

IN THE DISTRICT COURT OF COLOMBO

Hotel Developers (Lanka) Ltd.,  
Colombo Hilton Sports Complex,  
Echelon Square,  
Colombo 1.

Case No. 15322/MR

PLAINTIFF

Vs.

Nihal Sri Amarasekere,  
No. 167/4, Sri Vipulasena Mawatha,  
Colombo 10.

DEFENDANT

I, Taisuke Ishibashi of Mitsui and Co. Ltd., 12-01, East Tower, World Trade Centre, Echelon Square, Colombo 1 being a Buddhist, do hereby solemnly, sincerely and truly declare and affirm as follows:

1. I am the affirmant abovenamed and a Director of the Plaintiff-Company viz. Hotel Developers (Lanka) Limited.
2. I depose to the following facts from my personal knowledge and from the knoweldge I have gathered from perusing the relevant documents.
3. The Plaintiff-Company is duly incorporated under the Companies Act No. 17 of 1982 (Memorandum of Association and Articles of Association of the Plaintiff-Company are annexed hereto marked X1 and X2 respectively and are pleaded as part and parcel hereof).
4. In terms of Article 127 of the Articles of Association of the Plaintiff-Company, the quorum necessary for the transaction of the business of the Directors of the Plaintiff-Company is six (06) including at least two Directors nominated by the Minister of Finance and one (01) Director nominated by the foreign collaborators.
5. On 28th June, 1995 a meeting of the Board of Directors of the Plaintiff-Company was held with the necessary quorum being present including two (02) Directors nominated by the Minister of Finance and two (02) Directors nominated by the foreign collaborators (A certified copy of the said minutes of the said Board meeting is hereto marked X3 and is pleaded as part and parcel hereof).
6. At the aforesaid meeting of the Board of Directors of the Plaintiff-Company held on 28th June, 1995 inter alia the following decisions were taken:
  - (a) Mr. Cornel L. Perera was removed from the office of Chairman.
  - (b) Mr. Suran Wickremasinghe was elected as Chairman.

- (c) Corporate Services Limited was appointed as the Secretaries of the Company.
- (d) Settlement of District Court Colombo Case No. 15322/MR was taken up and the Board of Directors approved the said settlement and authorised the affixing of the seal of the Company on the settlement agreement tabled at the meeting - vide Minute 9 of X3 annexed hereto. (A certified copy of the said Settlement Agreement is annexed hereto marked X4 and is pleaded as part and parcel hereof).
7. In consequent to the decision taken at the meeting of the Board of Directors referred to in paragraph 6(d) above, the Company seal was affixed on the aforesaid agreement in the presence of the Chairman and a Director who attested the affixing of the seal thereof.
8. In terms of Clause 1(1) of the said agreement, the Plaintiff-Company became obliged to revoke the proxy given to Mr. Hussain Ahamed, Attorney-at-Law to act as the Registered Attorney representing the Company in District Court, Colombo case No. 15322/MR and to have the said case promptly withdrawn.
9. The Board of Directors of the Plaintiff-Company at its meeting held on 23rd February, 1996 confirmed the minutes of the Board meeting held on 28th June, 1995 (A certified copy of the minutes of the said meeting of 23rd February, 1996 is annexed hereto marked X5 and is pleaded as part and parcel hereof).
10. In consequent to the signing of the agreement marked X4, by a writing signed by 2 Directors of the Plaintiff-Company, Mr. Hussain Ahamed the Registered Attorney of the Plaintiff-Company was duly notified that the Board of Directors of the Plaintiff-Company has decided to revoke the proxy granted to him (A certified copy of the said writing is annexed hereto marked X6 and is pleaded as part and parcel hereof).
11. In response to the request contained in the writing marked X6, by a writing dated 7th October, 1996, Mr. Hussain Ahamed consented to the revocation of the proxy granted to him. (The writing dated 7th October, 1996 is annexed hereto marked X7 and is pleaded as part and parcel hereof).
12. Thereafter, the Plaintiff-Company duly granted a proxy to State Attorney, Mrs. Priyani Peiris, authorising her to act as the Registered Attorney of the Plaintiff-Company in District Court, Colombo case No. 15322/MR.
13. For the purpose of obtaining leave of court to revoke the proxy granted to Mr. Hussain Ahamed, State Attorney Mrs. Priyani Peiris filed a motion in the District Court of Colombo and moved court to have the District Court Colombo



case bearing No. 15322/MR called in open court on 15th October, 1996 to support the said motion.

14. When the case was called on 15th October, 1996 Mr. Hussain Ahamed informed court that the Managing Director of the Plaintiff-Company has informed him that the Board of Directors of the Plaintiff-Company has not taken a decision to revoke the proxy that has been granted to him.
15. On a request made by Mr. Hussain Ahamed, the case was adjourned to 16th October, 1996 to enable his Counsel to make further submissions.
16. On 16th October, 1996 after hearing to submissions, the court allowed Mr. Hussain Ahamed and the Attorney General to file affidavits to enable court to decide whether it should give leave to the Plaintiff-Company to revoke the proxy given in favour of Mr. Hussain Ahamed.
17. I categorically state that the Board of Directors of the Plaintiff-Company at its meeting held on 28th June, 1995 unanimously resolved to revoke the proxy granted to Mr. Hussain Ahamed, Attorney-at-law and the contrary instructions given by the Managing Director to Mr. Hussain Ahamed are totally false.
18. I am advised to state that in terms of Article 138 of the Articles of Association of the Plaintiff-Company the management and control of the business of the Plaintiff-Company is vested in the Board of Directors and the Managing Director has no authority to give instructions to Mr. Hussain Ahamed contrary to the decisions taken by the Board of Directors on 28th June, 1995.
19. Having perused the minutes of the meetings of the Board of Directors of the Plaintiff-Company, I state that there is no Board resolution appointing Mr. Hussain Ahamed as the Registered Attorney to file this action, and hence Mr. Hussain Ahamed has no legal authority to act as the Registered Attorney for the Plaintiff-Company in this case.
20. At the Meeting of the Board of Directors of the Plaintiff-Company held on 25th October 1996:
  - (a) the Board noted that Mr. Cornel Perera had no authority, whatsoever, to send a letter dated 10th October 1996 (copy not available) to Mr. Hussain Ahamed countermanding and in contravention of the Board decision to revoke Mr. Hussain Ahamed's Proxy.
  - (b) the Board noted that Mr. Hussain Ahamed had filed the replication of the Plaintiff-Company on 15th December, 1994 without the Board having considered the matter or having authorised Mr. Hussain Ahamed to file the said replication.

(c) the Board further confirmed that a Proxy that had been granted to Mr. Hussain Ahamed had been revoked by the Board on 28th June, 1995. Letter dated 24th July 1996 forwarded to Mr. Hussain Ahamed by Dr. P.B. Jayasundera and me confirming this decision of the Board was tabled.

(d) the Board ratified the Proxy that had been subsequently granted to the Attorney General to handled this action.

(Certified copies of the Extracts of the relevant Board Minutes of 25th October, 1996 confirmed at the Board Meeting held on 27th November 1996 are annexed hereto marked X8(A) & (B) and are pleaded as part and parcel hereof).

21. I humbly beg Your Honour's Court to grant the Plaintiff-Company leave to revoke the proxy granted to Mr. Hussain Ahamed.

The foregoing contents having )  
been read over to the affirmant )  
abovenamed who having understood )  
same, affirmed to and placed his )  
signature in my presence at )  
Colombo on this day 06th of )  
December, 1996 )

10.00  
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SRI LANKA  
CEYLON HILL - MYNAB  
BEFORE ME

JUSTICE OF THE PEACE  
LEELAN INDITH WEERASOORIYA  
Attorney-at-Law, Notary Public  
& Commissioner for Oaths  
No. 1/7, Samupakara Mawatha  
WEWALA - PILAYANDALA