

# Gampaha District court suspends enjoining order by Texlinen

The Additional District judge Gampaha L. M. Wijesekera set aside an enjoining order obtained by BOI against Texlinen Ltd.

The plaintiff Texlinen Ltd had instituted action and sought an enjoining order ex parte preventing the defendants making an application to court to wind up the plaintiff under the provisions of the companies act.

Plaintiff alleged that the defendants who are doing business in India under the name Sri Venkateshwara Import and Export Company are taking steps to file fresh proceedings in the District court of Gampaha on the ground that the plaintiff is unable to pay a purported debt of US \$ 110, 884.83.

The defendants upon being served notice of the action had supported the position that the enjoining order obtained by plaintiff is in violation of the provisions of the constitution and the provisions of the company's act of 1982 and thus should be vacated.

Thereafter the Additional District Judge had directed both parties to make submissions as to whether the enjoining order granted should be extended.

The plaintiff has stated among other things that damage would be caused to the plaintiff if a winding up application is made and its bank accounts may be affected resulting in the business being stalled and employees losing their jobs.

Defendants have submitted that the plaintiff is not

entitled to file a court action preventing the defendants to file a winding up action if they so desire.

Defendants submitted the winding up as a statutory right granted by provisions of the companies act of Sri Lanka and that by the enjoining a statutory right is being violated.

They also contented that the judicial power exercised by courts as provided the constitution cannot be taken away by this enjoining order. They also submitted that in terms of the judicature act the plaintiff is not entitled in final relief in the plaint and therefore no enjoining order can be granted.

Plaintiff argued relying on English law that this enjoining order is admissible in law. However the defendant's position was the winding up provisions in Sri Lanka are governed by the company's act and the winding up rules.

The learned Additional District Judge therefore made order accepting the defendants objections and suspended the enjoining order obtained by plaintiff company. He also held inter alia that he accepted the position that the enjoining order violated the statutory provisions of the companies act.

Nihal Fernando Attorney at Law with Sudath Perera Associates appeared for the plaintiff. Hiran De alwis Attorney at law instructed by Sivanathan Associates appeared for the defendant Sri Venkateshwara's company of India.