. In *Marks and Spencer plc v. BNP Paribas Securities Services Trust Co. (Jersey) Ltd.* [2015] 3 WLR 1843, the Supreme Court of the United Kingdom emphasised that a term may be implied in fact only where it is necessary to give the contract business efficacy, and not

merely because it would be reasonable, fair, or commercially desirable to do so. The Court underscored that the implication of a term is a strict exercise, to be undertaken only after construing the express terms of the contract, and that the tests of business efficacy and the officious bystander are complementary tools directed at the same inquiry of necessity. Particularly in the case of a detailed and professionally drafted contract, a term will not be implied unless the contract would lack practical or commercial coherence without it.

On the facts of the instant case, the task of the Court was easy. Clause 2 of the agreement marked P10 stipulates that the agreement comes into operation on 20.01.2004. The document marked P11 was issued shortly thereafter, on 26.01.2004. P11 is an internal circular issued by the 2nd defendant to its officers, setting out the manner in which inter-terminal trucking was to be carried out following the commencement of the agreement. According to P11, containers unloaded at the Jaya Container Terminal were to be transported to the South Asia Gateway Terminal by the plaintiff, while containers unloaded at the South Asis Gateway Terminal were to be transported to the Jaya Container Terminal by Sea Consortium Lanka (Pvt) Ltd.

The sole witness called on behalf of the 2nd defendant admitted in evidence that the document marked P11 reflected the policy adopted by the 2nd defendant in relation to inter-terminal trucking operations following the execution of the agreement marked P10.

In the light of this contemporaneous document, it cannot be said that the learned High Court Judge acted unreasonably in concluding that the intention of the parties, at the time of entering into the agreement marked P10, was that the inter-terminal trucking operations would be shared between the plaintiff and Sea Consortium Lanka (Pvt) Ltd., broadly on an equal basis.

That said, it is necessary to clarify that the plaintiff's entitlement does not strictly depend on a numerical allocation of 50%. On a proper

construction of the agreement read together with the surrounding circumstances, the plaintiff was at the very least entitled to expect that it would be entrusted with the entirety of inter-terminal trucking services from the Jaya Container Terminal to the South Asia Gateway Terminal, as contemplated at the inception of the contractual arrangement.

Accordingly, the absence of an express clause stipulating a precise percentage allocation does not defeat the plaintiff's claim, as the arrangement was implicit in the agreement and confirmed by the contemporaneous conduct of the defendants. This was an implied term of the agreement.

For these reasons, I reject the second ground of appeal as well.

Damages

Damages for breach of contract are intended, so far as money can do, to place the injured party in the position in which he would have been had the contract been duly performed, and not to put him in a better position or to punish the defendant. A breach of contract is a civil wrong and not a criminal offence.

In *Sri Lanka Omnibus Co. Ltd. v. L.A. Perera* (1951) 53 NLR 265 at 268, Lord Normand remarked:

> *The party complaining of a breach of contract is not entitled to be put in a better position than he would have enjoyed if the contract had been performed according to its terms.*

In *Robinson v. Harman* (1848) 154 ER 363, Parke B. stated:

> *The rule of the common law is, that where a party sustains loss by reason of a breach of contract, he is, so far as money can do it, to be placed in the same situation, with respect to damages, as if the contract had been performed.*

The term liquidated damages is used where the parties to a contract have agreed in advance upon a fixed sum payable, or a method of calculation, as damages in the event of a specified breach. Where the contract does not prescribe a sum or method for the assessment of damages, the damages are unliquidated and must be ascertained by the court in accordance with the general principles of contract law, namely by awarding compensation for losses which arise naturally from the breach or which may reasonably be supposed to have been within the contemplation of the parties at the time the contract was entered into. Parties to a contract may also stipulate liquidated damages in respect of a particular breach, while leaving claims arising from other breaches to be determined as unliquidated damages in the ordinary way.

The burden lies on the claimant to establish such loss on a balance of probabilities, and the assessment must be founded on evidence and reasonable inference, rather than on conjecture.

In *Kennedy v. Emden* [1997] 2 EGLR 137, Nourse L.J. held that "*Compensation is a reward for real, not hypothetical, loss. It is not to be made an occasion for recovery in respect of a loss which might have been, but has not been, suffered.*" This approach was also affirmed in *Ruxley Electronics v. Forsyth* [1996] AC 344, where Lord Mustill emphasised that damages must reflect the true loss actually suffered, not a theoretical or artificial measure of loss.

The measure of such damages is the net value of the benefit of which the claimant has been deprived, and not gross receipts or gross expectations. This reflects what is described as the "net loss rule", namely that courts assess the claimant's overall net loss by allowing countervailing gains or savings to offset gross losses. (Neil Andrews, *Contractual Duties: Performance, Breach, Termination and Remedies*, 1st Edition 2011, page 374)

In *Omak Maritime Ltd v. Mamola Challenger Shipping Co* [2011] 2 All ER (Comm) 155, it was held:

> *In a typical claim for damages for breach of contract on the expectancy basis both expected profits and necessary expenses will be taken into account. The claimant will claim a sum equal to the benefit he expected to earn from performance of the contract less the costs he would have had to have incurred in order to earn that benefit, which costs would include not only any sum he would have had to pay to the party in breach but also any expenses he would have had to incur in preparation for performance of the contract. Damages calculated in that way would put the claimant in the position he would have been in had the contract been performed. The measure of loss thus compensates for the loss of bargain and in doing so takes account of the expenses the claimant would have incurred in reliance on the contract being performed. To ignore those expenses when assessing damages would put the claimant in a better position than he would have been in had the contract been performed.*

In *Cullinane v. British "Rema" Manufacturing Co. Ltd.* [1954] 1 Q.B. 292, the Court of Appeal held that damages must place the claimant, so far as money can do so, in the position he would have been in had the contract been performed, and that an award which results in overcompensation is erroneous. The court emphasised that claims for capital loss and loss of profit are alternative and not cumulative, and that the claimant cannot recover both. Accordingly, excessive damages were reduced, and the assessment of loss of profit had to reflect the true compensatory principle and avoid duplication or inflation of loss.

When calculating damages, the duty cast upon the claimant must also be taken into account. Losses which could reasonably have been avoided are not recoverable. In *British Westinghouse Electric v. Underground Electric Railways* [1912] AC 673 at 689, the House of Lords held that damages are intended to compensate for pecuniary loss naturally flowing from the breach, subject to the duty to mitigate, and that a claimant

cannot recover loss attributable to his failure to take reasonable steps to reduce that loss.

It must be recognised that the assessment of damages for loss of earnings or loss of profit in cases of this nature is often a complex exercise, even where an agreed contractual formula exists. This is because such assessment necessarily involves projections and assumptions based on past performance and probable future conduct. However, the complexity of the exercise cannot justify a total refusal to award compensation once a breach of contract has been established.

Chitty on Contracts, Vol. I, 23rd edition 2018, para. 26-012, pp. 1799-1800 states:

> *The fact that damages are difficult to assess does not disentitle the claimant to compensation for loss resulting from the defendant's breach of contract. Where it is clear that the claimant has suffered substantial loss, but the evidence does not enable it to be precisely quantified, the court will assess damages as best it can on the available evidence. The fact that the amount of that loss cannot be precisely ascertained does not deprive the claimant of a remedy. The loss of profits suffered by a claimant as the result of the defendant's breach of contract frequently depends on many speculative factors, but the courts will always attempt to assess the amount of the loss.*

This approach was affirmed in *One Step (Support) Ltd v. Morris-Garner* [2019] AC 649, where the Supreme Court of the United Kingdom held at page 673 that the court must select the method of assessment most apt to secure compensation for the true loss suffered, and, quoting *Chitty* with approval, further stated at page 674 that where precise quantification is impossible, the court must nevertheless assess damages on the best available evidence.

In *Westminster (Duke) v. Swinton* [1948] 1 KB 524, Denning J. stated that "*the real question in each case is: What damage has the plaintiff really suffered from the breach?*"

Where the claimant proves a breach but no substantial loss, only nominal damages may be awarded. However, where substantial loss is established but precise computation is difficult, the court is entitled and required to make a reasonable and cautious estimate so as to compensation.

In the instant case, the agreement marked P10 does not provide for any agreed method or formula for the calculation of damages in the event of a breach. Schedule 1 of the agreement merely stipulates the applicable rates of payment for services rendered. In such circumstances, damages must be assessed in accordance with general principles of contract law.

The learned High Court Judge concluded that the plaintiff had established, on a balance of probability, that it was entitled to recover from the 1st defendant a sum of Rs. 28,902,456.92 together with legal interest from the date of institution of the action until payment in full.

I find that the grievance of the 1st defendant on this point is not directed at the plaintiff's entitlement to damages as such, but at the manner in which the quantum was calculated.

It is undisputed that following the execution of the agreement, the plaintiff's services were in fact utilised in terms of the agreement and that the plaintiff discharged its contractual obligations to the satisfaction of the defendants. For the period from 20.01.2004 to 05.03.2004, a period of approximately forty-five days, the 1st defendant paid the plaintiff a sum of Rs. 1,810,030 for inter-terminal trucking services rendered, as evidenced by cheques marked P13A to P13C. That sum represents the gross receipts earned by the plaintiff during that period.

However, that amount cannot be treated as net profit. The obligations of the plaintiff under the agreement are set out, *inter alia*, in clauses 4.1 and 4.2, which required the plaintiff to deploy twelve prime movers together with other equipment, fuel, maintenance, and manpower in order to perform its contractual duties. The costs associated with such operations necessarily had to be borne by the plaintiff out of the sums received. The learned High Court Judge did not deduct, or make allowance for, such expenses and proceeded on the footing that the gross receipts represented net earnings. This approach is erroneous, as damages for loss of profit must be assessed on the basis of net profit and not gross receipts.

Chitty on Contract, op. cit., para. 26-018, p. 1802, states "*If the exact loss cannot be determined, the court may have to use the nearest available measure.*"

In the absence of precise evidence as to the actual operational expenses incurred by the plaintiff, but bearing in mind the nature of the contractual obligations and the fact that the plaintiff did in fact perform the contract efficiently during the initial period, I consider it reasonable and fair to assess the plaintiff's net profit at 50% of the gross receipts proved. On that basis, the plaintiff's net profit for the forty-five day period would amount to Rs. 905,015.

On a proportional basis, this yields an estimated net monthly profit of approximately Rs. 603,343. Applying this figure to the unexpired portion of the contract from 29.03.2004 to 19.01.2007, a period of approximately thirty-four months, the plaintiff's total loss of profit would amount to Rs. 20,514,662.

However, having regard to the inherent uncertainties involved in projecting earnings over an extended contractual period, including possible fluctuations in volume of work and operational contingencies, and in order to avoid any element of overcompensation, it is appropriate to adopt a cautious approach. Doing so, I determine that a sum of Rs.

16,000,000 represents fair and reasonable compensation for the loss of profit suffered by the plaintiff as a result of the breach of contract by the 1st defendant.

Accordingly, I hold that the plaintiff is entitled to recover from the 1st defendant a sum of Rs. 16,000,000, together with legal interest thereon from the date of institution of the action until payment in full.

Conclusion

For the reasons set out above, I hold that the learned High Court Judge correctly found that the 1st defendant was in breach of the agreement marked P10 and that the plaintiff is entitled to damages arising from such breach. However, the quantification of damages made by the learned High Court Judge cannot be sustained in its entirety, as it proceeded on an erroneous basis by treating gross receipts as net profit.

Upon a reassessment of the evidence on record and applying settled principles governing the award of damages for breach of contract, I determine that the plaintiff is entitled to recover from the 1st defendant a sum of Rs. 16,000,000, together with legal interest thereon from the date of institution of the action until payment in full.

Accordingly, the judgment of the Commercial High Court is affirmed subject to the variation indicated above. The plaintiff is entitled to costs in both Courts. The Commercial High Court will enter decree accordingly.

Judge of the Supreme Court

Dr. Sobhitha Rajakaruna, J.
I agree.

Judge of the Supreme Court

Menaka Wijesundera, J.
I agree.

Judge of the Supreme Court