

SC dismisses claim against Board of Investment

The Supreme Court recently upheld the position taken up by the Board of Investment of Sri Lanka and dismissed an appeal filed by a local Company claiming more than Rs. one billion from BOI.

In the Order delivered by Chief Justice K. Sripavan together with Justices C. Ekanayake and D. Dep, PC, upheld the objections raised by the BOI.

Previously too the Civil Appellate Court of Colombo in a Judgment by Justices Dehideniya and K. K. S. A. F. Perera had upheld the issue of the lack of jurisdiction raised on behalf of the Board of Investment of Sri

Lanka and dismissed and rejected the plaint filed by the Company, Sees Lanka (Pvt) Limited against the BOI.

Initially the Company Sees Lanka (Pvt) Limited instituted action in the District Court of Colombo in relation to the agreement entered into with the Board of Investment of Sri Lanka and making monetary claims for improvement of the lands and that the Board of Investment of Sri Lanka had been unjustly enriched.

By this action the Plaintiff Company had claimed a sum of US\$ 1,100,000 or its equivalent - Sri Lankan

Rs.1,24,300,000 against the BOI.

The Supreme Court refusing to set aside the previous Order of the Civil Appellate Court rejecting the Plaint accordingly dismissed the Appeal to the Supreme Court.

The Supreme Court Order was in relation to the issue whether the Company incorporated in Sri Lanka had the authority to institute action in the Supreme Court of Sri Lanka based on the Power of Attorney given.

The Court referred to the fact that the Company had registered as a duly incorporated Company under

the Companies Laws of Sri Lanka in its own Plaint.

The Court referred to the fact that the Defendant-Respondent, BOI had originally objected to the jurisdiction of the District Court on the basis of the averments contained in the Answer on the grounds of the Arbitration Clause set out in the argument with the then GCEC (BOI) together with the provisions of the Arbitration Act of Sri Lanka. In the Appeal to the Supreme Court the question arose whether the Company is properly represented as utilised with a Power of Attorney authorizing for the institution of a

Leave to Appeal application for the Company which is incorporated in Sri Lanka.

The Court stated that the Supreme Court is the highest superior Court in the country and exercises Civil and Criminal Appellate Jurisdiction within Sri Lanka in terms of the Constitution.

Thus the Supreme Court has all island Jurisdiction in respect of Civil Appellate matters. The Court also referred to the provisions of the Companies Act and who can be a recognised Agent of a Company.

Therefore Court held that the Company may be represented by a Registered Attor-

ney in terms of the Civil Procedure Code and the appointment of such a Registered Attorney shall be in writing and signed by the client. Therefore it held that the Plaintiff Company is no property represented before the Supreme Court and accordingly the application for Leave to Appeal to the Supreme Court was dismissed.

M. E. Wickremasinghe PC with Rakitha Jayatunga appeared for the Plaintiff-Petitioner Company.

Hiran deAlwis with Kalpa Virajith and Asitha Ranasinghe appeared for the Respondent, the Board of Investment of Sri Lanka.