

BY HAND

9th March 1997

Mr. A.R.C. Perera,
Deputy Solicitor General,
Attorney General's Department,
Hultsdorp, Colombo 12.

Dear Sir,

INQUIRY NO. 1 OF 1995
RE - HOTEL DEVELOPERS (LANKA) LTD.

As you are aware, my evidence was led during March and April 1995 by the then Solicitor General, Mr. Douglas Premaratne P.C., and thereafter in deference to the request made by Counsel for the parties noticed, my evidence was re-led from May 1996. Cross-examination, having commenced immediately thereafter, was adjourned in July 1996 and was resumed for 2 days in September 1996 and one day in October 1996 and, as you are aware, hearing has been adjourned since, due to the health condition of one of the Commissioners, His Lordship F.N.D. Jayasuriya J.

In the given circumstances, as discussed, I wish to submit certain material clarifications, that I had kept in mind to clarify during re-examination, for your kind information, record and future reference.

FLOOR ELEVATIONS OF THE HILTON HOTEL & THE SCHEMATIC PLANS [P4, P4A]

During cross-examination, it transpired, that the Elevations shown on the Floor Sheets of the Amended Plan [P163, P17] of August 1985 [*approved by the UDA in April 1986*] were at variance with the *Floor Elevations* shown on the Sheets depicting the Cross-section of the Hotel in this very Amended Plan [P163, P17], *raising the question as to how the UDA had ever approved such a Plan ?*

Some of the Elevations and Floor Level denotations on the Floor Sheets of the Amended Plan [P163, P17] appeared tampered with in comparison with the style of such denotations in the other sheets of the same Plan. The 3rd and 4th Floors were shown to be at the same Elevation of 24.5 meters, whilst the 19th Floor and the Roof of the 19th Floor were shown to be at Elevations of 72.7 and 72.5 meters, respectively. *The Commission observed this as an inherent, intrinsic impossibility.*

As you are aware, consequently, with the permission of the Commission, I examined the Amended Plan [P163, P17] with the assistance of a Chartered Architect. The examination revealed that *Floor Elevations* shown on the Floor Sheets of the Amended Plan [P163, P17] were identical to the *Floor Elevations* depicted on the Cross-sectional Drawing of the Hotel given in the Schematic Plan [P4, P4A]. This revealed that these Floor Sheets, *with the room layout amended*, actually had belonged to the original Plans that had been filed with the UDA in October 1983 and approved in March 1984; all copies of which are subsequently missing. I attach Schedule [ANNEXURE "A"] that I had prepared, identifying the *Floor Elevations* given on the Floor Sheets of the Amended Plan [P163, P17], with the *Floor Elevations* depicted on the Cross-sectional Drawing in the Schematic Plan [P4, P4A]

This is clear evidence, that the original Architectural Plans lodged with the UDA in October 1983 and approved in March 1984, *as per the scale requirements of the UDA*, had been drawn, *as had been held out*, in strict conformity with the *Floor Elevations* of the Schematic Plan [P4, P4A]. The total height of the Hotel, including 19 Guest Room Floors and also the basement construction, as depicted in the Schematic Plan [P4, P4A], would accordingly have been provided for, as per the concept that had been agreed upon in March 1983, when the Preliminary Agreement [P41] had been entered into and *the Letter of Award for Construction issued to the Japanese, with all prices agreed upon*; as proven by the specific *Floor Elevations* given on the Floor Sheets of the Amended Plan [P163, P17], which *Floor Elevations* have now been identified with the specific *Floor Elevations* given on the Schematic Plan [P4, P4A] - vide [ANNEXURE "A"].

I also attach a Schedule [ANNEXURE "B"] giving the *amended Floor Elevations* depicted on the Cross-sectional Sheets of the Amended Plan [P163, P17], [*which appear to be new Sheets introduced*] and the *variance* of such amended *Floor Elevations*, with the *Floor Elevations* shown on the Floor Sheets of this very same Amended Plan [P163, P17], *which is also a further inherent, intrinsic impossibility, observed by the Commission.*

I also attach a Schedule [ANNEXURE "C"] reconciling the Elevation of the Hotel as per Schematic Plan [P4, P4A] with the amended Elevation given in the Cross-sectional Sheets of the Amended Plan [P163, P17] *identified the with specific amendments that have been made.* The built Hotel *does not have 22 storeys specified in the Construction Agreement [P31]*

ROOM BAYS & PROFITABILITY PROJECTIONS [P164]

A "room bay" has been confirmed by the panel of Architects, appointed by the Commission, in their Report at page 3 paragraph 7, as *"an acceptable sized bed room with an attached toilet that can be rented out to a guest"*. The Japanese Architects, KKS in their Affidavit in the District Court [P162, P162A]. had also confirmed that, a "room bay" is *"a unit of a standard size room"*.

The original profitability [P5, P7, P7A] of the Hotel had been consistently computed on 456 rooms i.e. on such "room bays", *in conformity with the Schematic Plan [P4/4A] upto October 1983*, and later in December 1983 [P7B], room revenue had been computed only on 452 such rooms, since 4 such rooms were to comprise the Manager's apartment, and even at the opening of the Hotel in July 1987, room revenue had been computed on 452 such rooms [P13]

Such computation of room revenues, had consistently continued [P164], even after the original architectural Plans had been submitted to the UDA in October 1983 and upto the time of opening of the Hotel in July 1987.

The Prospectus [P2] and Agreements - Preliminary [P41], Investment [P3], Construction [P31], Supplies [P32], Design & Supervision [P33] and Loan [P34] had specified this *452 room bays*.

Such computation of room revenue had been changed, only in December 1987/February 1988 [P14, P46], when Hilton Management could not produce the actual Monthly Profit & Loss Accounts, showing room revenue on 452 such rooms, *simply because such number of 452 rooms was actually not there.*

In the context of what actually had transpired, several documents have given varying room count numbers, i.e. Hilton Monthly Reports [P12, P12A, P12B] - *387 Rooms*, Hilton Amended Management Agreement [P166] - *406 Rooms*, Interior Design Agreement [filed by the parties noticed] - *395 Rooms*, Chart dated 7th May 1985, [attached to H345A] - *394 Rooms*. This is aptly described by the lines from Sir Walter Scott; *"O what a tangled web we weave, when first we practise to deceive!"*

On examination of the Plans submitted to the Commission by Mr. Cornel L Perera [CP7] and [P104], with the UDA approved Amended Plan [P163, P17], it was discovered, that *the very same area has been inconsistently depicted* in these Plans, described as "1-Bay" as well as "2-Bay", and as "2-Bay" as well as "3-Bay", in comparing these Plans with one another, as well as in comparing the different Floor Sheets of the very same Plan. A Schedule comparatively giving such *inconsistent discrepancies* is attached [ANNEXURE "D"], giving also the square areas of the rooms, on the standard room Floors [i.e. not the 2 Floors containing Suites].

Very significantly, the Chart dated 7th May 1985, attached to KKS Letter dated 5th March 1990 [H345A] had been prepared *just prior to the amendment of the original architectural Plan in July/August 1985*. Is not this Chart, *the very plot, on which basis, the amendments to the original architectural Plan had been effected ?*

ORIGINAL PLAN MISSING

Hotel Developers in its Answer[P18], at paragraph 51, [*Objections were not filed by Hotel Developers*], filed on 11th March 1991, through the Attorney General, *had admitted that it did not have a copy of the original Architectural Plans.*

Minutes of Hotel Developers Board Meeting on 31st May 1990, Page 2, Minute 2 (iii) reads:

"(iii) Original Architectural Plans and Clarifications

Mr. Ameresekere informed the Board that he could not obtain a copy of the Original Architectural Plans from the HDL Office. Mr. Sudharshan confirmed that a set of the Original Architectural Plans is not available at the HDL Office."

Mr. S.R. Sudharshan, General Manager, Hotel Developers had further confirmed by Letter dated 05th September 1990 [P106], that Exhibit 'A' to the Supplies Contract [P32], that defined the supplies of Furnishings, Fixtures & Equipment to the Hotel, was not available at the Registered Office, i.e. 16, Alfred Place, Colombo 3, also the Office of Cornel & Co. Ltd., where as confirmed in [P106] the original documents had been kept.

The Amended Plan dated 15th July 1985 [P163, P17] had been lodged with the UDA in August 1985, *substituting the original Plan, deliberately suppressing this matter from the Hotel Developers Board, notwithstanding my specific requirement placed before the Board, at that very same time in June/July 1985, for the tabling of progress reports from the Japanese Contractors and the Architects, on the progress of construction [P18, P19].*

It was because the original Architectural Plan was missing, that in 1990 I obtained the approval of the Hotel Developers Board and communicated in June/August 1990 with the Japanese Architects, KKS, to obtain a copy of the original Architectural Plan, which however they did not produce - vide [H341, H342, H343, H344]

In addition to the copy of the original Architectural Plan that had been lodged with the UDA in October 1983 [P8, P10] and had been approved and returned by the UDA in March 1984 [P9], {which Plan allegedly had been destroyed by the Fire in October 1985 [P35, P11]}, there had been another copy of the original Architectural Plan, tabled at Hotel Developers Board Meeting on 7th January 1984 [P36] and kept at the Registered Office, with other original documents.

Paragraph m], at page 41 attached [ANNEXURE "E"] of the Written Submissions filed in the Supreme Court on my behalf, specifically referred to this, whereas Mr. S.C. Crossette Thambiah, Counsel for Mr. Cornel L Perera, *suppressing this*, only referred to page 38 paragraph g) of the said Written Submissions, which concerned the parallel loss of the UDA approved copy of the original Architectural Plan, which had been in the custody of Mr. A. Naka, Executive Director, at the Operational Office of HDL, which at that time was at a Room in the Intercontinental Hotel, and later, at a separate location at the Echelon Square.

In the above circumstances, how could [P104] and [CP7] introduced before the Commission, *purportedly as original Plans*, be the original Plans? *If this was so, why were they not tabled by the Chairman & Managing Director, Mr. Cornel L Perera, when the matter of the substitution of the original Plan and the absence of the Original Plan had been a major issue before the Board in 1990? Are they not, subsequently introduced Plans, purportedly to conform with the Amended Plans [P163, P17], except for a few minor modifications?*

Similarly, another Plan of 21 sheets [P103], prominently date stamped as 29.06.'83, different to the normal dating style by the Japanese Architects, KKS, had been attempted to be introduced, through the UDA, to the Ministry of Finance in May 1990 [P20] purporting to be the original Plan. However, when the authenticity of this fabrication was questioned [P22], the UDA subsequently confirmed [P24], that it does not have a copy of the Original plan. Upon this aborted fabrication introduced through the UDA, being returned to the UDA [P205], this is also now missing with the UDA.

CABINET PAPER RE THE US \$ 2.0 MN. PAYMENT.

The question arose, as to why I had not produced in my evidence, the Cabinet Paper that had approved the payment of US \$ 2.0 Mn. I answered that this was not intentional, in that, certain evidence on what had transpired at the Ministry of Finance was to be led after my evidence, through the Finance Ministry officials, who had handled such matters at that time, namely Mr. K. Shanmugalingam and Mrs. V.M.Y. Cassie Chitty and that I recollected making some reference to this, towards the end of my evidence led in 1995. Consequently, on checking the record of the 1995 proceedings, I referred you to the relevant page of the proceedings of 27th April 1995 copy attached. [ANNEXURE "F"]

What transpired on the 27th April 1995 was that Mr. Douglas Premaratne, Solicitor General had just returned, after a very short overseas trip. In his absence, he had assigned Senior State Counsel, Mr. Parakrama Karunaratne to lead my evidence. Mr. Parakrama Karunaratne showed great reluctance to lead evidence that concerned the then Actg. Attorney General, Mr. Shibly Aziz, P.C. and this led to the abrupt adjournment of my evidence, with strictures being made by His Lordship, the Chairman of the Commission. Consequently, I brought to the notice of Their Lordships, the Members of the Commission, what exactly transpired - vide my Memo dated 6th July 1995 attached. [ANNEXURE "G"]

When Mr. Douglas Premaratne returned and resumed leading my evidence on 27th April 1995, the intention was to conclude my evidence as speedily as possible on that day. Having been informed that evidence on matters that had transpired at the Ministry of Finance would be led through the relevant officials, who had handled the matter at that time, I endeavoured to speedily conclude my evidence on that day, which I did, particularly in view of the undertones and nuances of certain personal implications concerning Mr. Douglas Premaratne, which were confided in me by Mr. Douglas Premaratne, who was quite a disturbed person that morning. This explains as to how this happened.

Having so concluded my evidence on 27th April 1995, I was re-called to give evidence again on 6th July 1995, mainly in relation to the Settlement Agreements that had been executed on 28th June 1995.

I was not following, as to what evidence was being led before the Commission, through the Finance Ministry Officials, Mr. K. Shanmugalingam and Mrs. V.M.Y. Cassie Chitty.

ISSUE OF CERTAIN CASES & THE RE-IMBURSEMENT OF COSTS

Mr. Ranjith Abeysuriya, P.C., cross-examining me on the Settlement Agreements that were finalised in June 1993 [P221A, 221B, 221C], *asserted that there were material changes beneficial to me*, made in the Settlement Agreements that were executed in June 1995, particularly in relation to certain People's Bank Labour Cases filed against me and Costs that were reimbursed to me.

I could not at that moment readily trace the relevant Clauses in this regard in the June 1993 Settlement Agreements [P221A, 221B, 221C], but however, I refuted such assertion, having been well aware that the correct facts were otherwise and produced a draft of a certain relevant Letter endorsed by Mr. R. Paskaralingam, then Secretary, Ministry of Finance. *The relevant conditions are contained in the June 1993 Agreement No. 3 [P221C] at Clause 6, with Annexure "X" thereto and Clause 8, respectively, accordingly, the conditions referred to by Mr. Ranjit Abeysuriya in the June 1995 Settlement Agreements were, in fact, contained in the June 1993 Settlement Agreements.*

I was quite surprised upon Mr. Ranjith Abeysuriya, raising such questions in the defence of Mr. R. Paskaralingam and making such incorrect assertions, whereas when it actually had been his very own Client, Mr. R. Paskaralingam, who had required and initiated the Settlement in 1992, *as recorded in the very Preamble in Agreement No. 3 [P221C] and who had willingly agreed to the aforesaid conditions.*

Mr. Ranjith Abeysuriya, also asked me as to whether, prior to the execution of the Settlement Agreements in June 1995, I had been reimbursed the costs incurred. I answered yes. In fact, the costs were reimbursed on *27th June 1995, just the day prior to the execution of the Settlement Agreements on 28th June 1995*, which however, I did not clarify on.

It has been pointed out to the Secretary, Ministry of Finance and the Hon. Attorney General, that costs and efforts on litigation would not have been incurred had the Government taken prompt and effective action and had the Auditors of Hotel Developers, M/s Ford Rhodes, Thornton & Co., Chartered Accountants, refused to certify the Annual Accounts in November 1990, *giving a disclaimer, as they ought to have*, particularly in the given background of the main Hilton Case, that had been filed on grounds of fraud previously in September 1990, *the facts pertaining to which, having been notified to the said Auditors: and furthermore that such costs incurred would be statutorily recoverable from such Auditors, even under circumstances of negligence, whereas in this instant case, they had been put on notice and with the requirement to have carried out examinations into several matters.*

THE SETTLEMENT

In cross-examination, Mr. Ranjit Abey Suriya drew attention to document [P222], which had been a Note dated 20th February 1993 submitted by Mr. K.N. Choksy, through President R. Premadasa, to the Secretary Ministry of Finance, Mr. R. Paskaraligham, who forwarded same through the Attorney General to me; Letter dated 22nd April 1993 [P223] contains my response to the Attorney General on Mr. K.N. Choksy's Note [P222].

Mr. Ranjit Abey Suriya, referring to Mr. K.N. Choksy's Note, asserted that in early 1990, there had been negotiations with the Japanese to re-schedule the Loans, with the Japanese agreeing to write-off accrued interest. I drew attention to [P87], which was the Minutes of the discussions referred to, had with the Japanese in February/March 1990 at the Ministry of Finance, wherein reference is also made, inter-alia, to the *shortfall* in the number of hotel rooms and the *question of validity of the state guarantees*.

Mr. Ranjit Abey Suriya, who relied on Mr. K.N. Choksy's Note [P222] however, did not point out, that at that very same time i.e. on 28th February 1990, Mr. K.N. Choksy, had, in fact, given a Letter [P48] endorsing that full payment be made to the Japanese, specifically in reference to my Memorandum to the Hotel Developers Board dated 13th December 1989 [P47], objecting to making any payments to the Japanese, until queries and discrepancies were fully clarified.

The Settlement concluded in June 1995 has written-off all accrued interest to June 1993 and has provided 3 % p.a. interest, as against the original interest of 6 % p.a. for the two years to June 1995, in effect, a full interest write-off upto June 1994. The amount of interest written-off from April 1990 upto June 1995 has amounted to, normal interest Jap Yen. 3156 Mn. i.e. S.L. Rs. 1923 Mn. and penal interest Jap Yen. 6170 Mn. i.e. S.L. Rs. 3760 Mn.

Had any re-scheduling been agreed upon in March 1990, as asserted by Mr. Ranjit Abey Suriya, relying upon Mr. K.N. Choksy's Note [P222], then the benefit of the further interest written-off for the period April 1990 to June 1995, as referred to above, amounting in total to Jap. Yen. 9326 Mn. S.L. Rs. 5684 Mn. would not have been achieved.

The Japanese never agreed to write-off any Capital. Infact, I produced Letter dated 25th March 1992 [H359] addressed to Hotel Developers by the Japanese, asserting and reiterating that they had never agreed to write-off any Capital.

However, in addition, the June 1995 Settlement, achieved a 30 % write-off on Capital, which write-off amounted to Jap. Yen. 4110 Mn. i.e. S.L. Rs. 2505 Mn.

The Japanese would not have agreed, to write-off in effect 10-Years' interest and 30 % of the Capital, further agreeing to re-schedule the balance, after applying the funds accumulated in Hotel Developers, in consequence of the Interim Injunctions, essentially against the Capital, unless they could not legitimately substantiate their alleged claims, in the face of the serious discrepancies discovered and the unauthorised substitution of the Plan.

Infact, in the Settlement Agreement No: 1, filed with the Commission, with Motion dated 9th May 1996, upon which the Commission made its Order on 10th May 1996, stating that the Commission had no objections to such Settlement, the Preamble in such Settlement Agreement No 1, has described the claims made by the Japanese "as stated to be", and the Preamble further stated that "a Settlement has been reached concerning the determination of the balance monies due....".

SUSPENSION OF THE SETTLEMENT

Evidence on the Settlement entered into in June 1995 was placed before the Commission on 6th July 1995. The terms of the settlement concluded as informed to the Commission, *were essentially the same as in the Agreements of June 1993 (P221A, 221B, 221C) that had been finalised previously, except for the improvement in the financial terms with the Japanese and the issuance of Promissory Notes by Hotel Developers; and not by the Government. Accordingly, assertions made by Mr. Ranjith Abeysuriya, were without any foundation and were incorrect.*

Subsequently, the Deputy Minister of Finance & Minister of Justice, Mr. G.L. Peiris, who had previously hailed the Settlement, stating that it was one of the *"happiest days of his life"*, having subsequently discovered, that one of the Clauses in the Settlement Agreements affected him, as a person, who had been a former Member of the Securities & Exchange Commission, notwithstanding being such an affected person, intervened to suspend the implementation of the Settlement Agreements; the two Letters dated 24th July 1995 addressed by the then Secretary, Ministry of Finance, Mr. A.S. Jayawardena to the Japanese, *suspending the Settlement on the directions of the Deputy Minister of Finance*, that were referred to by me in cross-examination, are attached. [ANNEXURES "H1", H2']

Nevertheless, suppressing his such affectation, the Deputy Minister of Finance made a false statement, false to his knowledge, by misleadingly only quoting the middle part of a comprehensive paragraph, which in its entirety had set out the true and correct facts. Though, I did not explain and clarify fully, I read out that part of the paragraph quoted by the Deputy Minister of Finance and the full paragraph during my cross-examination to be recorded in evidence, consequent upon assertions made by Mr. Ranjit Abeysuriya in such regard.

The prepared Statement read in Parliament by the Deputy Minister of Finance was after he had discarded the official Statement prepared by the then Secretary, Ministry of Finance, Mr. A.S. Jayawardena, a copy of which Statement is attached [ANNEXURE "I"].

The People's Bank Cases were in relation to *personal guarantees* that had been given by me, on behalf of the borrowings of a subsidiary company of Cornel & Co. Ltd., to facilitate the promotion of the Hilton Hotel. When the Government initiated and wanted a Settlement on the Hilton Cases, my Counsel legitimately required an out of Court settlement for these Cases as well; the Government, itself, *as a consequence of my efforts*, having resolved and settled its problem as a guarantor, with a write-off of 63.3 % i.e. Jap Yen. 17,586 Mn. SL Rs. 10,720 Mn. and the balance re-scheduled over a further period of 15-years upto 2010 at a reduced rate of 5.25% p.a. interest, *readily and willingly had agreed to do so*. The Cases by the Commissioner of Labour were also resultant from similar circumstances in facilitating the promotion of the Hilton Hotel, *bona-fides of which circumstances had been accepted by the then Attorney General and concurred upon by the parties to the Settlement*.

Though the Deputy Minister of Finance & Minister of Justice Mr. G. L. Peiris, referred to the above, *as conditions unacceptable to the Government*, on re-examination, the Government did not consider it so, *whilst the only condition that was deleted from the Agreements, with my acquiescence, was the Clause that pertained to the actions to be taken by the Government against the then Members of the Securities & Exchange Commission for their inaction and failure in the discharge of their statutory duties and responsibilities*.

It is therefore abundantly clear that what was not acceptable to the Government, as stated by the Deputy Minister of Finance, Mr. G.L. Pieris was actually this condition which affected him personally, as he was a Member of the Securities & Exchange Commission at the relevant time and that accordingly, action would have to be taken against him. I agreed to this deletion, in deference to the request made by the Secretary, Ministry of Finance, Mr. B.C. Perera and the Hon. Attorney General.

In the interest of the country, in the context of the paramount need, to have had the signed Agreements implemented prior to the Sri Lanka Aid-group Meeting in Paris in November 1996, particularly in the background of questions being raised, as to how Agreements signed by a sovereign Government could be suspended, the implementation of the Settlement was effected in October 1996, notwithstanding the assertions that had been made by the Deputy Minister of Finance, that the Settlement would not be implemented until the completion of the inquiry before the Commission. Nevertheless, satisfactory arrangements approved by the Hon. Attorney General have been put in place to ensure the implementation of the *conditions precedent*, contained in the Settlement Agreements.

The suspension of the implementation of the Settlement, by the Deputy Minister of Finance, presumably in the context of his affectation, has caused a loss of approximately Rs. 50 Mn. to Hotel Developers and has further caused a setback to the re-structuring strategies, to enhance the viability of Hotel Developers that had envisaged to be pursued, during the one year grace period that commenced on 1st July 1995, that had been provided for on the re-scheduling of the reduced balance loan.

INSULTING CROSS-EXAMINATION

Mr. Ranjith Abey Suriya, in cross-examination also asserted, that I was a "*misfit*" in the Ministry of Finance, *who had parachuted*. Unfortunately, you were not present on that day to have come to my defence. However, His Lordship, the Chairman of the Commission intervened and prevented further questioning on such lines. I regret that Counsel of the standing of Mr. Ranjith Abey Suriya, disregarding the Supreme Court Rules on the Conduct of and Etiquette for Attorneys-at-Law, more particularly Rule No. 53, resorted to insulting and ridiculing a professional, who had come forward in the public interest.

I restrained myself from answering in the affirmative and stating that I certainly would be a "*misfit amongst nitwits*". I cannot understand how Mr. Ranjit Abey Suriya could have made such assertion on behalf of his Client, Mr. R. Paskaralingam. I was very much a Consultant to the Ministry of Policy Planning & Implementation assisting/advising also, the Ministry of Finance & Planning, since 1979, when the present Government assumed office in August 1994.

Mr. R. Paskaralingam was the Secretary, Ministry of Finance & Planning, when my services were enlisted in 1979 by the Government, as the *Lead Consultant on the Transport Sector Restructuring Project funded by the World Bank*, and in 1992, as the *Senior Counterpart Director on the Project for the Promotion of Private Infrastructure funded by USAID*. Copy of the Letter issued by Mr. R. Paskaralingam to USAID that was referred to, by me, in cross-examination is attached [ANNEXURE J1"]. I also attach a copy of a Letter dated 8th June 1983 [ANNEXURE "J2"] from the then Director, Public Enterprises, Division Ministry of Finance, recording commendations made by visiting foreign missions on my work.

I have made the above persoal clarifications, not so much out of personal interest, but out of concern for the credibility of my evidence, as a recognised professional, which I believe that Mr. Ranjit Abey Suriya endeavoured to undermine by such insulting cross-examination.

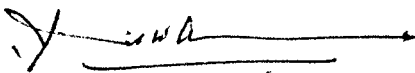
In addition to the Note [P222] referred to by Mr. Ranjit Abey Suriya, Mr. K.N. Choksy had also forwarded at that time, a further Note titled Hilton Hotel, through President R. Premadasa, who had submitted it to the then Secretary, Ministry of Finance, Mr. R. Paskaraligham, with the endorsement "*Please read this and speak*", a copy of which Note is attached [ANNEXURE "K"]. In this Note Mr. K.N. Choksy had specifically referred to my abovementioned professional work on Projects funded by the World Bank and USAID, which had nothing, whatsoever, to do with the Hilton Hotel.

Was not Mr. K.N. Choksy therby, abusing his power and position, to unduly interfere in my professional assignments, in the context of my actions on the Hilton Hotel, which had identified him as a wrong-doer ?; he, notwithstanding being a Director of Hotel Developers having failed in his endeavours to have my Court Action dismissed.

I also attach, as referred to during my cross-examination by Mr. S.C. Crossette Thambiah, an analytical Schedule [ANNEXURE "L"] in relation to Mr. Cornel L Perera's Affidavit [H362] dated 21st July 1995 filed in D.C. Colombo Case No. 4414/Spl. wherein Mr. Cornel L Perera had unreservedly corroborated and agreed with all the facts contained in my Affidavit in D.C. Colombo Case No 3155/Spl., in the context of which, *I could not understand the line of cross-examination by his Counsel, Mr. S. C. Crossette Thambiah.*

I trust that the above clarifies the several material matters and will be of assistance to you in the conduct of the Inquiry. You may bring the aforesaid matters to the attention of His Lordship, the Chairman and Their Lordships, the other Members, of the Commission, should you deem it necessary for assisting their Lordships in this Inquiry.

Yours faithfully,



Nihal Sri Ameresekere

THE SPECIFIC ELEVATIONS GIVEN ON THE FLOOR SHEETS OF THE AMENDED PLAN [P163] FILED WITH THE UDA IN AUGUST 1985 ARE IDENTICAL WITH THE FLOOR ELEVATIONS GIVEN IN THE SCHEMATIC PLAN P4/P4A

The original Architectural Plans of August 1983 filed with the UDA, but missing was to have been on the basis of P4/P4A

	HL.	Mt.	
Middle Tower Machine Room-Roof Top Wall Height	2.0 - Total Height with Wall	+ 86.5	
Machine Room on Middle Tower, [including Air Gap for Noise Control]	6.0 - Machine Room Roof Slab	+ 84.5	
21st Floor Height -	3.0 - 21st Floor Roof	+ 78.5	
20th Floor - 21st Floor	3.0 - 21st Floor	+ 75.5	
19th Floor - 20th Floor	3.0 - 20th Floor	+ 72.5	+ 72.5 Elevation given in A23 as Machine Room alleged Floor Level [+ 72.7 Elevation in A22 [alleged 19th Floor]
18th Floor - 19th Floor	3.0 - 19th Floor	+ 69.5	+ 69.5 Elevation in A21 [alleged 18th Floor]
17th Floor - 18th Floor	3.0 - 18th Floor	+ 66.5	+ 66.5 Elevation in A20 [alleged 17th Floor]
16th Floor - 17th Floor	3.0 - 17th Floor	+ 63.5	}
15th Floor - 16th Floor	3.0 - 16th Floor	+ 60.5	}
14th Floor - 15th Floor	3.0 - 15th Floor	+ 57.5	}
13th Floor - 14th Floor	3.0 - 14th Floor	+ 54.5	}
12th Floor - 13th Floor	3.0 - 13th Floor	+ 51.5	}
11th Floor - 12th Floor	3.0 - 12th Floor	+ 48.5	}
10th Floor - 11th Floor	3.0 - 11th Floor	+ 45.5	66.5 - 24.5 = 42 = 14 Floors 3
9th Floor - 10th Floor	3.0 - 10th Floor	+ 42.5	i.e. 4th Floor to the 18th Floor
8th Floor - 9th Floor	3.0 - 9th Floor	+ 39.5	}
7th Floor - 8th Floor	3.0 - 8th Floor	+ 36.5	}
6th Floor - 7th Floor	3.0 - 7th Floor	+ 33.5	}
5th Floor - 6th Floor	3.0 - 6th Floor	+ 30.5	}
4th Floor - 5th Floor	3.0 - 5th Floor	+ 27.5	}
3rd Floor - 4th Floor	3.0 - 4th Floor	+ 24.50	+ 24.5 Elevation in A20
2nd Floor - 3rd Floor	5.5 - 3rd Floor	+ 21.50	}
Lobby Floor- 2nd Floor	4.5 - 2nd Floor	+ 16.00	+ 8
Mez. Floor-Lobby Level	3.7 + Lobby Level	+ 11.50	Lobby Lounge + 13.5
Ground Flr - Mez.Floor	3.8 Mez. Flr.	+ 7.8	+ 2
Car Park Level-Grd Flr.	3.0 Ground Floor	+ 4.0	
Car Park Level	+ 1.0	[+ Car Park Levels + 2.8 & + 5.8 and small Mechanical Level - 0.50]	

FLOOR ELEVATIONS AS PER CROSS-SECTIONAL SHEETS OF THE THE AMENDED PLAN [P163] ARE AT VARIANCE WITH THE ELEVATIONS GIVEN ON THE FLOOR SHEETS OF THIS VERY SAME PLAN [P163]

	<u>Mt.</u>		<u>Mt.</u>	
Machine Room on Middle Tower only - Height	5.4	i.e. Roof Slab on Middle Tower Machine Room	+ 77.8	- But in A23 Middle Tower Roof Top Elevation + 77.0
Air-Gap Area above 19th Floor Roof for Noise Control	1.5	i.e. Machine Room Floor	+ 72.4	
19th Floor Height	3.1	i.e. 19th Floor Roof	+ 70.9	
18th Floor - 19th Floor	3.1	i.e. 19th Floor	+ 67.80	- But in A22 19th Floor Elevation + 72.7
17th Floor - 18th Floor	2.9	i.e. 18th Floor	+ 64.70	- But in A21 18th Floor Elevation + 69.5
16th Floor - 17th Floor	2.9	i.e. 17th Floor	+ 61.80	- But in A20 17th Floor Elevation + 66.5
15th Floor - 16th Floor	2.9	i.e. 16th Floor	+ 58.90	
14th Floor - 15th Floor	2.9	i.e. 15th Floor	+ 56.00	
13th Floor - 14th Floor	2.9	i.e. 14th Floor	+ 53.10	
12th Floor - 13th Floor	2.9	i.e. 13th Floor	+ 50.20	
11th Floor - 12th Floor	2.9	i.e. 12th Floor	+ 47.30	
10th Floor - 11th Floor	2.9	i.e. 11th Floor	+ 44.40	
9th Floor - 10th Floor	2.9	i.e. 10th Floor	+ 41.50	
8th Floor - 9th Floor	2.9	i.e. 9th Floor	+ 38.60	
7th Floor - 8th Floor	2.9	i.e. 8th Floor	+ 35.70	
6th Floor - 7th Floor	2.9	i.e. 7th Floor	+ 32.80	
5th Floor - 6th Floor	2.9	i.e. 6th Floor	+ 29.90	
4th Floor - 5th Floor	2.9	i.e. 5th Floor	+ 27.00	
3rd Floor - 4th Floor	3.1	i.e. 4th Floor	+ 24.10	- But in A20 4th Floor Elevation + 24.5
2nd Floor - 3rd Floor	5.5	i.e. 3rd Floor	+ 21.00	- But in A19 3rd Floor Elevation + 24.5
Lobby Floor - 2nd Floor	4.5	i.e. 2nd Floor	+ 15.50	
As per KKS SHEET A28		Lobby Level	+ 11.00	

Note:

$$66.5 - 24.5 = 42 = \frac{42}{2.9} = 14.5 \text{ Floors}$$

This cannot be

RECONCILIATION OF ELEVATIONS

	<u>Mts.</u>
<u>21st Floor Roof Top as per Original Plan</u> containing <u>19 Guest Room Floors</u>	78.5
<u>19th Floor Roof Top as per Amended Plan</u> containing <u>only 17 Guest Room Floors</u>	<u>70.9</u>
<i>∴ Difference in Height</i>	<u><u>7.6</u></u>

Amendments made in Elevations in Amended Plan:

Removal of 2 Guest Room Floors 3Mt.x 2 Nos	- 6.0
3rd, 18th & 19th Floor heights given as 3.1 Mt. and not 3.0 Mt. as originally	+ 0.3
Other 14 Floor heights given as 2.9 Mt. and not 3 Mt. as originally	- 1.4
3rd Floor Level Elevation in Amended Plan taken as 21.0 Mt., whilst original Plan Level had been 21.5 Mt.	- <u>0.5</u>
<i>∴ Reconciled Difference in Height</i>	<u><u>7.6</u></u>

	<u>CP7</u>	<u>P104</u>	<u>P163</u>
I. <u>GENTRE-TOWER TOP ROW</u>			
<u>EXTREME RIGHT ROOM [TYPE D]</u>			
- In Sheet A20 - 4th-17th Floor	<u>Not Indicated</u>	Shown as <u>2 - Bay</u>	Shown as <u>1 - Bay</u>
- In Sheet A21 - 18th Floor	Shown as <u>1 - Bay</u>	Shown as <u>2 - Bay</u>	Shown as <u>1 - Bay</u>
- In Sheet A22 - 19th Floor	Shown as <u>1 - Bay</u>	Shown as <u>2 - Bay</u>	Shown as <u>1 - Bay</u>
- In Sheet A19 - 3rd Floor	Shown as Pantry	Shown as Pantry	Shown as Pantry
II. <u>LEFT-TOWER BOTTOM ROW</u>			
<u>EXTREME LEFT ROOM [TYPE E]</u>			
- In Sheet A20 - 4th-17th Floor	<u>Not Indicated</u>	Shown as <u>2 - Bay</u>	Shown as <u>3 - Bay</u>
- In Sheet A21 - 18th Floor	Shown as <u>1 - Bay</u> (In 2 Bay Suite)	Shown as <u>2 - Bay</u> (In 3 Bay Suite)	Shown as <u>2 - Bay</u> (In 2 Bay Suite) <i>[But in Statement in H345A Shown as 3 Bay]</i>
- In Sheet A22 - 19th Floor	Shown as <u>2 - Bay</u> (In 5 Bay Suite)	Shown as <u>2 - Bay</u> Suite	Shown as <u>2 - Bay Suite</u>
- In Sheet A19 - 3rd Floor	Shown as 1 - Guest Room	Counted as 1 Bay in 5 Bay Manager's Apartment <i>[As per Statement - in H345A]</i>	Counted as 1 Bay in 5 Bay Manager's Apartment <i>[As per Statement - in H345A]</i>

Note: i. Extra Large Room on Suite Floor as per Schematic Architectural Plans P4 = 44 Sq.Mt.

- D Type - 48.94 Sq.Mt.
- E Type - 50.24 Sq.Mt.

ii. Standard Room on other Floors as per Schematic Architectural Plans P4 = 33 Sq.Mt.

- A Type - 29.36 Sq.Mt. (20 Nos Rooms per Floor ; 4th - 17th Floors)
- B Type - 32.33 Sq.Mt.
- C Type - 31.01 Sq.Mt.

- h) without notice to and/or approval and/or authority of the Board of Directors of the 4th Defendant Company, accompanied the 1st & 2nd Defendants, to a Meeting at the Ministry of Finance and obtained the concurrence of the Secretary, Ministry of Finance and arranged for the payment of US \$ 2.0 Mn., notwithstanding the Plaintiff's specific objections, made previously by Memorandum dated 13.12.89 to the Board, which was unopposed at the Board of Directors of the 4th Defendant Company,
Vide para 40 of the Plaint - Documents P39(a), P39(b) & P39(c)
- i) permitted deliberations at the Board Meetings of the 4th Defendant Company, with the presence and participation of the Representatives of the 1st & 2nd Defendants, on matters of conflicting interest and moreso particularly, this instant Action, which had been instituted against them in the very interest of the 4th Defendant Company and its Shareholders,
Vide para 45(a) of the Plaint
- j) notwithstanding the discrepancies raised by the Plaintiff and the discovery of the unauthorisedly and surreptitiously substituted Architectural Plans of 15.07.85, described as "Amended" Plans, and further notwithstanding the objection made thereto by the Plaintiff, on or about 27.11.90, as Chairman & Managing Director of the 4th Defendant Company, arranged for the tabling and adoption of the Accounts of the 4th Defendant Company for the Year Ended 31.03.90, disregarding the financial consequences thereof to the 4th Defendant Company,
Vide the other Action - D.C.Colombo 3231/Spl.
- k) failed and neglected to respond to the Plaintiff's Memorandum dated 20.12.90 specifically addressed to the Directors of the 4th Defendant Company, which had set out the said several matters referred to herein and thereby has been unable to controvert the contents therein, even though specifically exhorted to do so by the Plaintiff, and take any action thereon in the interest of the 4th Defendant Company and its Shareholders; on the contrary he caused the removal of the Plaintiff as a Director of the 4th Defendant Company,
Vide the other Action - D.C.Colombo 3231/Spl.
- l) failed and neglected to respond to the several Memoranda/Letters dated 12.04.90 (2), 24.04.90 (2), 31.05.90, 29.06.90 and 04.07.90, forwarded to the Board of Directors of the 4th Defendant Company by the Plaintiff with copies to all Directors, after the discovery in March '90 of the substitution of the original Plan as aforesaid described as "Amended" Plans; and as the Chairman & Managing Director of the 4th Defendant Company failed and neglected to take any action whatsoever thereon. Vide paras 45, 54(b) & 54(c) of the Plaint-
Documents P44(a), P44(c), P45(a) & P52(d)
- m) as the Chairman & Managing Director of the 4th Defendant Company failed and neglected to produce the authenticated copies of the original Architectural Plans, and Exhibit 'A' to the Supplies Contract, that defined and specified the Supplies of Furnishings, Fixtures & Equipment to the Colombo Hilton Hotel, eventhough all original Contracts/Agreements and Documents had been kept at the Registered Office of the 4th Defendant Company, which was situated at the Office of Cornel & Co Ltd, 16, Alfred Place, Colombo 3, the Office of the 5th Defendant himself.
Vide paras 50(i) & 51 of the Plaint
- n) the Certificate of Conformity from the Urban Development Authority dated 27.04.87, which specifically related to the aforesaid "Amended" Plans, had been addressed to the aforesaid Registered Office of the 4th Defendant Company, also the address of the 5th Defendant as aforesaid, whereas the matter of the surreptitious substitution of the original Plans as aforesaid, had been deliberately and knowingly suppressed from the Board of Directors of the 4th Defendant Company,
Vide paras 45(b) & 45(d) of the Plaint

Volume 6 at folio 74. This letter appears to have been signed by Mr. Vasudeva Nanayakkara, addressed to His Excellency the President, Mr. Premadasa, with copy to Mr. Paskaralingam.

A: Yes.

Q: P206 was in reply to this?

A: No. I believe this P207 is in reply to P206. With that I have completed the markings from the Ministry files. There are two subject matters which I have not produced. One is the proceedings of the Cabinet appointed Committee. Your lordships will recall that Akeel Mohamed was appointed with some officials. That matter, either I or some other official can produce before your lordships. There have been some discussions and negotiations while I was proceeding with the litigation in court. That Cabinet appointed Committee has been having discussions. That will take a little time. I want to proceed with my other evidence. I also wish to mark the minutes of file No.6 because I will be referring to it a number of times. These minutes are fairly important. That gives a number of matters about the settlement and the discussions.

The Chairman: You can mark it when you give the evidence.

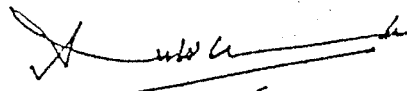
Mr. Amarasékera: On P70b, I just want to draw your lordships' attention. Mrs. Casiechetty's minute says, "The decision of the judge that no payment at all should be made seems unfair in view of the fact that it is only a part of the construction that is in dispute." She says it is unfair. If I am permitted to say, I think it is unfair that my letter was not submitted to Justice Soza. I wish to clarify some matters which your lordships raised. Your lordships

CONFIDENTIALRe - Proceedings on Monday 24th April '95 & Thursday 27th April '95

1. The Actg. Solicitor General, Mr. Douglas Premaratne, P.C., at a discussion had prior to leading my evidence, intimated that he was aware that there were some matters concerning Mr. Shibly Aziz, P.C., the then Additional Solicitor General, who was the Counsel appearing for Hotel Developers (Lanka) Ltd., and that he, Mr. Premaratne would not be asking any questions on such matters, but that I was free to refer to such matters in my evidence, should I wish to do so.
2. During the days that I was giving evidence, whilst I was having general conversation outside the times of the Commission's sittings, Mr. Parakrama Karunaratne, Senior State Counsel, on two or three occasions, inquired from me, whether Mr. Douglas Premaratne requested me not to refer to matters concerning Mr. Shibly Aziz. I replied in the negative and avoided any further discussion on the matter.
3. Having informed me previously that he had to suddenly go abroad, Mr. Douglas Premaratne intimated to me that I could continue giving evidence on Friday 21.04.'95, and that he would instruct Senior State Counsel, Mr. Parakrama Karunaratne, to lead my evidence. Accordingly, my evidence was led by Mr. Karunaratne on Friday 21.04.'95.
4. Whilst I was giving evidence on Friday 21.04.'95 and when document marked P185, a certified copy of the District Court proceedings, was being marked, Mr. Karunaratne indicated to me not to read out the lines therefrom, which I had highlighted. Nevertheless, I read out these lines, Quote;

" Mr. Aziz state as follows: - According to what the 1st and 2nd Defendants state, they should have received notice of this motion. If by chance the Court issues Commission, it could have affected them "
5. At the end of the proceedings of the Commission on Friday 21.04.'95, Mr. Karunaratne indicated to me that he was merely standing and marking documents and that he would wish to be briefed on the evidence for the next date i.e. Monday 24.04.'95.
6. For such purpose, we agreed to meet at my Office on Sunday 23.04.'95 at 7.00 p.m. However, Mr. Karunaratne telephoned and informed me that he was indisposed and unable to come and we then agreed to meet on Monday 24.04.'95 at 8.00 a.m. at my Office on his way to the Commission. On Monday morning there was a telephone message from Mr. Karunaratne intimating that he would not be coming and that we could meet at the Commission, prior to the commencement of the day's proceedings.
7. Accordingly, I sent through members of my staff, who were assisting me with the documents at the hearings of the Commission, the relevant documents, that were to be produced in evidence that day, Monday 24.04.'95, to be made available to Mr. Karunaratne to peruse, until I

8. When I arrived at the Commission, prior to the commencement of the sittings of the Commission, my staff informed me that Mr. Karunaratne had perused some of the documents whilst retaining the 3 Letters, subsequently marked P248, P248 A & P248 B with him. These Letters by my Attorneys-at Law had been addressed to the Attorney General, inter-alia, concerning the conduct and actions of Mr. Shibly Aziz. Mr. Karunaratne had these Letters with him and referring to them intimated to me that they contained allegations against Mr. Shibly Aziz and that he would wish to consider the same, after discussing with Mr. Shibly Aziz. I intimated to him that he should not do so, since Mr. Aziz was an affected party.
9. Thereafter, Mr. Karunaratne, having gone to the Office of the Commission, returned and intimated to me that he had spoken to Your Lordship's and was moving for a postponement and accordingly, he sought a postponement, when the proceedings commenced.
10. After the proceedings were adjourned on that day, i.e. Monday 24.04.'95, Mr. Karunaratne suggested, that we proceed to the Attorney General's Department, so that he could examine the documents and also speak with Mr. Shibly Aziz. I declined to do so, pointing out that the proceedings had been fixed for Thursday 27.04.'95 and that Mr. Premaratne was expected on Wednesday 26.04.'95. However, I agreed to meet with the Mr. Karunaratne on Wednesday 26.04.'95 at 2.30. p.m. at the Attorney General's Department, in case Mr. Premaratne did not arrive as expected.
11. Mr. Premaratne arrived as scheduled and I spoke with him on the telephone on the morning of Wednesday 26.04.'95. He was already aware of the postponement of Monday's proceedings and had seen the newspaper reports thereon. He intimated that he was in an embarrassing position, since the story going round at the Attorney General's Department was, that knowingly he had left the island leaving it to Mr. Karunaratne to lead my balance evidence, which included matters concerning Mr. Aziz, as he, Mr. Premaratne was aspiring for the office of Attorney General.
12. I met Mr. Premaratne at the Attorney General's Department in the afternoon on Wednesday 26.04.'95 and briefed him on the balance evidence and the documents that I wished to mark on the following day, i.e. Thursday 27.04.'95.
13. In the context of the above circumstances, Mr. Premaratne suggested that it would be better if I could avoid reference to Mr. Shibly Aziz, but that I could mark the necessary documents. I realised the embarrassing circumstances in which Mr. Premaratne was placed in.
14. On Thursday 27.04.'95 morning, when the proceedings commenced, the matter of my evidence not being led on Monday 24.04.'95 again surfaced.
15. In the circumstances that I was placed in, I decided that I would endeavour to mark all the necessary documents and conclude my evidence on that date i.e. Thursday 27.04.'95, refraining from referring to matters in my oral evidence concerning the conduct and actions of Mr. Shibly Aziz, except marking the necessary documents.


6/7/95



Telephones

- Minister

කාර්යාලය } 433937, 435860,
அலுவலகம் } 421251, 421254,
Office } 421255, 430051-5

සෂ්‍යවරාණී
Secretary

61

எனது எனது
My No.

ANNEXURE "H1"

වෘත්තීය ලේකම්
அந்தரங்கச் செயலாளர். } 320436
Private Secretary

உமது எனது
Your No.

වෛලස්ස
தொலைச்சல் } 21409 CE
Telex

தொலைச்சல்
பக்ஸ் } 449823
Fax

இதரல். கும் சமீபாடின, சனவார்கீக கடுக்து சய
சாதிக பீகாடிடினா டிவாநகாண்டி

මහලේකම් කාර්යාලය, කොලො 01
செயலகம், கொழும்பு 01
The Secretariat, Colombo 01

நிதி, திட்டமிடல், இன உறவு அலுவலகம்,

தேசிய நல்லிணக்க அமைச்சு

MINISTRY OF FINANCE, PLANNING, ETHNIC AFFAIRS AND
NATIONAL INTEGRATION

24th July, 1995

දිනය }
தேதி }
Date }

Mr. Masaaki Miyakage
Mitsui & Co. Ltd.
2 - 1, Ohtemachi 1-Chome
Chiyoda-Ku
Tokyo, Japan

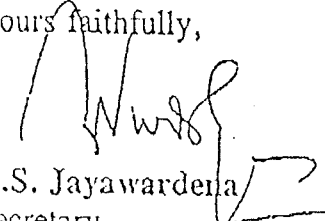
Dear Mr. Miyakage

Hilton Hotel Agreements

With reference to the Agreements signed on 28th June, 1995 regarding the contracts for the Hilton Hotel, Colombo, I am directed by the Hon. Deputy Minister of Finance to inform you that the agreements will not be implemented until the determination on the Hilton contracts by the Special Presidential Commission of Inquiry.

I am also instructed to inform you that Sri Lanka Courts have restrained me from implementing the agreements, arising from certain cases filed in the courts.

Yours faithfully,


A.S. Jayawardena
Secretary.

phones

Minister }
 කාර්යාලය } 433937, 435860,
 அலுவலகம் } 421251, 421254,
 Office } 421255, 430051-5

Secretary } 431761
 செயலகப் பேரவை }
 அந்தரங்கச் செயலாளர் } 320436
 Private Secretary }
 වෙලපස් }
 ගෞරවය } 21409 CE
 Telex }

My No. }
 உமது எண் }
 Your No. }
 ලදුපස් }
 பக்ஸ் } 449823
 Fax }

ANNEXURE "H2"

புரட்சி, மூல மதிப்பாண்மை, பன்னாட்டுகளை கட்டுப்பாடு செய்தல்
 சார்ந்த பன்னாட்டுகளை மேலாண்மை

මහලේකම් කාර්යාලය, කොළඹ 01
 செயலகம், கொழும்பு 01
 The Secretariat, Colombo 01

சிதி, திட்டமிடல், இன உறவு அலுவலகங்கள்,
 தேசிய நல்லிணக்க அமைச்சு

MINISTRY OF FINANCE, PLANNING, ETHNIC AFFAIRS AND
 NATIONAL INTEGRATION

24th July, 1995
 திகதி }
 தேதி }
 Date }

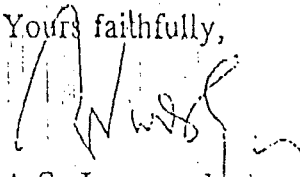
Mr. Takamitsu Nakano
 Taisei Corporation
 25 - 1, Nishi Shinjuku 1-Chome
 Shinjuku-Ku
 Tokyo, Japan

Dear Mr. Nakano,

Hilton Hotel Agreements

With reference to the Agreements signed on 28th June, 1995 regarding the contracts for the Hilton Hotel, Colombo, I am directed by the Hon. Deputy Minister of Finance to inform you that the agreements will not be implemented until the determination on the Hilton contracts by the Special Presidential Commission of Inquiry.

I am also instructed to inform you that Sri Lanka Courts have restrained me from implementing the agreements, arising from certain cases filed in the courts.

Yours faithfully,

 A.S. Jayawardena
 Secretary.

Hilton Settlement

When I replied the adjournment question raised by the Hon. Mahinda Samarasinghe, M.P. on 08.08.95 I based my answer on the settlement agreements that have been executed in the matters pertaining to the Hilton Hotel, not having participated in the negotiation process that had taken place at the Attorney General's Department. Subsequently, I have gone into this matter and I find that the Settlement has been reached taking into account the related and relevant issues, protecting the interest of the Government as the major Shareholder and Guarantor.

2. I wish to clarify that there has been no negotiations with the Japanese companies on the basis of any write-off, either of interest or capital, until Mr. Nihal Sri Ameresekere had raised queries in relation to the construction of the hotel. Having made representations as far back as 1990 to the Ministry of Finance and having had no positive response, Mr. Ameresekere had instituted a Derivative Action in Courts on behalf of the Company and had obtained Interim Injunctions, which subsequently have been upheld by the Supreme Court. As a result, no payments could be made to the Japanese companies, causing a strain in Sri Lanka-Japan relations.

3. In 1992, the then Secretary, Ministry of Finance & Planning had initiated the negotiation of a settlement of this matter with the Japanese companies and Mr. Ameresekere. By June 1993 the negotiations had led to the Japanese companies agreeing to write-off all accrued interest and 30 percent of the capital.

4. However, on the advice of his lawyers, Mr. Ameresekere had declined to execute the draft Settlement Agreements of June, 1993 mainly on the issue that the Japanese companies had required Promissory Notes for the balance debt from the Government, which the Ministry of Finance then had agreed to. Mr. Ameresekere had insisted, quite rightly, that the Company being the borrower, the Promissory Notes should be given by the Company. There would have been serious consequences to the Government if it had agreed to issue the Promissory notes.

5. Subsequent attempts in June, 1994 to conclude the Settlement had also not borne results, particularly because of certain compromises that had been required from Mr. Ameresekere, as evidenced by the correspondence in such regard. Evidently, to pressurise Mr. Ameresekere into so compromising, an Action has been filed against Mr. Ameresekere in August, 1994 claiming Rs.26 million, on the basis of professional negligence, along with a complaint to the Institute of Chartered Accountants, whereas it was Mr. Ameresekere, who had been one Director of the Company who had acted for the benefit of the Company, in instituting the Derivative Action. The Institute of Chartered Accountants having examined the complaint and the evidence held that there was no basis to pursue and had dropped the matter.

6. Consequent to our Government assuming office, respecting the observations made by the Supreme Court that the Government could not be indifferent in this matter and honouring the commitment that already had been given to the Japanese Companies by the former government, the Settlement was concluded, further improving upon those conditions which were being negotiated earlier.

7. As regards the People's Bank cases, wherein Mr. Ameresekere had been implicated as one of the guarantors, in circumstances that Mr. Ameresekere had given these guarantees as a nominee of Cornel & Co. Ltd. for its subsidiary in facilitating the promotion of the Hilton Hotel, Mr. Ameresekere had required, as a part of the settlement, that these cases be also settled by accounting correctly the relevant dues for the period of the guarantee. The Government was to only assist in resolving this matter. The Japanese companies have obtained an undertaking from Mr. Ameresekere that he would not pursue any action against them in such regard. These conditions had been agreed upon as a part of the overall settlement conditions at discussions had since 1992.

8. The costs reimbursed to Mr. Ameresekere has been in respect of legal and other related costs which he had incurred over the last 5 years (since 1990) on this matter and had been duly audited and verified prior to payment. Had the former Government taken prompt action on Mr. Ameresekere's complaints in the first

instance, there would not have been the necessity for Mr. Ameresekere to have taken legal action and to have incurred such costs to prosecute this matter on behalf of this Company owned by the Government, by himself over these several years.

9. The current Settlement of 28.6.1995 has resulted in a write-off of Japanese Yen 17,586 Million, i.e. Sri Lanka Rs.10,200 million at the date of settlement. This is a saving for the Company and the Government as the Shareholder and the Guarantor, which arose primarily from Mr. Ameresekere's efforts. It is generally recognised that costs incurred in such a situation be reimbursed to the person who had instituted such action and this has been agreed upon at the settlement discussions had since 1992. It is noteworthy that the costs incurred by Mr. Ameresekere of Rs.6.98 million is only a fraction of the saving of Rs.10,200 million (0.07%). Furthermore, in the current settlement, the balance debt is rescheduled to be repaid over 15 years in year 2010, whereas the original Hilton contractual commitment required full repayment by 1999. Also, the interest payable now is 5.25% as against 6% previously.

10. Contrary to misinformation by affected parties, there had never been negotiations on the basis of the US Dollar, since all contracts, including the Loan Agreement, and the Government guarantees have been in Japanese Yen. In fact, the balance debt of the Company of Japanese Yen.7834 million after the current settlement was equivalent to US.\$92 million at the date of settlement on 28.06.1995, whilst today it is equivalent to US.\$76 million in the context of the subsequent appreciation of the US Dollar against the Japanese Yen.

11. Mr. Ameresekere in his evidence before the Special Presidential Commission has submitted copies of the Draft Settlement Agreements and correspondence that had been had during the previous Government and had also placed evidence on the concluded settlement. The previous draft Settlement Agreements as well as the concluded agreements had been approved by the Attorney General's Department and handled by the Solicitor General, who is assisting the Commission. Copies of the draft Settlement Agreements had also been forwarded to

the Hon. Minister, whilst negotiations were in progress. The salient features of the current Agreements were referred to the Cabinet, which gave it's approval.

12. Cornel & Co. Ltd., had defaulted payment to the UDA on the land leases amounting to Rs.109.47 million, which had been fixed on very concessionary terms, necessitating the UDA to take appropriate action, whereas the original shareholding had been created on the capitalised value of these land leases. Cornel & Co. Ltd., had also defaulted payment of Rs.85.7 million on the public share issue that had been under-written by them. They have failed to conclude certain Agreements reached to this regard with the Ministry of Finance and the Attorney General. The current Settlement Agreements concluded had also taken these matters into account.

13. There is allegation also of foreign commission payments of Japanese Yen 340 million, i.e. Sri Lanka Rs.180 million, paid to a Bank Account in Hongkong for concessions obtained from the former government, which evidence has been placed before the Special Presidential Commission, which is inquiring into the matter of the Hilton.

14. In view of the foregoing, answers to the questions raised do not arise.

18.09.1995



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MINISTRY OF FINANCE

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செயலகம், கொழும்பு 1
The Secretariat, Colombo 1

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26th October '92

Mr. Richard M. Brown,
Director, USAID,
356, Galle Road,
Colombo 3.

Dear Mr. Brown,

Promotion of Private Infrastructure Project (383-0118)

This is to affirm our approval of the Center for Financial Engineering in Development, Washington, as the Main Contractor and Comindtax Management Service Ltd., as the Sub-Contractor for the abovementioned PPI Project.

Mr. Nihal Sri Ameresekere of Comindtax Management Service Ltd., has functioned successfully as the Lead Consultant on the Peoplisation of the Transport Boards and has discharged his duties and responsibilities, adhering to scheduled deadlines, to our satisfaction.

Yours sincerely,

R. Paskaralingam
Secretary, ~~Ministry of Finance~~
& Ministry of Policy Planning



කොළඹ
Colombo

1983 June 8.

Mr.Nihal Sri Amerasekera,
167 B, Sri Vipulasena Mawatha,
Colombo 10.

Computerisation of information - Sri Lanka Central
Transport Board

I refer to an extract of a mission report 17th November to 9th December, 1982, of Mr.P.W.P.Browne, Inter-regional Adviser on Information Management and the use of computers in Public Administration which reads as follows -

"Useful computerisation of an organisation can only be carried out with the active participation and desire of management. Management must feel the need for better information and support the search for it via computerisation. They must understand what sort of improvements in information, computerisation can bring about. The only manager that I encountered during my mission who seemed to have such an understanding was the Director (Finance) of the Sri Lanka Transport Board, (Mr.Nihal Sri Amerasekera) who developed and installed some 10 computerised control systems in about one year".

An United Nations supported International Advisory team, consisting of Mr.Praxy Fernandes, (Team Leader) who was formerly the Secretary, Ministry of Finance, Government of India and presently UN Team Leader to the International Centre for Public Enterprises, Mr.Philip Neck, The Director, ILO Regional Office, India, Dr.Toni Bennett, UN Adviser, Ministry of Public Enterprises, Malaysia, Mr.Raja Gomez, Assistant Director, Commonwealth Secretariat and Mr.Yashieko Inoue, ILO Regional Adviser on Productivity, in their study titled "Government and Public Enterprises in Sri Lanka - A Study in relationships," have said

"The Finance Director of the SLCTB has introduced an information system which enables top management to assess continuously the performance of each bus depot and indeed of each vehicle in the fleet. This system covers information on vehicle utilisation, load factor, fuel consumption, tyre consumption, earnings per road kilometre, expenditure per road kilometre and a variety of other productivity factors. This information has been computerised and this enables the top management of SLCTB to know what is going on".

2. Since you have left the public sector, a statement for posterity of your experience in this field will be very valuable. I wonder whether you could prepare a note, which I intend to give wide exposure at senior decision making levels, about how you got about achieving this task indicating the information providing system that prevailed, the strategies and tactics adopted, the difficulties encountered, the achievements and failures and suggestions for the future. These elements are mere suggestions for you are welcome to draft this note in the way you wish.

M. Somasundaram
M.Somasundaram,
Director,
Public Enterprises Division.

S/F

Pl read this

L speak

8/2/93

D/EA

Please speak.

S/F 9/2

Spoken
th.

to advise the Government on
inter alia, Secretary - Posts
public officials and private-

advisers" on BOT. They have
Place. Nihal Amerasekera is
in this set-up.

large defunct.

in conjunction with Finance Ministry
is said to have given Amerasekera
high remuneration (in conjunction
advise on the last lap of the
Board.

recently. They may be verified

cases is being discussed between
General's Office and Amerasekera.
prepared and circulated. The
Government will utilise its
power the following for Amerasekera,

- (i) Give Amerasekera representation on the Hilton Board of Directors (he had been removed from the directorate in 1990);
- (ii) Reimburse Amerasekera the costs of his litigation;
- (iii) Remove the present Auditors of the Company (with whom Amerasekera has been quarreling);
- (iv) Remove Cornel Perera from the Chairmanship of the Company.

- (1) A local Committee was set-up to advise the Government on BOT concept. It included, inter alia, Secretary - Posts and Telecommunications and public officials and private-sector representatives.

U.S.Aid has taken-over as "advisers" on BOT. They have set-up an office in Horton Place. Nihal Amerasekera is virtually the Chief-Executive in this set-up.

The local Committee is by and large defunct.

- (2) Ministry of Transport in conjunction with Finance Ministry and Policy Planning Ministry are said to have given Amerasekera a two year contract at very high remuneration (in conjunction with the World Bank/IMF) to advise on the last lap of the peoplisation of the Transport Board.

- (3) The above two have been done recently. They may be verified please.

- (4) A settlement of the pending cases is being discussed between the Treasury, the Attorney-General's Office and Amerasekera. Draft documents have been prepared and circulated. The main provisions are that the Government will utilise its majority share-holding to achieve the following for Amerasekera,

(i) Give Amerasekera representation on the Hilton Board of Directors (he had been removed from the directorate in 1990);

(ii) Reimburse Amerasekera the costs of his litigation;

(iii) Remove the present Auditors of the Company (with whom Amerasekera has been quarreling);

(iv) Remove Correl Perera from the Chairmanship of the Company.

The Board of Directors has not been consulted or kept informed of the above.

They ^{above terms} are one-sided. They will give the wrong impression that Amerasekera was correct in making his allegations.

- (5) It is probably by reason of the aforesaid that Amerasekera claims that he is being supported in his course of action by the Government.
- (6) Certain negotiations had been taking place with the Japanese. This was to give the Company relief in respect of the Loan Agreement. These discussions started prior to Amerasekera commencing litigation. But his litigation and allegations against the Japanese disrupted these negotiations. Amerasekera is, however, now trying to claim credit that his course of action has resulted in this relief being obtained by the Company.
- (7) Whilst there is no objection to a settlement, this must not be one-sided and create a wrong impression. Also, Amerasekera must withdraw his allegations of fraud etc.

ANALYTICAL SCHEDULE TO [H362]
Affidavit of Cornel L Perera dated 21st July 1995

PARA 56 OF [H362] - Affidavit of Cornel L Perera - 21.07.'95

" I further plead that as the Supreme Court has already observed that prima-facie fraud has been established and in any event, in all probabilities the alleged fraud to have been committed by the Mitsui and Taisei will be established in the action and in that event, the HDL will not have to make any payment to Mitsui and Taisei and the guarantee given by the Government of Sri Lanka can be set aside or cancelled or revoked "

PARA 59 OF [H362] - Affidavit of Cornel L Perera - 21.07.'95

" I further state that the Supreme Court of this country had already observed that prima-facie fraud had been established on the part of Mitsui and Taisei and that in all probabilities that the fraud committed by the said Mitsui and Taisei will be established in the said Case No. 3155/Spl instituted by Mr. N.S. Ameresekere as representing the HDL "

PARA 60 OF [H362] - Affidavit of Cornel L Perera - 21.07.'95

" I further state that since the matters stated in Case No. 4392/Spl are the same as stated in Case No. 3155/Spl the said Case No. 4392/Spl there is a strong likelihood of this action also being successful and the Government of Sri Lanka will be relieved of all burdens under the guarantees "P15" and "16" "

ANALYSIS OF CONTENTS IN PLAINTS IN 3155/SPL & 4392/SPL

Essentially Para Nos. 9 to 57 of Plaintiff in 3155/Spl have been reproduced as same Para Nos. 9 to 57 (excluding paras 18 & 19) of Plaintiff in 4392/Spl

OUTLINE OF MATTERS CONTAINED IN PARA/S	[P57] PLAINT IN 3155/SPL PARA NO.	[P308] PLAINT IN 4392/SPL PARA NO.
1. <u>International 5 Star Class Hotel</u> } <u>to comprise of 22 Storeys, 452</u> } <u>Guest Room Bays</u> } } <ul style="list-style-type: none"> - Preliminary Agreement (P41), } 9(a) - Investment Agreement [P3], } 11 - Construction Agreement [P31], } 13(a) - Loan Agreement [P34], } 15(a) - Supplies Agreement [P32] } 16(a) - Design & Supervision Agreement } [P53] } 		
2. HDL Board notes Hotel to } comprise 452 Guest Rooms to be } built upto 5 Star Class standards } required by Hilton International }	19(d)	17d)
3. Hilton International's Letter } dated 31.03.'83 [P6] - Forecasts } of Income & Expenditure (P5) & } (P7) in conformity with } Architectural Plans [P4] which } provided for 19 Guest Room Floors } 456 Rooms (452 Guest Rooms & 4 } Rooms as Manager's Quarters) - } Letter of Award for Construction } issued on 30.03.'83 }	9(e) 10(a) & (b) 31(c)	9(e) 10(a) & (b) 31(c)

4. Mitsui's Profitability & Cash Flow [P7B] (December '83) computed on the basis of 452 Guest Rooms	16(c)	16(c)
5. Scope of Supplies described in Exhibit "A" attached to the Supplies Agreement [P32] & such Exhibit "A" reported missing - vide Letter dated 05.09.'90 [106] from G.M. HDL	14(b) 51(a),(b) & (c)	14(b) 51(a), (b) & (c)
6. Prospectus [P2] setting out, inter-alia, at Page 8 therein that Hotel shall have a 452 - Roomed Tower concept going up to 22 Floors with covered car parking for 400 Vehicles	20(a) & (c)	20(a) & (c)
7. Submission of Architectural Plans for approval to UDA on 19.10.83 [P08]	22(b)	22(b)
8. Copy of Architectural Plans tabled at the Board of HDL on 07.01.'84 [P36] and Board noted that Hotel was to comprise 452 Guest Rooms and further that Mitsui's Profitability Forecast & Cashflow Projections [P7] of December '83 had been also computed on the basis of 452 Guest Rooms	22(c)	22(c)
9. As per UDA's Letter dated 19.01.'84 [P10] the said Architectural Plans had comprised <u>27 Sheets</u>	22(d)	22(d)
10. UDA had approved the said Architectural Plans as per their Letter dated 23.3.'84 [P9]	22(e)	22(e)
11. <u>Original Architectural Plans had provided for 19 Guest Room Floors 456 Guest Rooms Bays, Basement Level, Covered Car Parking for 400 Vehicles</u>	32(iii),(iv) & (v)	32(iii),(iv) & (v)
12. Fire at Construction site in 1985 [P11] whereby all drawings and documents reportedly burnt and replaced by Mitsui/Taisei. The fraudulent nature of the Hand Written Note [P35] was apparently to suppress the approved Original Architectural Plans	24 50(iii)	24 50(iii)
13. Mitsui's Revised Profitability Forecast & Cashflow Projections [P13], after the Opening of the Hotel, forwarded by M. Kubota was based on <u>452 Guest Rooms</u>	26(a) & (c)	26(a) & (c)
14. Discovered that Hilton's Monthly Statement gave only <u>387 Rooms</u>	26(d)	26(d)
15. M. Kubota of Mitsui could not explain discrepancy but forwarded further revised Profitability Forecast & Cashflow Projections recomputed on the basis of 387 Guest Rooms	26(e)	26(e)

16.	Discrepancies brought to the notice of HDL Board on 30.12.'87 by Mr. Ameresekere [P28]	27(a) & (c)	27(a) & (c)
17.	Mitsui/Taisei's response confusing and misled HDL Board on queries re Guest Room Bays	28(a)	28(a)
18.	Dissatisfied with clarifications, Mr. Ameresekere expressed doubts to M.T.L. Fernando and Dr. A. C. Randeni, Government Directors. Accordingly, independent engineering inspection requested by M.T.L. Fernando [P26]	29(a) & (b)	29(a) & (b)
19.	Based on Mr. Choksy's Letter [P42], such Independent inspection was not carried out [P43]	30(b)	30(b)
20.	<u>Decision not to appoint an independent engineer is shown to be wrong and detrimental</u>	33(d)	33(d)
21.	Further Revised Profitability Forecast & Cashflow Projections [P46] by Mitsui/Taisei in Feb'88 again on 387 Guest Rooms	28(b)	28(b)
22.	Final & Completion Certificates from Japanese Architects [P29] & [P30]	33(a), (b) & (c)	33(a), (b) & (c)
23.	<u>Architectural Plans approved by UDA missing. Therefore probed on the basis of Architectural Plans [P4] based on which the Profitability forecasts had been prepared</u>	31(b) & (c)	31(b) & (c)
24.	On a suggestion by Shanmugalingam, Ameresekere authorised to obtain the assistance of local Architect/Engineer	30(d)	30(d)
25.	Draft Debt Re-Scheduling Agreements with a stipulation committing to Mortgage Hotel, surreptitious execution thereof and subsequent deletion of Mortgage Clause, due to objection by Ameresekere and Dr. Randeni	35(a),(b),(c) (d) & (e) 36	35(a),(b),(c) (d) & (e) 36(a)
26.	Mr. Ameresekere calls for Completion Certificate, BOQ and Final Measurement. Refusal to pay in absence of such documentations and specific clarification on Storeys, Rooms etc. [P89, P47 & P53]. Suggestion that the Public Shareholders be refunded their Share Capital	38(a) & (c) 39	38(a) & (c) 39
27.	Unauthorised discussion with Officials of Finance Ministry by Mr. Cornel L Perera, Mr. K.N. Choksy and Representative of Mitsui/Taisei causing payment of US \$ 2 Mn.	40	40

28.	Mr. Choksy's Letter dated 28.02.'90 [P48] expressing that Mitsui/Taisei's two certificates were adequate coverage that construction work was in conformity with all stipulations of the Contract and that HDL will be justified in making balance payments. Mr. Choksy's statement had been in response to Letter by H. Ogami, Mitsui/Taisei's representatives	41(a) 41(b) 41(c) 41(d) 41(e)	41(a) 41(b) 41(c) 41(d) 41(e)
29.	Finance Ministry calls for Original Architectural Plans from UDA and the discovery of an unauthorised set of Amended Architectural Plans dated 15.07.'85 submitted by C. Weerakon Chief Engineer HDL on 08.08.'85 [P16] and approved by UDA on 29.04.'86. <u>Such amendment of Plans required HDL Board approval and written agreement.</u>	44(a),(b) & (c)	44(a),(b) & (c)
30	Having informed after search in Feb/March '90 that there were no other Plans UDA endeavoured to introduced in May'90 a purported Original Plan and later in June'90 UDA confirmed that Original Architectural Plans were not available	44(d) & (e) 50	44(d) & (e) 50
31.	<u>Certificates from Architects and Certificate of Conformity by UDA invalid being based on a set of un-authorised Architectural Plans filed in August'85 and approved in April'86 after construction had commence in March'84</u>	44(b)	44(b)
32.	M/s Ameresekere and Shanmugalingam express serious concern and decide to write to KKS to obtain clarifications - HDL Board Meeting [P25]	46(a) & (b)	46(a) & (b)
33.	On 24.04.'90 HDL Board Meeting Mr. Ameresekere submitting Memo suggested Arbitration <u>stating Construction Agreement remains unfulfilled since the certificate related to another set of Plans and that the matter be thoroughly examined</u>	47(a) (i) (ii) (iii) 57	47(a),(i) (ii) (iii) 57
34.	Investments Agreement required unanimous written approval and signatures of all parties for amendments	48(b) & (c)	48(b) & (c)
35.	HDL confirms non-availability of Original Architectural Plans	50(i),(ii) (iii), (iv) (v) & (vi)	50(i) (ii) (iii),(iv) (v) & (vi)
36.	Disregarding discrepancies and clarifications Mitsui/Taisei were only concerned about obtaining monies	53(a),(b) & (c)	53(a),(b) & (c)
37.	Mitsui/Taisei admits that the constructed Hotel has only <u>20 Storeys</u> in violation of the Construction Agreement	55(b)	55(b)