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

In the matter of an application for leave to appeal in terms of Section 5 of the High Court of the Provinces (Special Provisions) Act No. 10 of 1996 read with the provisions of the Civil Procedure Code

SC Appeal No: 25/2021

H.C. (Civil) Case No: CHC/745/2018/MR

Mahawaduge Priyanga Lakshitha Prasad Perera
No. 60, Kandawala,
Katana.

Carrying on business as a sole proprietor under the name and style of 'Trading Engineering and Manufacturing Company'

Plaintiff

Vs.

China National Technical Import and Export Corporation
No. 90,
Xi San Huan Zhong Lu Genertec Plaza
Beijing, China

Having its local representative office at
No. 445A, 3rd Floor, Galle Road,
Colombo 03.

Defendant

AND NOW BETWEEN

Mahawaduge Priyanga Lakshitha Prasad Perera
No. 60, Kandawala,
Katana.

Carrying on business as a sole proprietor under the name and 'Trading Engineering Manufacturing Company'

Plaintiff-Petitioner

Vs.

China National Technical Import and Export Corporation
No. 90,
Xi San Huan Zhong Lu Genertec Plaza
Beijing, China

Having its local representative office at No. 445A, 3rd Floor, Galle Road, Colombo 03.

Defendant-Respondent

Before : Priyantha Jayawardena PC, J
Yasantha Kodagoda PC, J
Arjuna Obeyesekere, J

Counsel : Sanjeewa Jayawardena PC with Ruwantha Cooray and Rukshan Senadeera for the Plaintiff-Appellant

Chandaka Jayasundera PC with Shivan Kanag-Ishvaran and Rukmal Cooray for the Defendant-Respondent

Argued on : 13th February, 2024

Decided on : 29th February, 2024

Priyantha Jayawardena PC, J

The instant appeal was filed by the plaintiff-appellant (hereinafter referred to as the "appellant") seeking to set aside the judgment of the Commercial High Court dated 7th of December, 2020, where the plaint was dismissed consequent to a preliminary objection raised by the defendant-respondent (hereinafter referred to as the "respondent").

The Plaint

The appellant instituted action in the Commercial High Court on the 19th of October, 2018 against the respondent, claiming, *inter alia,* a sum of Rs. 602,298,639/10 with legal interest.

The appellant stated that he is a Sole Proprietor carrying on business as a Civil Engineering Contractor, under the name and style of "Trading Engineering and Manufacturing Company", and the respondent is a company duly incorporated under the laws of the People's Republic of China.

In his plaint, the appellant stated that the respondent has its local representative office, **the contract sought to be enforced was entered into,** and/or **the cause and/or causes of action** set forth in the plaint arose within the local limits of the jurisdiction of the Commercial High Court. It was further stated that the Commercial High Court has jurisdiction to hear and determine the matter under and in terms of the provisions of the High Court of the Provinces (Special Provisions) Act No. 10 of 1996.

The appellant further stated that on the 11th of June, 2010 the respondent entered into a contract with the Road Development Authority for the construction of the Southern Transport Development Project bearing reference No. RDA/STDP/CEXIM/P-K4. Thereafter, on the 3rd of November, 2011 the respondent entered into a Sub-contract with the appellant bearing No. STDP/CNTIC/TEAM/2011/10/3 (hereinafter referred to as the "Sub-Contract"), which was produced as part and parcel of the plaint marked as 'P2'. The appellant stated that, as per the terms in the said Sub-Contract, he completed the work and handed it over to the respondent on the 22nd of September, 2013.

The appellant further stated that later, certain disputes arose from the said Sub-Contract with the respondent. However, as they were unable to settle the said disputes amicably, the said disputes were referred to arbitration in terms of Clause 17 of the said Sub-Contract by Notice of Arbitration dated 2nd of April, 2014. (The said Notice of Arbitration was signed by the appellant as the Managing Director of Trading Engineering Manufacturing Company.) However, the respondent denied the claim by reply dated 30th of April, 2014 and included a counterclaim in the said reply.

The appellant stated that it was later found out that, **by mistake, his business was named as a company incorporated under the Companies Act of Sri Lanka in the said Sub-Contract and in the Notice of Arbitration**, whereas it was in fact a Sole Proprietor and not an incorporated company under the Companies Act No. 7 of 2007. Further, the Registration No. (AA) 4726, referred to as the company registration number in the said Sub-Contract, is the business registration number given to the Sole Proprietorship registered by him.

Hence, a new Notice of Arbitration was sent to the respondent by the appellant's Attorney-at-Law on the 20th of June, 2014 informing the respondent that the initial Notice of Arbitration dated 2nd of April, 2014 is withdrawn and that the new Notice of Arbitration should be considered as the correct Notice of Arbitration. In the said Notice of Arbitration, the appellant was named as the claimant to the dispute referred to arbitration. Furthermore, the appellant included additional claims in the second Notice of Arbitration.

The appellant further stated that the respondent objected to the jurisdiction of the Arbitral Tribunal on the basis that the Notice of Arbitration dated 20th of June, 2014 refers to the appellant as a Sole Proprietor, whereas the said Sub-Contract was entered into between the respondent and a company said to be duly incorporated in Sri Lanka, namely Trading Engineering Manufacturing Company. Thus, there was no agreement between the appellant and the respondent to arbitrate the disputes referred to in the Notice of Arbitration.

After hearing the submissions of the parties, the Arbitral Tribunal delivered its Order on the said objection raised by the respondent and terminated the proceedings of the said Arbitration on the basis, *inter alia,* that the said Sub-Contract is not a valid contract and therefore there is no valid arbitration agreement between the parties to refer the alleged disputes to arbitration. Further, it was held that, as the Arbitral Tribunal derives its jurisdiction from the Notice of Arbitration issued under the arbitration clause and as the said Sub-Contract is *void ab initio,* both Notices of Arbitration have no force or effect in law.

Being aggrieved by the said Order of the Arbitral Tribunal, the appellant filed an application on the 20th of November, 2014 in the High Court in terms of section 11 of the Arbitration Act No. 11 of 1995 praying, *inter alia,* to set aside the said Order and seeking a declaration that there is a valid and binding arbitration agreement between the parties to refer the disputes to arbitration under and in terms of the said Sub-Contract.

After hearing the parties, the said application was dismissed by the learned High Court Judge by his judgment dated 5th of June, 2017 on the basis that the High Court has no jurisdiction to entertain the said application as there is no provision in the Arbitration Act to appeal against an Order where an Arbitral Tribunal has ruled on its jurisdiction. The appellants, instead of appealing against the said judgment, instituted the action under reference in the Commercial High Court on the 19th of October, 2018 praying *inter alia*;

> "(a) Judgment and Decree be entered in favour of the Plaintiff in a sum of Rs. 88,794,135/74 together with legal interest from 05th November 2013 up to the date of Decree and thereafter further interest on the aggregate amount of the Decree until payment in full in respect of the First Cause of Action;
>
> (b) Judgment and Decree be entered in favour of the Plaintiff in a sum of Rs. 30,110, 210/88 together with legal interest from 03rd April 2014 up to the date of Decree and thereafter further interest on the aggregate amount of the Decree until payment in full in respect of the Second Cause of Action;
>
> (c) Judgment and Decree be entered in favour of the Plaintiff in a sum of Rs. 142,666,236/86 together with legal interest from 03rd April 2014 up to the date of Decree and thereafter further interest on the aggregate amount of the Decree until payment in full in respect of the Third Cause of Action;
>
> (d) Judgment and Decree be entered in favour of the Plaintiff in a sum of Rs. 272, 088, 384/97 together with legal interest from 18th October 2014 up to the date of Decree and thereafter further interest on the aggregate amount of the Decree until payment in full in respect of the Fourth Cause of Action;
>
> (e) Judgment and Decree be entered in favour of the Plaintiff in a sum of Rs. 15, 824, 792/89 together with legal interest from 18th October 2014 up to the date

of Decree and thereafter further interest on the aggregate amount of the Decree until payment in full in respect of the Sixth Cause of Action;

(g) **A Declaration that the Plaintiff has duly completed the works under the Sub-Contract on 23rd September 2013 and notified the same to the Defendant;**

(h) **A Declaration that the Plaintiff is entitled to the issue of a Completion Certificate/Acceptance Certificate under and in terms of Clause 13.4 of the said Sub-Contract;**

(i) Costs; and

(j) Such other and further relief as this Court may seem meet to be granted."

[emphasis added]

Answer

The respondent filed its answer and prayed *inter alia* for a dismissal of the plaint on the basis that the appellant cannot maintain the said action as the appellant is not a contracting party to the contract ('P2') sought to be enforced.

Proceedings before the Commercial High Court

The trial commenced before the Commercial High Court by marking admissions and raising issues. Thereafter, the respondent had moved court to have the following issues tried as preliminary issues of law in terms of section 146 of the Civil Procedure Code as amended;

"23
(a) Is the Plaintiff a party to the Sub-contract Agreement marked P2 to the Plaint?
(b) If the above issue is Answered in the negative, does the Plaintiff have no locus standi to institute this action?
(c) If the above issues are answered in favour of the Defendant has a cause of action accrued to the Plaintiff against the Defendant?

(d) Is the action of the Plaintiff misconceived in law and contrary to the provisions of the of section 43 of Civil Procedure Code?

24. if one or more of the above issues (a), (b), (c) and (d) are answered in favour of the Defendant, should this action be dismissed in limine?

25. Does any purported relationship between the Plaintiff and the Defendant necessarily arise from any purported work and labour done on behalf of the Defendant by the Plaintiff?

26. Is any cause of action for work or labour done prescribed in term of Section 08 of the Prescription Ordinance?"

Thereafter, the learned High Court judge heard the parties on the said issues and directed them to file written submissions in respect of the same.

Judgment of the Commercial High Court

The learned Commercial High Court Judge delivered his judgment dated 7th of December, 2020 and held that the contract produced marked as 'P2' is not a valid contract. Accordingly, he dismissed the plaint filed by the plaintiff.

Appeal to the Supreme Court

Being aggrieved by the said judgment of the Commercial High Court, the appellant filed an appeal in the Supreme Court, and the court granted leave to appeal on the following questions of law;

"b. At all times during the execution of P2 has the Defendant duly acted on the basis of the plaintiff being a person engaged in the business as a sole proprietor?

d. In all the circumstances, is the Defendant effectively estopped from denying substantive status and character of the Plaintiff?

f. If the Plaintiff is left without a remedy on the basis of the purported objection, will the plaintiff be grievously prejudiced as a result of being non suited?

g. Did the commercial high court place an undue and rigorous reliance on a patently erroneous issue of nomenclature and failed to see the true nature, character and status of the Plaintiff?

h. Given the inherent and intrinsic character of the plaintiff as an individual or as a person engaged in business as a sole proprietor; is he entitled to have and maintain the action maintained in the Commercial High Court?

k. Did the High Court err by concluding that the issues which were taken as preliminary issues were pure questions of law that could dispose of the action in its entirety?

l. Did the High Court err by holding that the sub contract P2 was void and/or was entered into by an entity or person known to law?"

Did the High Court err by holding that the Sub-Contract P2 was void and/or was entered into by an entity or person known to law?

The main issues that need to be considered in this appeal are whether;

(i) the appellant had the capacity to enter into the said Sub-Contract produced marked as 'P2',
(ii) there was an agreement between the parties to enter into the said contract (meeting of minds), and
(iii) the appellant is entitled in law to institute the action under reference in the Commercial High Court after the Arbitral Tribunal held that the sub-contract ('P2') is *void ab initio*.

Moreover, it is pertinent to note that the issues raised by appellant, *inter alia;* stated;

"1. Does the Plaintiff have **Locus Standi** to institute, have and maintain the above styled action?"

Thus, it appears that both parties have raised the jurisdictional issue before the High Court. Hence, it is necessary to consider the jurisdictional issue in the first instance, as it goes to the root of the case.

The law of contract requires at least two parties to form a contract. Further, the parties to a contract must, *inter alia,* have the capacity to enter into a contract. It is pertinent to note that the incapacity of one or more of the contracting parties will result in a contract being void or voidable.

The said Sub-Contract was entered into between China National Technical Import & Export Corporation and 'Trading Engineering and Manufacturing Company a company duly incorporated under the laws of the Democratic Socialist Republic of Sri Lanka and registered under Company Registration No. AA4726 in terms of the provisions of the Companies Act No. 07 of 2007, and having is registered office at No. 317/A, Thelwatta Junction, Colombo Road, Negombo, Sri Lanka.' In the said Sub-Contract the parties are named as follows;

> "**CHINA NATIONAL TECHNICAL IMPORT & EXPORT CORPORATION,** a company duly incorporated in the People's Republic of China having its principle office at No. 90 Xi San Huan Zhong Lu Genertec Plaza, Beijing, China (hereinafter referred to as "**CNTIC**" which terms and expression shall mean and include the said China National Technical Import & Export Corporation and its successors, assigns, administrators and liquidators) of the **ONE PART**
>
> **AND**
>
> **TRADING ENGINEERING AND MANUFACTURING COMPANY**, a company duly incorporated under the laws of the Democratic Socialist Republic of Sri Lanka and registered under Company Registration No. AA4726 in terms of the provisions of the Companies Act No. 07 of 2007, and having is registered office at No. 317/A, Thelwatta Junction, Colombo Road, Negombo, Sri Lanka, (hereinafter referred to as "**TEAM**" which term and expression shall mean and include the said TEAM and its successors, administrators and liquidators) of the **OTHER PART**"
>
> [emphasis added]

It was submitted by the learned President's Counsel for the appellant that the appellant was mistakenly referred to as a company duly incorporated under and in terms of the Companies Act in the said Sub-Contract. This position is also stated in averment 12 of the plaint.

However, it was submitted by the learned President's Counsel for the respondent that the appellant attempted to correct the said mistake only when the second Notice of Arbitration was given on the 20th of June, 2014, i.e., 3 years after entering into the said Sub-Contract in the year 2011.

The elements required to form a valid contract is set out in *The Law of Contracts,* Volume 1 at page 84 by C.G. Weeramantry which states as follows;

> "(a) agreement between the parties
>
> (b) actual or presumed **intention to create a legal obligation**
>
> (c) due observance of prescribed forms or modes of agreement, if any
>
> (d) legality and possibility of the object of the agreement
>
> (e) **capacity of parties to contract**"
>
> [emphasis added]

Capacity to enter into a contract

The law only recognises natural persons and juristic persons as having the capacity to enter into contracts. A juristic person is considered as having a separate legal personality in law. Thus, it is necessary to consider whether the appellant can be considered as a juristic person.

Section 3 of the Companies Act No. 7 of 2007 specifies the types of companies that can be incorporated under the said Act;

> "(1) A company incorporated under this Act may be either—
>
> (a) a company that issues shares, the holders of which have the liability to contribute to the assets of the company, if any, specified in the company's articles as attaching to those shares (in this Act referred to as a "limited company"); or
>
> (b) a company that issues shares, the holders of which have an unlimited liability to contribute to the assets of the company under its articles (in this Act referred to as an "unlimited company"); or
>
> (c) a company that does not issue shares, the members of which undertake to contribute to the assets of the company in the event of its being put into liquidation, in an amount specified in the company's articles (in this Act referred to as a "company limited by guarantee").

(2) Where a limited company is incorporated as a private company or as an off-shore company, the provisions of Part II or Part XI shall apply respectively, to such a company."

However, in his plaint filed in the Commercial High Court, the appellant referred to his business as a sole proprietorship. A sole proprietorship is the simplest form of business that is owned and managed by one person. On the other hand, a company incorporated under the Companies Act No. 7 of 2007 is owned by the shareholder/s of the company, while the directors manage the operations of the company. Further, a sole proprietorship has no separate legal personality of its own, and thus, in law, the business and its owner are viewed as a single entity. Hence, it is not possible for a sole proprietor to sue and to be sued by his business registration name. Thus, all actions filed by or against a sole proprietorship should be in the personal name of the sole proprietor carrying on business under the name of the sole proprietorship. In contrast, a registered company is a person in the eyes of the law, distinct from its shareholders. Further, as a company has a separate legal personality, it can, *inter alia,* enter into contracts, sue, and be sued in the name of the company.

A similar view was held in ***Solomon v Solomon & Co. Ltd.*** **[1897] AC 22,** where it was held that the proceedings were not contrary to the true intent and meaning of the Companies Act 1962; that the company was duly formed and registered and was not the mere "alias" or agent of or trustee for the vendor; and that he was not liable to indemnify the company against the creditors' claims.

Further, it was common ground that there was no company incorporated under the Companies Act No. 7 of 2007 by the name of Trading Engineering and Manufacturing Company. Moreover, the number referred to as the company registration number in the said Sub-Contract is incorrect, as there is no such company in existence. Further, a Sole Proprietorship does not have a registered office, as stated in the said Sub-Contract.

Moreover, the said Sub-Contract was entered into by Chinese National Technical Import & Export Corporation and Trading Engineering and Manufacturing Company, which is said to be incapacitated under the provisions of the Companies Act. As the said Trading Engineering and Manufacturing Company was not a company incorporated under the Companies Act, it did not have the capacity to enter into a valid contract. Moreover, the aforementioned description given to the Trading Engineering and Manufacturing Company is incorrect and misleading.

In *The Law of Contracts,* Volume I at page 532 by C.G. Weeramantry, it states;

> "There must in general be two parties to a contract. If one of the parties to the contract be dead or non-existent no contract can come into being."

In the circumstances, I am of the opinion that the said Sub-Contract is *void ab initio* as one of the parties to the said contract lacked the capacity to enter into the said contract, which is a core element in forming a valid contract. A similar view was expressed in *The Law of Contracts,* Volume I at page 95 by C.G. Weeramantry which is as follows;

> "The absence in a contract of any of the essentials of a valid contract would render it null and *void ab initio*."

Meeting of the Minds

The plaint filed in the Commercial High Court contains 6 causes of action based on the said Sub-Contract filed along with the plaint marked as 'P2'. It is apparent that the said causes of action are founded upon the said Sub-Contract.

In fact, following the proper procedure and accepted drafting skills of plaints, the appellant has averred the following in respect of each cause of action preferred to in the plaint filed in the Commercial High Court;

> "The Plaintiff re-iterates the averments contained in paragraph 1 to 21 above."

Hence, a careful consideration of the plaint shows that all the claims are based on the said Sub-Contract. Moreover, in a contract, the parties consent to perform certain obligations arising from the contract. Thus, it is necessary to have a "meeting of the minds" of the parties to perform the contractual rights/obligations under the contract. However, in the said Sub-Contract as one party is not an entity, it is not possible to have the meeting of the minds of the parties in order to form a contract. This aspect also renders the said Sub-Contract *void ab initio.*

Mistake in naming a party in the Sub-Contract

In the instant appeal, the appellant withdrew the initial Notice of Arbitration dated 2nd of April, 2014 and served the new Notice of Arbitration dated 20th of June, 2014 naming himself as the claimant. Further, in averment 12 of the plaint, the appellant stated that the said Trading Engineering and Manufacturing Company was named as a company duly incorporated under the Companies Act by mistake.

A careful consideration of the aforementioned two Notices of Arbitration shows that the appellant realised the error/mistake in the Sub-Contract where Trading Engineering and Manufacturing Company was not a company incorporated under the Companies Act only after the first Notice of Arbitration dated 2nd of April, 2014 was sent to the respondent. It is pertinent to note that a mistake in entering into a contract itself makes such a contract *ab initio void*. Moreover, it is pertinent to note that the appellant has been sending correspondences as the Managing Director of Trading Engineering and Manufacturing Company. However, there are no directors in Sole Proprietorships.

Therefore, I hold that the Commercial High Court was correct in holding that the said Sub-Contract marked 'P2' was void as one of the parties to the contract was neither a natural person nor a legal person known to law.

Given the inherent and intrinsic character of the plaintiff as an individual or as a person engaged in business as a sole proprietor; is he entitled to have and maintain the action maintained in the Commercial High Court?

In his plaint, the appellant sought to enforce the Sub-Contract marked and produced as 'P2' along with the plaint, which was declared *void ab initio* by the Arbitral Tribunal as the said Trading Engineering and Manufacturing Company, being a sole proprietor, did not have the capacity to enter into the said contract.

It is pertinent to note that the said Sub-Contract was not entered into between China National Technical Import and Export Corporation and the appellant, namely, Mahawaduge Priyanga Lakshitha Prasad Perera. Thus, as the Sub-Contract was *void ab initio*, the said contract is non-existent in the eyes of the law. Hence, it renders the said contract unenforceable, with no legal

rights or obligations arising from it. Therefore, the alleged parties to the Sub-Contract cannot seek to enforce any rights or remedies under the said contract.

As stated above, Trading Engineering and Manufacturing Company was described as a company duly incorporated under the laws of the Democratic Socialist Republic of Sri Lanka and registered under the Company Registration No. AA4726 in terms of the Companies Act No. 7 of 2007, and having its registered office at No. 317/A, Thelwatta Junction, Colombo Road, Negombo, Sri Lanka, (hereinafter referred to as "**TEAM**" which term and expression shall mean and include the said TEAM and its successors, administrators and liquidators). The aforementioned description contains all the features of a company incorporated under the Companies Act No. 7 of 2007. Further, a Sole Proprietorship cannot have successors and liquidators. Such matters are unique to an incorporated company.

Moreover, as stated above, in the plaint filed in the Commercial High Court, the appellant admitted that the Sole Proprietorship was named as a company by mistake. Hence, a person engaged in a business as a Sole Proprietor cannot be replaced as a party to the said Sub-Contract, particularly when the Sub-Contract is *void ab initio* and is non-existent before the law.

Applicability of the Doctrine of Res Judicata

It is pertinent to note that, if the court holds that the Sub-Contract produced marked as 'P2' is a valid contract between the parties, the arbitration agreement in Clause 17 of the said contract will become operative between the parties to the said action, and thereby, any dispute, controversy or difference of any kind arising between the appellant and respondent in connection with or arising out of the said Sub-Contract is required to be referred to arbitration.

Hence, if the respondent objects to the jurisdiction of the Commercial High Court under section 5 of the Arbitration Act No. 11 of 1995, the Commercial High Court will not have jurisdiction to entertain the plaint filed by the appellant and hear the case. Such an event will leave the appellant to go back to arbitration. However, as the arbitral tribunal has already ruled on its jurisdiction as the said Sub-Contract is *void ab initio* and come to the conclusion that it has no jurisdiction, the said Order of the Arbitral Tribunal acts as res judicata between the parties. Thus, no purpose would be served in continuing with the case pending before the Commercial High Court.

In any event, as the arbitral tribunal has already decided that the said Sub-Contract is *void ab initio*, the doctrine of res judicata also acts as a bar to the institution of the plaint filed by the appellant.

Further, section 26 of the Arbitration Act No. 11 of 1995 reads as follows;

> "Subject to the provisions of Part VII of this Act, **the award made by the arbitral tribunal shall be final and binding on the parties to the arbitration agreement**."
>
> [emphasis added]

Hence, the aforementioned decision of the Arbitral Tribunal shall be final and binding on the parties to the Sub-Contract marked and produced as 'P2' along with the plaint filed in the Commercial High Court. Moreover, a careful consideration of section 26 of the Arbitration Act shows that the Doctrine of Res Judicata has been introduced to arbitrations conducted under the said Act.

In ***Fidelitas Shipping Co Ltd v V/o Exportchleb*** **[1965] 1 Lloyd's Rep. 223 at 229 and 230,** Lord Denning MR held:

> *"Within one issue, there may be several points available which go to aid one party or the other in his efforts to secure a determination of the issue in his favour. The rule then is that each party must use reasonable diligence to bring forward every point which he thinks would help him. If he omits to raise any particular point, from negligence, inadvertence, or even accident (which would or might have decided the issue in his favour) he may find himself shut out from raising that point again, at any rate in any case where the self-same issue arises in the same or subsequent proceedings.*
>
> *……*
>
> *It is in the interest of commerce that issues, once decided, should not be reopened because one side or the other thinks of another point. If we were to allow the issue of waiver to be raised now it might well mean another journey up this Court on another special case. That would never do. There must be an end of litigation some time."*

Further, in *International Commercial Arbitration 2021***,** 3rd Edition, Vol. 3, page 4145 by Gary B. Born, *inter alia*, discusses the preclusive effect and/or finality of jurisdictional awards in arbitral proceedings when there is no contractual relationship between the parties.

> *"Jurisdictional awards*
>
> *Particular issues of preclusion are raised by an arbitral tribunal's jurisdictional award. Such awards can be either positive (either upholding the existence, validity, or applicability of an arbitration agreement) or negative (holding that no valid arbitration agreement exist or applies). In either case, the question arises to the preclusive effects of the award in subsequent judicial or arbitral proceedings . this question can arise in different contexts, which require different analysis. ...*
>
> *...*
>
> *Second, the preclusive effect of a jurisdictional award can arise in subsequent arbitral or judicial proceedings (i.e., other than actions to annul or recognize an award). In these proceedings, there is no reason that both positive and negative jurisdictional decisions should not be entitled to the same preclusive effects as those of other types of arbitral awards (not addressing issue of jurisdiction).*
>
> ***For example, if an arbitral tribunal decides that there was no contractual relationship between the parties, or that the asserted arbitration clause was never concluded, then the substantive decision should be preclusive with regard to that issue in subsequent efforts by one of the parties to commence a second arbitration based upon the putative arbitration clause or to rely on that clause in defence to a litigation***. *Equally, a positive determination of this jurisdictional issue should be dispositive if, in a subsequent arbitration, one of the parties objected to jurisdiction or denied the existence of a contract, or if a party seeks to pursue claims covered under the arbitration agreement in a litigation."*
>
> [emphasis added]

Conclusion

In light of the above, the following questions of law are answered as follows;

(l) Did the High Court err by holding that the subcontract P2 was void and/or was entered into by an entity or person known to law?

No

(h) Given the inherent and intrinsic character of the plaintiff as an individual or as a person engaged in business as a sole proprietor; is he entitled to have and maintain the action maintained in the Commercial High Court?

No

In view of the answers given to the aforementioned questions of law, the other questions of law are not answered.

Accordingly, the appeal is dismissed. No costs

Judge of the Supreme Court

Yasantha Kodagoda PC, J

I Agree **Judge of the Supreme Court**

Arjuna Obeyesekere, J

I Agree **Judge of the Supreme Court**