IN THE HIGH COURT OF JUDICATURE AT MADRAS

ORDERS RESERVED ON : 10.12.2021

PRONOUNCING ORDERS ON : 15.12.2021

Coram:

THE HONOURABLE JUSTICE MR.N.ANAND VENKATESH

Civil Suit No.258 of 2020
(Comm.Suits)

E-merge Tech Global Services p Ltd.,
Represented by its Authorised Signatory,
Mr.R.Venkatesh
having its registered office at
1/62, First Street, Ravi Colony,
Saint thomas Mount,
Chennai 600 016

.. Plaintiff

/versus/

1. Mr.M.R.Vindhyasagar

2. Datasolve Analytics P ltd.
Represented by its Director,
Mr.M.R.Vidhyasagar,
Having its registered office at
No.M3, Dr.VSI Estate, 9th street,
South phase – II, Thiruvanmiyur,
Chennai 600 041

..Defendants

Prayer: Civil Suit has been filed under Order IV, Rule 1 O.S.Rules and Order VII, Rule 1 of the C.P.C. Read with Section 61 and 62 of the Copy rights Act, 1957 r/w Section 7 of the Commercial Courts, Commercial Appellate Courts, Commercial Division and Commercial Appellate Division of the High Courts Act, 2015, praying to pass a judgment and decree for:-

(a) directing the defendants to pay a sum of Rs.2,00,00,000/- (Rupees two crores) being restitution for unjust enrichment and restitution along with future interest of 18% per annum from the date of filing of this suit, till the actual payment thereof.

(b) Permanent injunction restraining the defendants, their men, directors, employees, agents, servants, representatives or any person(s) acting on their behalf from divulging or disseminating or otherwise exploiting the copy righted material belonging to the plaintiff as defined in Schedule A of the plaint in any manner including but not limited to reproducing, issuing copies of, communicating to the public, selling or public selling or offering for sale, adoption or infringing by any other means whatsoever, the plaintiff's copy righted work;

(c) Permanent injunction restraining the defendants, their men, directors, employees, agents, servants, representatives or any person(s) acting on their behalf in any manner which could divulge and / or enable others to divulge the plaintiff's confidential information which as described in Schedule B of the plaint, and in each of the products and information individually, specifically by reproducing, issuing copies of, communicating to the public, selling or public selling or offering for sale,

adaption or infringing by any other means whatsoever, the plaintiff's copy righted work.

(d) Permanent injunction restraining the defendants, their men, directors, employees, agents, servants, representatives or any person(s) acting on their behalf from directly or indirectly soliciting PI Healthcare holdings limited and any of the customers/clients of the plaintiff.

(e) directing the defendants to disclose in an affidavit the confidential information /data and trade secrets, and any other such details pertaining to the operation of the plaintiff companies that are in the possession of the defendants which belong to the plaintiffs and to return all such confidential information / data that are in possession of the defendants to the plaintiffs and to consequently return all the confidential information / data, trade secrets, and other such details in whatever from that are stored by the defendants, back to the plaintiffs.

(f) Directing the 2nd defendant to disclose its books of accounts including ledger accounts, balance sheets, bank statements and tax returns from the financial year 2019-2020 onwards for each financial year till the production of such book of accounts.

(g) Directing that the cost of the suit be paid by the defendants to the plaintiffs.

For Plaintiff :Mr.Anirudh Krishnan
for M/s.Sarvabhauman Associates

For Defendant : Ex parte

JUDGMENT

The suit in C.S.No.258 of 2020 is laid for the relief of damages to the tune of Rupees Two Crores and for the consequential relief of permanent injunction restraining the Defendants from divulging or exploiting the copyrighted material belonging to the Plaintiff, restraining the Defendants from divulging the confidential material and from directly or indirectly soliciting the customers/clients of the Plaintiff. The Plaintiff has also sought for the relief of rendition of accounts and for a direction to the Defendants to disclose the availability of the confidential information and return of the same to the Plaintiff.

2.The case of the plaintiff is that for the past 13 years they are into the business of service/knowledge processing and provide knowledge intensive solutions which also includes patent and technology research, business research, life science information research, etc. The first Defendant was appointed as Manager-Business Development in the Plaintiff Company through a letter of appointment dated 31.12.2007. The appointment letter, amongst other things, contained a confidential information agreement and conflict of interest guidelines.

3.The first Defendant was thereafter promoted as a Senior Manager in the year 2010 and was further promoted as the Associate Vice President – Operations during the year 2012. According to the Plaintiff Company, the first Defendant was given wide exposure and was imparted knowledge and skill by placing immense faith on him. The first Defendant was also allowed to attend various international meetings and conferences sponsored by the Plaintiff Company. The first Defendant was literally seen as a face of the Plaintiff Company.

4.During the year 2016, the first Defendant tendered his resignation from the post of Associate Vice President- Operations citing personal reasons. The Plaintiff Company accepted the resignation and a relieving order was given on 31.03.2017. Even in the relieving order, the first Defendant was reminded about the clauses relating to non-compete, non-solicitation of customers/clients and confidentiality terms of the appointment letter dated 31.12.2007. As a gesture of goodwill for the services rendered by the first Defendant, the Plaintiff Company also offered a consultancy fee to the first Defendant to act as a consultant till he obtained another employment.

5. From the records, it is seen that the first defendant requested the Plaintiff Company to relieve him from the consulting assignment within a few days. The Plaintiff Company parted ways with the first Defendant by making a loyalty payment of rupees three Lakhs to the first Defendant.

6. In 2020 the plaintiff came to know that the first Defendant had floated a new Company which is the second Defendant in this suit. When the Plaintiff Company further enquired, they found that the second Defendant Company was incorporated on 06.08.2019 and the subscribers of the Memorandum of Association are the first Defendant and one PI Healthcare Holding Limited. This became a trigger point for the Plaintiff Company since the said PI Healthcare Holding Limited was a long standing client of the Plaintiff Company. The Plaintiff Company also became curious since the directors of the second Defendant Company were found to be the first Defendant and one Ms. Johanna Marie Jarvis, who is the representative of PI Healthcare Holding Limited, who used to be regularly in touch with the Plaintiff Company in all their transactions.

7.The Plaintiff, on further enquiry, found that the second Defendant Company was being run by the first Defendant with an identical business model. On further scrutiny, the Plaintiff Company found that the first Defendant was brazenly violating the non-compete, non-solicitation of customers/clients and the confidentiality terms. The main customer of the Plaintiff Company viz., PI Healthcare Holdings Limited through whom they had generated a substantial income was virtually knocked off by the first Defendant from the financial year 2019-20. These events have culminated with the filing of the suit for the reliefs indicated, supra.

8. Summons was attempted to be served on the defendants on various occasions and it was repeatedly returned with the endorsement's door locked or left. This Court therefore directed the learned counsel for the Plaintiff to take steps for substituted service. Accordingly, the publication was effected and affidavit of service was filed. The Defendants did not choose to defend the case either in person or through counsel and hence, they were called absent and set *ex-parte* by an order dated 12.11.2021.

9.This Court after carefully going through the pleadings and the documents relied upon by the Plaintiff, found that no oral evidence will be required in the present case and directed the documents relied upon by the Plaintiff to be marked. Accordingly, Ex.P-1 to P-53 were marked. Exhibit P-53 is certificate under Section 65-B of Evidence Act for the electronic records which were relied upon by the Plaintiff.

10.Heard Mr.Anirudhkrishnan, learned counsel for the Plaintiff.

11.For clarity and better appreciation, the points for decision are as under:

a) Whether the first Defendant is bound by non-solicit, non-compete and confidentiality/ non-disclosure agreement?

b)Whether the Plaintiff is entitled for permanent injunction as sought for against the Defendants?

c) Whether the Plaintiff is entitled to damages and an account of profits?

d)Whether the Plaintiff is entitled to claim for infringement of their copyrighted work against the Defendants?

12.The Defendants did not choose to enter appearance and defend their case and hence the factual assertions made by the Plaintiff in the pleadings have not been denied and as a result of the same, every allegation of fact in the plaint should be taken to be admitted. This is the effect of the amendment made to Order VIII Rule 5 of the Code of Civil Procedure pursuant to the introduction of the Commercial Courts Act, 2015. In view of the above finding, this Court must only assess based on the materials placed by the Plaintiff as to whether they are entitled for the reliefs sought for by them.

13.The case of the plaintiff rests on the non-solicit, non-compete and confidentiality agreements. Thus, for the purpose of considering the reliefs claimed by the Plaintiff, it becomes necessary for this Court to first examine the letter of appointment dated 31.12.2007

which has been marked as Ex.P-4. A careful reading of the letter of appointment shows that the first Defendant was fully aware of his obligations for non-solicitation of customers/clients (clause 21), non-compete (clause 20) and confidentiality of information (clause 16 read with Annexure II). Insofar as the non-compete clause is concerned, the same cannot be made enforceable after the first Defendant has left the employment. A post employment restriction of this nature will undoubtedly be hit by Section 27 of the Contract Act. Useful reference can be made to the judgment of the Division Bench of this Court in **[FL Smidth (P) Ltd. vs. Secan Invescast (India) (P) Ltd.]** reported in ***2013 (1) CTC 886***. Thus, this Court can consider the claim made by the Plaintiff Company only under the other two clauses namely viz., non-solicit and confidentiality/non-disclosure.

14. Before going into these clauses, this Court has to consider the role played by the first Defendant in the Plaintiff Company. The first Defendant joined the services of the Plaintiff Company in 2007. He quickly went up the ladder in quick succession and by 2013, he was promoted as Associate Vice President-Operations. Even in the promotion

letter, marked as Ex. P-15, it has been clearly stated that all the terms and conditions in the original appointment order will remain unaltered. A close look at some of the documents namely, Ex. P-17 to Ex. P-26 shows that the first Defendant had access to confidential information of the Plaintiff Company. It is evident that he was the main contact on the side of the Plaintiff Company in touch with PI Healthcare Holding Limited until his resignation. Ex.P-22 shows that the first Defendant had infact travelled to United Kingdom to hold business meetings with PI Healthcare Holding Limited. The first Defendant had been given various opportunities by the Plaintiff Company and at one stage had become the face of the Plaintiff Company.

15.The level of confidence that was reposed on the first Defendant is apparent from the fact that even after the resignation of the first Defendant from the organization, the Plaintiff Company offered consultancy services to the first Defendant which is evident from Ex.P-28 and the first Defendant was also given loyalty payment which is evident from Ex. P-32. That apart, the first Defendant was also reminded

while he was relieved from employment that he should comply with non-solicit and confidentiality clauses contained in the appointment letter. The same is evident from Ex. P-27.

16. The above materials clearly establish that the first Defendant knew every shred of information pertaining to the Plaintiff company and the profile of its every client, particularly PI Healthcare. In view of the same, the first Defendant had an obligation under the non-solicit and confidentiality/non-disclosure clauses and if the same is violated, he is bound to face the consequences. This is more so since the first Defendant is bound by the non-solicit clause for a period of 3 years even after leaving the employment. Insofar as the confidentiality clause is concerned, he was bound by the same during the term of employment and even thereafter.

17. In view of the aforesaid discussion, it is evident that the 1st defendant is bound by the non-solicit and confidentiality/non-disclosure agreement and the first point for consideration is answered accordingly.

18. Insofar as the second point taken up for consideration, it is only a consequence to the finding rendered for the first issue. This Court has held in favour of the Plaintiff Company with regard to the non-solicit clause and confidentiality/non-disclosure clause and hence the Plaintiff will be entitled for the relief of permanent injunction as claimed in relief (c) and (d) in the plaint. Consequently, the Plaintiff will also be entitled for the relief (e) claimed in the plaint.

19. This Court will now take up the issue pertaining to damages. The plaintiff has claimed damages to the tune of Rs 2 crores on the ground of unjust enrichment and has also sought restitution by disgorgement of the gains unlawfully made by the 1st defendant.

20. The materials that have been placed before this Court shows that the first Defendant left the employment from the Plaintiff Company effectively in 2017. The Memorandum of Association and the Articles of Association of the second Defendant company marked as Ex.P-36 and Ex.P-37 respectively shows that the first Defendant had

floated the company during the first half of the year 2019. This came to the knowledge of the Plaintiff Company in February 2020 and the same is evident from the e-mail disclosing the details marked as Ex.P-44. The relevant statutory form marked as Ex. P-49 gives the details about the second Defendant Company and the second Defendant company has commenced business on 06.08.2019. A close look at the Articles of Association further reveals that one Ms. Joannah Marie Jarvis who is the representative of PI Healthcare, is also one of the subscribers in the second Defendant company. She is also one of the first director in the Board of the second Defendant Company. It is self-evident that the first Defendant, after using the credentials of the plaintiff cultivated and nurtured his relationship with PI Healthcare. The records show that after the 1st defendant left the Plaintiff Company in 2017, the 2nd defendant was floated in the year 2019 in which the representative of PI Healthcare has a major role. The defendants having kept away from participating in these proceedings despite receipt of summons, this Court is not persuaded to conclude that all of this is a mere happenstance. It is fairly obvious that the 1st defendant had come into contact with PI Healthcare only through his employment in the Plaintiff Company. This is reinforced

by the fact that the 2nd defendant is also into the same type of business which is in clear violation of the non-solicit clause and confidentiality/non-disclosure clause.

21. During 2019, PI Healthcare had approached the Plaintiff Company on many occasions to obtain quotations and the same is evident from Ex. P-33 to Ex. P-43. However, they never came back to the Plaintiff to carry out the work. It is evident that this was because by then the second Defendant company had been floated and PI Healthcare had become a part of it.

22. The aforesaid facts clearly demonstrate that the first Defendant had used the Plaintiff Company as a spring board for the development of the business of the second Defendant Company. The sequitur is that the 1st Defendant has breached the terms of the non-solicit and non-compete clauses entered into by him.

23. PI Healthcare was availing the services of the Plaintiff Company right from the beginning and was a significant revenue

generating client of the Plaintiff Company. The same is clear from the auditor certificate marked as Ex. P-45. It shows that for every financial year up to 2018-2019, the maximum earnings were only from PI Healthcare. This came to a grinding halt during the financial year 2019-2020 when the turnover dropped from Rs.1,17,44,656/- to Rs.20,93,425/-.The earnings virtually nose-dived and a loss of Rs.96,51,264/- was suffered by the Plaintiff Company. This is the direct consequence of the first Defendant floating the second Defendant Company in the year 2019 diverting the revenues from PI Healthcare into the 2nd defendant Company.

24.The learned counsel for the Plaintiff submitted that the Plaintiff is entitled to damages under the head of compensatory damages as also under the head of restitutionary damages by way of an account of profits. To test this contention, it is necessary to examine the concepts of compensatory and restitutionary damages.

25.Compensatory damages are awarded to redress the loss suffered by an aggrieved party. The restitutionary damages are more in

the nature of directing the Defendants to disgorge the benefit accrued in his favour due to unjust enrichment at the expense of the Plaintiff. Compensatory damages normally present themselves with difficulties associated in computing a reliable assessment of the loss caused to the plaintiff. Sometimes, the loss is of such nature that an accurate assessment may well be out of the question.

26.The principles governing the grant of damages have been statutorily incorporated into Section 73 of the Contract Act, and has been lucidly explained by a Division Bench of the Kerala High Court in ***State of Kerala v. K. Bhaskaran*, AIR 1985 Ker 49,** wherein, it was held as under:

> "***12.*** *So the question that has to be decided by this court is whether the 10% profit claimed by the plaintiff as a loss of gain prevented can fairly and reasonably be considered as a loss "arising naturally", i.e. according to the usual course of things. We think Section 73 of the Indian Contract Act allows as damages, the loss of reasonable profits arising from a breach of contract. The rule that is applicable can be summarised as follows:—*
>
> *The defendant is liable only for "natural and proximate*

consequences of a breach or those consequences which were in the parties' contemplation at the time of contract." The above quoted phrases are words of art and usually represent two ways of expressing a single requirement. Proximate and natural consequences are those that flow directly or closely from the breach in the usual and normal course of events — those which a 'reasonable man' or a person of ordinary prudence would when the bargain is made foresee, as expectable results of later breach. The phrase 'in the parties' contemplation' normally means in the reasonable contemplation of the defendant. Thus understood, it has got only the same meaning as the companion phrase 'natural and proximate'. Brevity and clarity are better served by abandoning these traditional phrases of legal art and using instead the gist of their meaning. We propose the following statement of the rule. The defendant is liable only for reasonably foreseeable losses — those that a normally prudent person, standing in his place possessing his information when contracting would have had reason to foresee as probable consequences of future breach."

The Division Bench went on to highlight the compensatory nature of the damages envisaged under the provision by observing as under:

In the light of the above decision, if we are not prepared to accept the estimate of the trial court in the matter of assessment of damages, we are thrown to a

more difficult zone, where the assessment of damages may be more arbitrary and uncertain when the plaintiff

fails to give any evidence of loss and proves only breach of contract by the defendant, certainly nominal damages are allowed. But, it by no means follows that in every such cases, only nominal damages are recoverable. A distinction has to be drawn between a case of lack of total evidence which renders it impossible to quantify damages and cases which present difficulty in assessing damages because of the nature of the damage to be proved, and the difficulty in assessing it is not a ground for refusing substantial damages. Courts are bound to try to get at that sum of money which put the wronged party in the same position as that in which he would have been, if he had not sustained the wrong which entitles him to claim damages. A judge has got to assess damages as best as he could on the materials available. He is not justified in declining to estimate the damage merely because the plaintiff could not adduce the best evidence but has to decide what the proper measure is, having regard to all the attendant circumstances and proved facts in the case. Of course in the matter of granting reasonable compensation when it is proved that one of the parties to the contract has committed breach of contract, a degree of arbitrariness is always likely to be present. To what extent the arbitrariness can travel is the crucial question. The answer is, the assessment must have the character of fairly reasonable certainty.

The relevant test was then set out as under:

The plaintiff must prove his case. Plaintiffs seeking damages for breach of contract are no exception. They have to bear the burden of proving the financial loss for which they seek recovery. Here the courts face the same dilemma that confronts them when they apply the rule in Hadley v. Baxandale. To be sure, defendant has broken a contract, he should be and he is liable. Simple justice, however forbids saddling him with liability for claims that rest on conjecture and speculation rather than real proof. On the other hand, tender concern for him should not be carried so far as to penalise the plaintiff. Fairness forbids requiring too much of him. After all, defendant did make the contract and did commit the breach which bore the controversy. Sensitive to these conflicting equities, the courts adopt a compromise — the requirement of reasonable certainty. This standard requires plaintiff to prove with fair certainty first, that defendants breach did cause plaintiff a loss and second the amount of or extent of that loss. Of course the qualifier 'reasonable' is the key to the requirement. Plaintiff is obliged to prove with reasonable certainty, not with fatalistic sureness that defendant's breach prevented gains or otherwise resulted in loss for the plaintiff, nor is he bound to prove with mathematical exactitude the amount of gain or loss in question. Thus if the plaintiff sues to recover profits lost, he need show

> *convincingly that in the normal course of events, he would have realised a gain which he estimates, had the defendant performed his part of the contract. In the context, he has to produce the best estimate of the amount allowed by the circumstances. Fairly persuasive evidence, the most convincing and best available under the particular circumstances of the case will suffice.*

It is important to notice that the Division Bench had determined the measure of damages with reference to the loss caused to the claimant rather than with reference to the gain made by the other party.

27.However, of late the Courts have developed the principle of restitution by way of an account of profits followed by a disgorgement of those profits. The enquiry in such cases is not on the loss suffered by the plaintiff but is focused on the gain made by the defendant from the alleged breach. These forms of damages have gained currency post the decision of the House of Lords in ***Attorney General v Blake [2000 3 WLR 625***]. George Blake, a notorious self-confessed traitor was a member of the British security and intelligence service for a number of years. In 1951 he defected to the Soviet Union. Sometime later, he leaked confidential information gained by him while in his

employment with the Crown, and was sentenced to imprisonment for 42 years. True to form, he escaped from prison and went to Russia from where he penned his autobiography "*No Other Choice*" and entered into a publishing contract with Jonathan Cape for 150,000 pounds. The Attorney General commenced proceedings against Blake with a view to ensure that he did not enjoy the fruits of his treachery. The matter eventually reached the House of Lords. In his leading speech Lord Nicholls of Birkenhead began by setting out the general principle in the following way:

> "*The general rule is that, in the oft quoted words of Lord Blackburn, the measure of damages is to be, as far as possible, that amount of money which will put the injured party in the same position he would have been in had he not sustained the wrong: Livingstone v. Rawyards Coal Co. (1880) 5 App.Cas. 25, 39. Damages are measured by the plaintiff's loss, not the defendant's gain.*"

28. To this general principle, he proceeds to outline the basis for some exceptions:

> "*But the common law, pragmatic as ever, has long recognised that there are many commonplace situations where a strict application of this principle would not do*

justice between the parties. Then compensation for the wrong done to the plaintiff is measured by a different yardstick.

Even when awarding damages, the law does not adhere slavishly to the concept of compensation for financially measurable loss. When the circumstances require, damages are measured by reference to the benefit obtained by the wrongdoer. This applies to interference with property rights. Recently, the like approach has been adopted to breach of contract. Further, in certain circumstances an account of profits is ordered in preference to an award of damages. Sometimes the injured party is given the choice: either compensatory damages or an account of the wrongdoer's profits. Breach of confidence is an instance of this. If confidential information is wrongfully divulged in breach of a non-disclosure agreement, it would be nothing short of sophistry to say that an account of profits may be ordered in respect of the equitable wrong but not in respect of the breach of contract which governs the relationship between the parties. With the established authorities going thus far, I consider it would be only a modest step for the law to recognise openly that, exceptionally, an account of profits may be the most appropriate remedy for breach of contract."

It is clear from the aforesaid passage that an award of compensatory damages and an account of profits cannot go hand in hand, and in any case an

account of profits an only be made in "exceptional" cases. The decision in was recently considered by the Supreme Court of the United Kingdom in ***One Step (Support) Limited v Morris-Garner*** [2018 2 WLR 1353] which involved the assessment of damages for a breach of a non-compete clause. The Supreme Court reversed the view of the Courts below directing an account of profits and held that the general rule of compensatory damages ought to applied. The leading opinion of Lord Reed sums up the position in the following way:

"*It might be objected that there is a sense in which any contractual right can be described as an asset, or indeed as property. In the present context, however, what is important is that the contractual right is of such a kind that its breach can result in an identifiable loss equivalent to the economic value of the right, considered as an asset, even in the absence of any pecuniary losses which are measurable in the ordinary way. That issomething which is true of some contractual rights, such as a right to control the use of land, intellectual property or confidential information, but by no means of all. For example, the breach of a non-compete obligation may cause the claimant to suffer pecuniary loss resulting from the wrongful competition, such as a loss of profits and goodwill, which is measurable by conventional means, but in the absence of such loss, it is difficult to see how there could be any other loss.*"

29. What is important to notice is the fact that the Supreme Court had refused to resort to order an account of profits where the damages were indentifiable in the normal way. This has a direct bearing on the case at hand, since there exists unrebutted material providing a legitimate basis on which the Court can base its conclusion to assess damages. This Court also finds that there is nothing "exceptional" in the facts of this case so as to warrant a deviation from the general principle.

30. To complete the picture this Court also notices that the principle that a plaintiff ought to elect between an account of profits or damages has been reiterated by the Bombay High Court in ***J.C. Eno. Ltd. v. Vishnu Chemical Co.*, AIR 1941 Bom 3 :**

> "*In Edn. 6 of Kerly on Trade Mark, at p. 517, it is said that the plaintiff may, in general, make his choice of either an account and payment to him of the profits which the defendant has gained by his wrongful conduct, or an enquiry as to, and payment of, the damages occasioned to the plaintiff by reason of it, and (1905) 22 RPC 341 [('05) 22 RPC 341 : 92 LT 511 : 21 TLR 418, Weingarten Bros. v. Charles Bayer & Co.] is relied upon in support of that proposition. Towards the end of his judgment at p. 351, Lord Macnaghten said:*

Ever since the case in (1863) 1 DE GJ & S. 185 [(1863) 1 De GJ & S. 185 : 9 Jur (NS) 479 : 7 LT (NS) 768 : 11 WR 328 : 137 RR 202, Edelsten v. Edelsten.] it has been the established rule that a plaintiff succeeding in a case of this sort may at his option take an inquiry as to damages or an inquiry as to profits. I do not see any ground for departing from that practice in the present case."

31. In ***Lim OO Tong v. Tan Kah Cheng*, 2013 SCC OnLine MYCA 264,** the Malaysian Court of Appeal has taken a similar view, and had observed as under:

"*It must also be emphasised that the right to an account of profits is entirely distinct from the right to damages. Unlike an award of damages, an account of profits is restitutionary because the plaintiff need not have suffered any loss. What the Plaintiff needs to prove is that the Defendant is the accounting party and that the latter is owing the Plaintiff certain sums though the quantum is uncertain, for it is subject to inquiries before the court. A claim for damages and an account of profits are alternative and inconsistent remedies between which the plaintiff must elect."*

32. From the aforesaid decisions, it is clear that the contention of the learned counsel for the plaintiff that the Plaintiff Company is entitled to both compensatory damages as well as an account

of profits cannot be accepted. The question then is : have the plaintiff's made out any exceptional case to deviate from the general principle and seek for an account of profits? This Court is of the considered view that an order directing an account of profits developed in response to cases where the loss suffered could not be measured adequately or if measured could/would not adequately place the plaintiff in the same position as if the breach had not occurred. In such a situation, the Court was empowered to justly compensate the plaintiff by assessing damages with reference to the gains made by the defendant instead of conventionally assessing it with reference to the loss caused to the plaintiff.

33. In the present case, the plaintiff has produced the auditor's certificate marked as Ex. P-45. If this certificate is read along with Ex. P-33 to Ex. P-43, the only plausible conclusion is that the plaintiff had suffered a loss of Rs.96,51,264/- during the financial year 2019-20. These documents have remained unchallenged. As has been noticed above, PI Healthcare was a prime client of the plaintiff. Further, the allegation that this loss has been occasioned on account of the 1st defendant's treacherous acts have not been rebutted. Consequently,

this Court is of the considered view that the plaintiff has adequately established and proved that is has suffered loss to the tune of Rs. 96,51,264/-

34. In view of the aforesaid, the case of the plaintiff does not fall within the exceptional class of cases for an account of profits. Even otherwise, in view of the Exhibits 33-43 and 45, there are adequate material for the Court to arrive at an assessment of damages under the general principles. The prayer for an account of profits will, therefore, stand rejected. The third issue is answered accordingly.

35. The plaintiff has also made a claim for copyright infringement based on the contents of the web page of the second Defendant. According to the Plaintiff, the Defendants have plagiarised and adapted the literary work of the Plaintiff. According to the Plaintiff, a web page visitor who visits the website of the second Defendant will get an impression that the second Defendant is a rebranded version of the Plaintiff Company.

36. In the considered view of this Court, there is no material available to substantiate this claim. The name of the second Defendant company is completely different. Judged by the standard of an ordinary prudent man it is impossible to mistake the second Defendant company to be a rebranded version of the Plaintiff Company. The fourth point taken up for consideration is answered accordingly.

37. In the result, there shall be a decree on the following terms:

[a] The defendants shall pay to the plaintiffs a sum of Rs.96,51,264/ [Rupees Ninety-Six Lakhs Fifty-One Thousand Two hundred and sixty-four only] towards damages along with interest at the rate of 9% per annum from the date of presentation of the plaint till the date of realisation.

[b] The defendant their men, director, employees, agents, servants, representatives, or any person(s) acting on their behalf, shall be restrained, by a decree of perpetual injunction, from acting in any manner which could divulge and/or enable others to divulge the Plaintiff's

confidential information which are described in Schedule-B of the Plaint, and in each of the products and information individually, specifically by reproducing, issuing copies of communicating to the public, selling or public selling or offering for sale, adaption, or infringing by any other means whatsoever;

[c] The defendants, their men, directors, employees, agents, servants, representatives, or any person(s)shall be restrained, by a decree of perpetual injunction, from acting on their behalf from directly or indirectly soliciting business from PI Healthcare Holdings Limited and any of the customers/ clients of the Plaintiff;

[d] Directing the Defendants to disclose in an affidavit the confidential information/ data and trade secrets, and any other such details pertaining to the operation of the Plaintiff companies that are in the possession of the Defendants which belong to the Plaintiffs and to return all such confidential information/ data that are in possession of the Defendants to the Plaintiffs and to consequently return all the

confidential information/ data, trade secrets, and other such details in whatever form that are stored by the Defendants, back to the Plaintiff.

38. Considering the facts and circumstances of the case and the conduct of the defendants, the suit will stand decreed on the aforesaid terms with costs assessed at Rs.2,50,000/- [Rupees Two Lakhs Fifty Thousand only]. Consequently, connected applications are closed.

15.12.2021

Internet: Yes
Index : Yes
KP

List of Witness examined on the side of the Plaintiff:- --

List of Witness examined on the side of the Defendant:- --

List of the Exhibits marked on the side of the Plaintiff:-

Sl. Nos.	Exhibits	Description of documents
1.	Ex.P.1	Original bond resolution
2.	Ex.P2	Memorandum of Association of the plaintiff
3.	Ex.P3	Articles of Association of the plaintiff
4.	Ex.P.4	Letter of appointment of the 1st defendant as the manager Business development of the plaintiff company

Sl. Nos.	Exhibits	Description of documents
5.	Ex.P.5	Certificate of completion issued by madras management association and national institute for quality and reliability to the 1st defendant.
6.	Ex.P.6	Certificate of completion issued by madras management association for quality and reliability to the 1st defendant
7.	Ex.P.7	Letter promoting the 1st defendant as Senior manager operating, of the plaintiff
8.	Ex.P.8	Certificate of training and examination to the 1st defendnat for completion of training and examination – six sigma green belt conducted by MSME
9.	Ex.P.9	Certificate of participation issued by Boehmert & Boehmert
10.	Ex.P.10	Email exchange between the 1st defendant and PI healthcare holdings limited
11.	Ex.P11	Certificate of participation issued by Sri Ramachandra University to the 1st defendant for successfully participating as a resource person in the national level Seminar & Workshop on 'quality sustenance' in Research publication.
12.	Ex.P12	Email exchange between the 1st defendant and PI Healthcare holdings Limited.
13.	Ex.P13	Email exchange between the 1st defendant and PI Healthcare holdings Limited.
14.	Ex.P14	Email exchange between the 1st defendant and PI Healthcare holdings Limited.
15.	Ex.P15	Letter promoting the 1st defendant as Associate vice president operations of the plaintiff.
16.	Ex.P16	Certificate of participation issued by Indian Institute of Management, Ahmedabad to the 1st defendant for participating in the programme on B2B marketing
17.	Ex.P17	Email exchange between the 1st defendant and PI Healthcare holdings Limited.
18.	Ex.P18	Email exchange between the 1st defendant and PI Healthcare holdings Limited.
19.	Ex.P19	Email exchange between the 1st defendant and PI Healthcare holdings Limited.

Sl. Nos.	Exhibits	Description of documents
20.	Ex.P20	Email exchange between the 1st defendant and PI Healthcare holdings Limited.
21.	Ex.P21	Email from the 1st defendant to the plaintiff regarding PI Healthcare's proposal.
22.	Ex.P22	Email from the 1st defendant to the plaintiff with respect to the expenses incurred during the Europe Trip.
23.	Ex.P23	Email exchange between the 1st defendant and PI Healthcare holdings Limited.
24.	Ex.P24	Email exchange between the 1st defendant and Joanna Jarvis of PI Healthcare holdings Limited.
25.	Ex.P25	Letter of resignation tendered by the 1st defendant as Associate Vice president operations of the plaintiff
26.	Ex.P26	Email exchange between the 1st defendant and PI Healthcare holdings Limited.
27.	Ex.P27	Email from the plaintiff accepting the resignation of the 1stdefendnat thereby reliving him from the services of the company
28.	Ex.P28	Letter addressed by plaintiff company to the 1st defendant wherein it was confirmed that they were availing his consulting services.
29.	Ex.P29	Email from the 1st defendant declining the offer to tender consulting services.
30.	Ex.P30	Email exchange between the 1st defendant and PI Healthcare.
31.	Ex.P31	Letter addressed by plaintiff company to the 1st defendant withdrawing the consulting services of the 1st defendant.
32.	Ex.P32	Email from the plaintiff to 1st defendant attaching proof of payment of loyalty fee
33.	Ex.P33	Email exchange between the plaintiff and PI Healthcare holdings Limited.
34.	Ex.P34	Email exchange between the plaintiff and PI Healthcare holdings Limited.
35.	Ex.P35	Domain for the 2nd defendant's website created
36.	Ex.P36	Articles of association of the 2nd defendant
37.	Ex.P37	Memorandum of Association of the 2nd defendant

Sl. Nos.	Exhibits	Description of documents
38.	Ex.P38	2nd defendant issued a certificate of incorporation by the Ministry of Corporate affairs
39.	Ex.P39	Email exchange between the plaintiff and healthcare
40.	Ex.P40	Email exchange between the plaintiff and PI health care
41.	Ex.P41	Email exchange between the plaintiff and PI health care
42.	Ex.P42	Email exchange between the plaintiff and PI health care
43.	Ex.P43	Email exchange between the plaintiff and PI health care
44.	Ex.P44	Email from MR.Venkatesh of the plaintiff to the CEO of the plaintiff disclosing the details of the 2nd defendant.
45.	Ex.P45	Auditor's certificate issued by Rajendran Viji and co.
46.	Ex.P46	List of meetins attended by the 1st defendant on behalf of the plaintiff with PI Healthcare holdings limited
47.	Ex.P47	List of Business meetings attended by the 1st defendant on behalf of the plaintiff with various customers.
48.	Ex.P48	List of international conferences attended by the 1st defendant which were sponsored by the plaintiff for its business promotion.
49.	Ex.P49	Form No.INC-20A-Declaration of commencement of business of the 2nd defendant.
50.	Ex.P50	Anniversary cards issued by the plaintiff signed by the CEO of the plaintiff and the 1st defendant.
51.	Ex.P51	Screen shots of the plaintiff and the 2nd defendant's website
52.	Ex.P52	Photographs of Ms.Joanna Jarvis along with th 1st defendant in the plaintiff's premises.
53.	Ex.P53	Section 65B Affidavit of Mr.Venkatesh

List of the Exhibits marked on the side of the Defendants:- --

N.ANAND VENKATESH, J.

KP

Pre-Delivery Judgment in
Civil Suit No.258 of 2020
(Comm.Suits)

15.12.2021