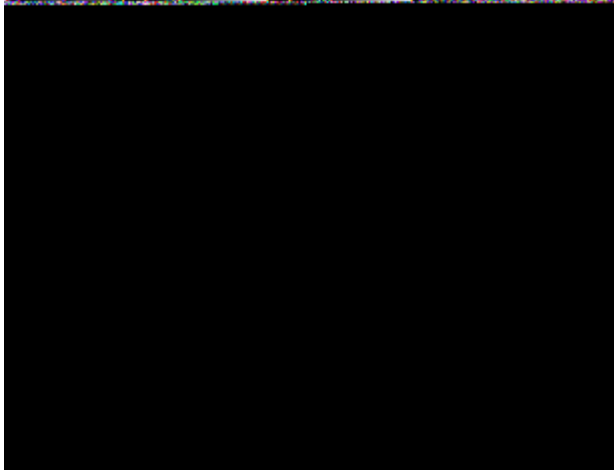


**IN THE SUPREME COURT OF THE DEMOCRATIC SOCIALIST
REPUBLIC OF SRI LANKA**

In the matter of an Appeal
from the Judgment dated 1st
October 2009.



Censtar International (Pvt) Ltd,
No 320A, Dehiwala Road,
Bellanwilla.

Plaintiff

Vs.

Distilleries Company of Sri
Lanka PLC
P.O. Box 1756,
No.110, Norris Canal Road,
Colombo 10

Defendant

AND NOW

Distilleries Company of Sri
Lanka PLC
P.O. Box 1756,
No.110, Norris Canal Road,
Colombo 10

Defendant- Appellant

Vs.

Censtar International (Pvt) Ltd,
No 320A, Dehiwala Road,
Bellanwilla.

Plaintiff- Respondent

BEFORE:

**HON. P.PADMAN SURASENA, CJ,
HON. YASANTHA KODAGODA, PC, J,
HON. KUMUDINI WICKREMASINGHE, J**

COUNSEL:

S.A. Parathalingam, PC with N.R. Sivendran
and Nishkan Parathalingam and Renuka
Udumulla instructed Ms. V.J. Senaratne for
the Defendant- Appellant.

Dr. Romesh de Silva, PC with Sugath Caldera
for the Plaintiff- Respondent.

WRITTEN SUBMISSIONS: Pre Argument Written Submissions by
the Defendant-Appellant on 09.10.2012.

Pre Argument Written Submissions By the Plaintiff-Respondent on
24.03.2023.

ARGUED ON: 24.10.2023

DECIDED ON: **07.10.2025**

K. KUMUDINI WICKREMASINGHE, J.

This is an appeal from a judgment of the High Court of the Western
Province holden in Colombo (Exercising its Civil Jurisdiction), dated
25.11.2009.

The Plaintiff-Respondent (hereinafter referred to as the “Respondent”)
instituted the initial action before the High Court of the Western
Province holden in Colombo (Exercising its Civil Jurisdiction)
(Commercial High Court), against the Defendant-Appellant-
(hereinafter referred to as the “Appellant”).

The Respondent instituted this action on 29 July, 2005 against the
Appellant upon three (3) causes of action together with an alternative

cause of action on the basis that a sum of Rs.17,982,358.38 is due in respect of goods sold and delivered and for a further cause of action for loss and damage being 30% of Rs.17,982,358.38 per annum from 1st October, 2004.

The Respondent on or about 3rd August, 2004 at the request of the Appellant sold and delivered to the Defendant-Appellant the empty glass bottles at the specifications specified in and at the prices stated in the invoice dated 3rd August, 2004. A true copy of the said invoice was annexed to the Complaint marked "P1" (page 48/64 of the Brief). The said document was marked in evidence as "P2" - (page 87/110 of the Brief).

The Appellant had failed and/or neglected to pay the Respondent the said sum of Rs.6,341,511.60 or any part thereof though thereto obliged and though thereto demanded. The Respondent on or about 27th August, 2004 at the request of the Appellant sold and delivered to the Appellant empty glass bottles at the specifications specified in and at the price stated in the invoice dated 27th August, 2004. A true copy of the said invoice was annexed to the Complaint marked "P2" (page 49/65 of the Brief). The said document was marked in evidence as "P4" - (page 98/121 of the Brief). The Appellant failed and/or neglected to pay the Respondent the said sum of Rs.1,933,656.20 or any part thereof though obliged and demanded.

The Respondent on or about 1st September, 2004 at the request of the Appellant sold and delivered to the Appellant the empty glass bottles at the specifications given in and at the price stated in the invoice dated 15th September, 2004. A true copy of the said invoice was

marked "P3" (page 50/66 of the Brief). The said document was marked in evidence as "P6" - (page 103/126 of the Brief).

The Appellant had failed and/or neglected to pay the Respondent the said sum of Rs.9,707,190.58 or any part thereof though obliged and demanded. The Respondent on or about 1st September, 2004 at the request of the Appellant sold and delivered to the Appellant empty glass bottles at the specifications given in and at the price stated in the invoice dated 1st September, 2004. A true copy of the said invoice was annexed to the Complaint marked "P3" (page 50/66 of the Brief). The said document was marked in evidence as "P6" - (page 103/126 of the Brief). The Appellant has failed and/or neglected to pay the Respondent the said sum of Rs.9,707,190.58 or any part thereof though obliged and demanded.

By letter dated 6th September, 2004 the Appellant acknowledged that a sum of Rs.17,982,358.38 is due and owing from the Appellant to the Respondent and promised and undertook to pay the same to the Respondent. A true copy of the said letter was marked "P4" (page 51/67 of the Brief). The said document was marked in evidence as "P8" - (page 118/141 of the Brief). The Appellant failed and neglected to pay the said sums of money in the months of August and September causing the Respondent loss and damages which the Respondent estimates at 30% of Rs. 17,982,358.38 per annum from 15 October, 2004 till the said sum of Rs.17,982,358.38 is paid to the Respondent.

On 25th October, 2005, the Defendant-Appellant filed Answer (page 52/68 of the Brief) and denied liability and stated, inter alia, that -

- (a) that the appellant is not liable to make the payment.
- (b) that the Appellant is engaged in the business of manufacturing and distribution of alcohol;
- (c)that the Respondent represented that the Plaintiff-Respondent was the agent of Jg Containers (Malaysia) SDN BHD and that the principal of the Respondent was in a position to supply quality empty glass bottles to the Appellant;
- (d) that although the Respondent supplied glass bottles to the Appellant, the Respondent delayed in supplying the glass bottles;
- (e) that the Respondent had not paid its dues to its principal and the said principal made a claim on the Defendant-Appellant;
- (f) that there was a meeting on 4th September, 2004 between the Respondent, Appellant and the principal of the Respondent, namely Jg Containers (Malaysia) SDN BHD and an arrangement was reached whereby in the event the Respondent failed to pay the principal of the Respondent, the Appellant to pay directly to the said Jg Containers (Malaysia) SDN BHD.
- (g) that although the Respondent undertook to pay to Jg Containers (Malaysia) SDN BHD, failed to pay to Jg Containers (Malaysia) SDN BHD and consequently, a demand was made on the Appellant by Jg Containers (Malaysia) SDN BHD and the Appellant made the payment of Rs.17,982,358.38 to Jg Containers (Malaysia) SDN BHD.
- (h) that in the circumstances, thus and otherwise the Appellant is not liable to make any payment to the Respondent;
- (i) that as a result of the delay in supplying the goods by the Respondent as undertaken by it loss and damage in a sum of Rs.400,000,000/- was caused to the Appellant;
- (j) that as the Respondent failed to supply the goods as per the invoices marked with the Plaint and as a result of the delay in

supplying the goods, the Appellant could not continue with its business and had suffered loss and damage in a sum of Rs.400,000,000/-;

(k) that as a result of the Plaintiff-Respondent not making payments of its dues due to Jg Containers (Malaysia) SDN BHD, Jg Containers (Malaysia) SDN BHD failed to supply and/or refused to supply empty bottles to the Defendant-Appellant and as a result of that the Defendant-Appellant could not continue with its business properly and as such, the Defendant-Appellant suffered loss in a sum of Rs.100,000,000/- as a consequence thereof.

The Respondent filed replication denying the claims in reconvention in the answer of the appellant. Thereafter, when the matter was taken up for trial on 21st March, 2006 (page 308 of the Brief), five (5) admissions were recorded and the fifth admission was subject to the reservations made therein. The translation of the said admissions are as follows:

01. The Defendant is a duly incorporated company and its registered office and/or principle place of business is situated within the local limits of the Jurisdiction of this Court.

02. Jurisdiction of the Court is admitted.

03. The Defendant is engaged in the business of manufacture, sale and supply of alcohol both locally and abroad.

04. The Plaintiff issued invoices dated 3rd of August, 27th of August and 15th September, 2004 and the Defendant was in receipt of the same.

05. Mr.Romesh De Silva, President Counsel moves to record as an Admission that the letter referred to in paragraph 21 of the Answer has been written by the Defendant. Mr. Gomin Dayasiri states that, if the said fact is recorded in that manner and on that basis alone that is, in

considering all the other matters also averred in paragraph 21 of the Answer, he is agreeable to the same.

Accordingly, in the aforesaid premises, taking into consideration the entirety of the matters stated in paragraph 21, it is admitted that the said letter was written by the Defendant.

The Appellants contended that the evidence of witnesses had been recorded and concluded before Honourable K.T. Chitrasiri, then Judge of the High Court of the Western Province Holden in Colombo (Exercising its Civil Jurisdiction). Upon his elevation to the Court of Appeal, the judgment could not be delivered by him. Consequently, the parties agreed that the succeeding Learned High Court Judge, who had not heard the oral testimonies, would deliver judgment. The Appellants maintained that as a result, the succeeding Judge erroneously recorded that it was their position from the inception that there existed a tripartite agreement between the Respondent, the Appellant, and Jg Containers (Malaysia) SDN BHD.

The Appellant averred that it was not in dispute that the Respondent had failed to make payments to Jg Containers (Malaysia) SDN BHD for bottles supplied prior to 1st September 2004. The uncontradicted oral testimony of the General Manager of Jg Containers (Malaysia) SDN BHD established that as of that date substantial sums remained outstanding from the Respondent. The admitted document marked “V35”, dated 1st September 2004, confirmed that an amount of USD 235,869.78 was due in respect of shipments effected between March and August 2004. The Respondent’s failure to honour the Sales Agreement with Jg Containers (Malaysia) SDN BHD disrupted the smooth functioning of the Appellant.

The Appellants further contended that the Learned Trial Judge erred in law in failing to appreciate that although the Appellant was not a

party named in, nor a signatory to, the agreement, it was pursuant to the arrangement between the Respondent and the Appellant that the Sales Agreement marked “V8” came into existence.

It was the Appellants contention that it was common ground that the Appellant had settled the monies claimed by Jg Containers (Malaysia) SDN BHD under the said letter, but the Respondent failed to remit the same to Jg Containers (Malaysia) SDN BHD.

The Appellants emphasised the significance of the meeting held on 4th September 2004. The representative of Jg Containers (Malaysia) SDN BHD, as well as other witnesses of the Appellant, confirmed that such a meeting took place. Two of the three parties present, testified that an arrangement was reached whereby, in the event the Respondent failed to pay the outstanding USD 235,869.78, the Appellant would be entitled to make such payment. The Appellants submitted that although this understanding was not subsequently confirmed in writing, the Learned Trial Judge erred in law in failing to recognise that this was the natural and ordinary course of events arising out of the meeting of 4th September 2004.

The Appellants further submitted that the Learned Trial Judge, having observed that the Respondent’s witness was not truthful, erred in law in nonetheless entering judgment in favour of the Respondent. They argued that if payment is now ordered to be made to the Respondent, the Appellant would effectively be required to make double payment in respect of the same liability. It was undisputed that the Appellant had already settled the sums due by the Respondent to Jg Containers (Malaysia) SDN BHD. A further payment to the Respondent would unjustly enrich the Respondent in the sum of Rs. 17,982,358.38, to the detriment of the Appellant.

The Appellants contended that the Learned Trial Judge, having noted that the Chairman/Managing Director of the Respondent admitted that under-invoicing was illegal, failed to appreciate that the Respondent's conduct was fraudulent and that it sought to enforce an illegal transaction. It was their position that the Respondent had derived its rights under the contract through fraud and illegality, rendering the entire contract a nullity and unenforceable. The Learned Trial Judge, while finding that the Respondent's witness was evasive, untruthful, and concealing facts, nevertheless grossly misdirected himself in concluding that no agreement had been reached at the meeting of 4th September 2004.

The Appellants further submitted that their claim in reconvention had been substantiated by documentary evidence. All documents tendered by the Appellant were admitted, and no further proof was necessary. The Respondent failed to specify which documents, if any, remained unproven. In these circumstances, the Respondent could not properly maintain that the documents marked subject to proof had not been proved. The Appellant established by documentary evidence that, owing to the Respondent's conduct, its foreign supplier, Jg Containers (Malaysia) SDN BHD, ceased supply, resulting in loss to the Appellant. Accordingly, the Appellants contended that their claim had been duly established, and they are entitled to the reliefs prayed for in their Answer.

The Respondent in their written submissions contended that the High Court entered the judgment in favour of the Respondent. The Respondent stated that the Appellants case is mala fide in the Appellants takes up two contrary positions:

(i) that the Appellant was dealing with the Respondent's principal in Malaysia

(ii) that at a meeting held on 4th September 2004, the Respondent, Appellant and the Malaysians (Jg Containers (Malaysia) SDN BHD) agreed that in the event of the Respondent not paying the Malaysians (Jg Containers (Malaysia) SDN BHD) a certain sum of money the Appellant would forward the sum of Rs. 17,000,000/- claimed in this case to the Malaysians.

At the outset, the Respondent contended that the Appellant's claim is fraudulent. If, as alleged, the contract was between the Appellant and the Respondent's principal in Malaysia, then the Appellant was under no obligation to pay any sum of money to the Respondent but only to the said principal. In such circumstances, there would have been no necessity for a meeting, nor for the Respondent's consent, for the Appellant to remit payment to the supplier in Malaysia.

The Respondent further submits that the Appellant, while claiming to have made payments to the principal in Malaysia, now asserts a claim in reconvention against the Respondent for alleged defective bottles. It is the Respondent's position that if the agreement was with the Malaysian principal, any claim in reconvention must necessarily lie against that principal and not against the Respondent. In any event, if the Appellant's version is to be believed, any such alleged claims should have been deducted from the sum of Rs. 17,982,358.38/- prior to its payment to the Malaysian supplier, rather than pursued against the Respondent.

The Respondent maintains that their case is straightforward: the Respondent sold and delivered bottles to the Appellant, for which a sum of Rs. 17,982,358.38 remains due and owing. By letter dated 6th September 2004, marked P8, the Appellant expressly acknowledged this liability and promised to pay the said sum. The Appellant's failure to honour that promise gives rise to the Respondent's entitlement to

recover the same. The Respondent has produced all relevant invoices and delivery notes, which stand unchallenged, as their witnesses were not cross-examined on any of the documents marked on behalf of the Respondent.

The Respondent further submits that the Appellant's own claim in reconvention for defective and delayed deliveries reinforces that the contract for sale of goods was between the Respondent and the Appellant, and not between the Appellant and the Malaysian principal.

The Respondent specifically denied that the Respondent ever agreed to the Appellant remitting monies directly to the Malaysian supplier. At no stage did the Appellant document such an agreement. Being a large multinational company, if such an arrangement had in fact been reached, the Appellant would undoubtedly have reduced it into writing.

It is the Respondent's position that the letter marked P8, issued on 6th September 2004, merely two days after the purported meeting of 4th September, makes no reference whatsoever to any such arrangement. On the contrary, it expressly acknowledges liability to the Respondent. Notably, the letter was signed by Mr. Rajanathan, Supplies Manager of the Appellant, who was present at the alleged meeting. Had such an agreement been reached on 4th September, he would not have signed a letter admitting liability to the Respondent only two days later.

Further, the Respondent averred that, despite the extensive correspondence exchanged between the parties, the Appellant made no mention of any agreement arising out of a meeting on 4th September 2004. The first occasion on which the Appellant sought to advance this version was only after receipt of the Respondent's letter

of demand. Even when payment was allegedly made to Jg Containers (Malaysia) SDN BHD, the Appellant did not notify the Respondent, thereby casting doubt on whether such payment was in fact made.

The Respondent contends that the Respondent was cross-examined on the basis that there had been under-invoicing between the Respondent and the Malaysian supplier of bottles. It is submitted that this issue is wholly irrelevant to the present case. The matter before Court concerns the bottles sold and delivered by the Respondent to the Appellant. If any under-invoicing existed between the Respondent and the Malaysian supplier, such would:

- a. be a matter for the Customs Authorities and/or any other governmental regulatory authority; and
- b. concern only the relationship between the Malaysian supplier and the Respondent.

The Respondent contends it is immaterial to the transaction between the Respondent and the Appellant. The invoices exchanged between the Respondent and the Appellant reflected the actual value of the goods supplied and the genuine transactions between the parties. Significantly, there has been no allegation of illegality of any kind in respect of the transaction between the Respondent and the Appellant.

With respect to the Appellant's claim in reconvention, the Respondent submits that no evidence was led to establish either defective bottles or delayed deliveries. The only documents relied upon in support of such a claim were documents V58 to V60. Counsel for the Appellant undertook to call one Mr. Nagahawatte, the person who prepared those documents, to prove them. However, Mr. Nagahawatte was not called, nor was any other witness led to properly mark those documents or give evidence in support of the alleged claim.

In the circumstances, the Respondent maintains that the Appellant's claim in reconvention is wholly unsubstantiated, while the Respondent's claim is supported by documentary evidence, including the express acknowledgment of liability in P8, entitling the Respondent to judgment as prayed for.

The Learned High Court Judge, by judgment dated 2009.10.01 held in favour of the Respondent and had identified three causes of action for the recovery of the sum of Rs. 17,982,358.38, being the value of bottles sold and delivered by the Respondent to the Appellant. In arriving at this conclusion, the Learned Judge held that the document marked P8 did not constitute a formal written agreement but rather amounted to an acknowledgment by the Appellant that the said sum was due and payable to the Respondent.

The Learned Judge further held that the document marked V8 evidenced an agreement between the Respondent and the Malaysian supplier, and not a tripartite arrangement as the Appellant sought to suggest. No document was produced evidencing the existence of such a tripartite agreement, notwithstanding the Appellant's attempt to establish one by implication. The Learned Judge observed that the contracts for the sale of goods evidenced by invoices P1, P2 and P3 were independent transactions between the Respondent and the Appellant, unaffected by the separate agreement between the Respondent and the Malaysian supplier.

The Learned Judge has also emphasised the significant fact that the Malaysian supplier was not made a party to these proceedings. The letter marked V36 contains no denial of the liability acknowledged in P8, while the document marked V52 amounts to no more than a request by the Malaysian supplier that payment be made to the Appellant. That request, however, does not create any legal obligation

binding upon the Respondent, nor does it reflect any agreement by the Respondent to alter the existing contractual relationship with the Appellant.

The Learned High Court Judge observed that the absence of a written tripartite agreement is of material significance. The Court also observed that the Appellant, in its own written submissions before the High Court, had conceded that there existed an agreement distinct from V8, thereby undermining its own contention that liability to the Respondent was displaced by a tripartite arrangement.

I will now turn to the applicable principles of law.

According to Sri Lankan law, several elements must be satisfied in order to create a valid and enforceable agreement between two or more parties. As enumerated by **C. G. Weeramantry in *The Law of Contracts, Volume I* at page 84**, the prerequisites of a contract are:

- (a) an agreement between the parties;
- (b) the actual or presumed intention of the parties to create a legal obligation;
- (c) due observance of prescribed forms or modes of agreement;
- (d) legality and possibility of the object of the agreement; and
- (e) capacity of the parties to contract.

As noted in ***Chitty on Contracts Volume 1 General Principles* (31st ed., Sweet & Maxwell, para. 2-003)**, the essentials of a valid contract include agreement, consideration (or causa), intention to create legal relations, capacity, and, where applicable, proper form. Nonetheless, even when these requisites are satisfied, the contract may nonetheless be void or voidable if vitiated by misrepresentation, mistake, duress, undue influence, or illegality. The Roman-Dutch legal tradition which underpins Sri Lankan contract law similarly insists that consent must

be free from error, force or fraud (**Voet Commentarius ad Pandectas 2.14.7**), and our courts have consistently held that absence of genuine consent undermines enforceability.

Therefore, based on the established principles governing the law of Contract, it is well established that the mere presence of offer and acceptance does not, of itself, suffice to constitute a valid and enforceable contract. The law further requires additional elements such as consideration or causa, an intention to create legal relations, compliance with any prescribed form, and the legal capacity of the parties. Yet, even the concurrence of all these essentials does not invariably guarantee the validity of the agreement. Where the transaction is tainted by vitiating factors such as duress, the purported contract cannot, in law, be regarded as binding.

In **Wimala Perera v. Kalyani Siriyalatha [2011] 1 SLR 182**, Justice Shiranee Tilakawardane affirmed that:

“It is an elementary rule that every contract requires an offer and acceptance. Therefore an offer or promise which is not accepted, is not actionable [vide Justice Weerasooriya in Muthukuda v. Sumanawathie 4 NLR 321 at 208, 209]. It has been stated that it is an elementary proposition of law that a contract is concluded when in the mind of each contracting party there is a consensus ad idem, Noorbhai v. Karuppan Chetty (1925) 27 NLR 325 (per Lord Wrenbury). Cumulatively therefore an intention to create a legal relationship and a consensus ad idem or meeting of the minds needs to be in existence in order to establish a contract between the parties.”

Soertsz J. in **Edward Silva v. De Silva [1945] 46 NLR 510** also emphasised that, for a promise to be enforceable,

“the agreement must be a deliberate, serious act, not one that is irrational or motiveless.”

These principles resonate with established common law doctrines. In ***Balfour v. Balfour* [1919] 2 KB 571**, Atkin LJ underscored that not all agreements are legally binding unless there is an intention to create legal relations, while in ***Carlill v. Carbolic Smoke Ball Co.* [1893] 1 QB 256**, the English Court of Appeal affirmed that where there is a clear offer, acceptance, and consideration, coupled with an intention to be bound, the promise becomes enforceable. These comparative authorities highlight that the bedrock of contractual liability lies in consensus ad idem, intention, and enforceability in law.

In the case of ***People’s Bank v Ceylinco Insurance Company Limited* [SC CHC Appeal 06/2003 decided on 11.02.2016]** it was held that,

“I am of the view that any Court is entitled to look into the surrounding circumstances in order to identify the scope and object of the guarantee bonds just as much as it would be entitled to look at the factual matrix as an aid to the interpretation of any other commercial agreement. The court should always seek to construe the document in such a way as to reflect what may fairly be inferred to have been the objective, intention and understanding of the parties.”

The central issue in this matter is whether the Appellant is liable to pay the Respondent the sum of Rs. 17,982,358.38 for bottles sold and delivered. The Respondent relies upon, inter alia, the admitted letter dated 6th September 2004 (marked P8), wherein the Appellant expressly acknowledged the said liability and undertook to make payment.

The Appellant stance is that the true arrangement was tripartite, involving the Malaysian supplier, Jg Containers (Malaysia) SDN BHD, with the Respondent acting merely as an intermediary. The alleged meeting of 4th September 2004 is unsupported by any contemporaneous documentation, while P8, signed two days later by the Appellant's own officer who attended that meeting, is a clear written acknowledgment of liability to the Respondent. Thus, even if discussions took place with a view to involving the Malaysian supplier, they did not crystallise into a legally binding arrangement; instead, the operative agreement remained the one evidenced in P8. The existence of a valid contract requires a meeting of the minds supported by an intention to be legally bound. What the Appellant has sought to portray is, at best, an informally agreed transaction without the attributes of a legally enforceable agreement

The Learned High Court Judge has observed that the document marked P8 did not constitute a formal written agreement but nevertheless amounted to an express acknowledgment by the Appellant of its liability to the Respondent. I find no reason to depart from this finding. The Learned High Court Judge further held that the Sales Agreement marked V8 evidenced an agreement solely between the Respondent and its Principal, and not a tripartite arrangement as suggested by the Appellant. I am in agreement with this conclusion. No contemporaneous document has been produced by the Appellant to substantiate the existence of a tripartite arrangement, and it is significant that the Malaysian supplier, who would have been a necessary party to such an arrangement, was not included in these proceedings. As the High Court Judge rightly observed, had such a tripartite agreement existed, it would inevitably have been reflected in either V36 or V52; however, neither document contains any reference to such an arrangement. P8 here is not the product of casual

discussion or informal understanding but a deliberate and unequivocal commitment.

The Appellant further alleged that the Respondent engaged in under-invoicing with its Malaysian supplier. With regard to the allegation of under-invoicing, the High Court Judge rightly held that such matters are wholly irrelevant to the civil obligations between the present parties. The contract in question is confined to the relationship between the Appellant and the Respondent, and any allegation of under-invoicing between the Respondent and its Malaysian supplier does not impinge upon the enforceability of that contract. I am inclined to affirm this view, which is consistent with the principle that collateral arrangements or irregularities with third parties do not vitiate an otherwise binding agreement. Even where such collateral conduct is suggested, it does not nullify a contract that is otherwise valid and enforceable. The alleged under-invoicing does not affect the enforceability of the agreement between the Respondent and the Appellant as the contract in question is limited to the agreement between these two parties, and any alleged under-invoicing as between the Respondent and its supplier does not affect the enforceability of the obligations herein.

Upon perusal of the Judgment of the Learned High Court Judge and his reasoning, I see no reason to interfere with his findings because in my view the judgment reflects a careful and thorough analysis of the facts, documents, and evidence, including the testimonies of the witnesses. I see no way in which the Appellant has been prejudiced by the change of the judge as the Appellants contended that the evidence of witnesses had been recorded and concluded before Honourable K.T. Chitrasiri, then Judge of the High Court Colombo. Upon his elevation to the Court of Appeal, the judgment could not be delivered by him.

With consent of the parties, the succeeding Learned High Court Judge, who had not heard the oral testimony, delivered judgment. If the Appellants had any objection to this arrangement, such objection ought to have been raised at that stage of the proceedings. Their failure to do so renders the present objection untenable. The alleged misstatement regarding the Appellants' position on the existence of a tripartite agreement does not, in my view, amount to any prejudice warranting appellate interference. It is also pertinent to note that the documents relied on by the Appellant from V1 to V48 have been tendered to this court by the Respondent as the Appellants had taken no steps for over 3 years to furnish the following documents and prosecute the appeal filed by them in the first place.

The claim that payment to the Respondent would amount to a "double payment" is equally unsustainable. Once more, the Appellant has failed to produce any evidence that its alleged payment to Jg Containers (Malaysia) SDN BHD discharged the sum acknowledged in P8. Without proof of such discharge, this assertion remains at the level of an informally agreed transaction, incapable of displacing the legally binding obligation expressly admitted by the Appellant in writing.

With respect to the claim in reconvention, the Appellant's allegations of defective or delayed delivery are similarly unsupported. The documents marked V58 to V60 were not properly proved, nor was any evidence of actual loss adduced. The accepted position in law is that enforceability requires a deliberate and serious foundation. The Appellant's claim in reconvention, lacking both form and proof, amounts only to an informal complaint rather than a legally cognisable claim.

On the totality of the evidence and the applicable principles, this Court is satisfied that the Respondent has established a valid and enforceable contract for the sale and delivery of bottles. The elements of offer, acceptance, consideration, and intention to create legal relations are present and free from vitiating factors. The Appellant has failed to substantiate the existence of any tripartite arrangement or the discharge of its liability by payment to the Malaysian supplier, and its claim in reconvention cannot succeed.

Having examined the facts of the case, and the material placed before this court, I dismiss the appeal of the Appellant and uphold the judgment of the High Court of the Western Province holden in Colombo (Exercising its Civil Jurisdiction).

Appeal dismissed.

JUDGE OF THE SUPREME COURT

P.PADMAN SURASENA, CJ.

I agree

CHIEF JUSTICE

YASANTHA KODAGODA P.C., J.

I agree.

JUDGE OF THE SUPREME COURT