

NOTE ON EVIDENCE PLACED BEFORE THE SPECIAL PRESIDENTIAL COMMISSION,
WITH MARKED DOCUMENTS REFERENCED [P..] & [H..]

1. HOTEL DEVELOPERS (LANKA) LTD. OWNING COMPANY OF HILTON HOTEL
- A PUBLIC LISTED COMPANY

[P1] Memorandum of Association

Subscribers - Cornel L Perera, T.P. Perera, Nihal Sri
Ameresekere, M. Radhakrishnan, F.G.N. Mendis,
M.C.V. Mendis, T.A. Kreltzhaim

[P1A] Articles of Association

Articles 126 } - Presence of Japanese for Quorum at
127 } - Directors' & Shareholders' Meetings.
128 } - "Veto Power" of Japanese over Board Decisions
129 }

[P3] 31.01.'84 - Investment Agreement, between Government, Mitsui,
Taisei & Cornel & Co. Ltd.

[P41] 30.03.'83 - Preliminary Agreement, adopted by the Investment
Agreement [P3] and Government became party thereto
only on the terms and conditions provided in the
Investment Agreement

By the Preliminary Agreement 30.03.'83 [P41] the following Hilton
Hotel Project costs were agreed upon:

i. Construction Price	Jap Yen. 11,952,000,000
ii. Furniture, Fixtures & Equipment Price	Jap Yen. 1,680,000,000
iii. Architects Design & Supervision Fees	Jap Yen. 400,000,000
iv. Loan Agreement	Jap Yen. 12,300,000,000

IMPORTANT Letter of Award for Construction to Mitsui & Taisei was issued
on 30.03.'83 with the Preliminary Agreement

Government agreed to issue State Guarantees and Cornel & Co. Ltd. agreed
to underwrite the Public Share Issue.

Cornel & Co. Ltd agreed to transfer to the Government the Share Capital
essentially created on the leasehold value of the UDA land given for the
Hilton Hotel.

The Hotel was to be a International 5-Star Class Hotel, with approximately
452 Bays (i.e. Guest Room Bays) having a Floor area of about 40,000 Sq.Mt.

[H316] 21.12.'90 - Minutes of Extra-Ordinary General Meeting of
Shareholders of HDL at which all parties to the
Investment Agreement [P3] were present
- Government Shareholding unanimously confirmed as 65%
- Government Directors unanimously increased to 6 out of
11 on Board of HDL.

[H318] } Share Certificates of Government Shareholdings in HDL (65%) held
[H318A] } in the name of Secretary to the Treasury.

2. SCHEMATIC ARCHITECTURAL PLANS FOR HILTON HOTEL PROJECT

[P4] } Japanese Architects Plans of July 1980, defining the Hilton Hotel
[P4A] } Project

- Floors/Storeys 22
- Guest Room Floors 19
- Ground + Basement Levels
- Machine Room Slabs [Penthouse] Not numbered as Floors
- 19 Floors x 12 Room "Bays"/"Modules" per Tower x 2 Towers = 456 Rooms
- 3rd Tower - 19 Floors x 12 Room "Bays"/"Modules" = 228 Rooms
- Therefore for 3 Towers Total = 684 Rooms

- Square Areas of Hotel & Car Park shown separately

- Hotel 51,160 M2 for 3 Towers
Car Park 12,730 M2

Therefore, Hotel for 2 Towers only i.e. Above 2nd Floor 39,563 M2

- Basement Car parking for 450 Vehicles.

At the time the Preliminary Agreement [P41] was entered into on 30.03.'83 and the letter of Award for construction given to Mitsui & Taisei there was only this Schematic Architectural Plans [P4]

3. PROFITABILITY & CASH FLOW PROJECTIONS OF HILTON HOTEL

[P5] August '81 - Hilton International's Profitability Projections for [P5A] 456 Rooms. Mitsui's Cash Flow Projections also from 1981 on same basis.

These Profitability Projections for 456 Rooms were based on the Schematic Architectural Plan [P4]

[P6] 31.03.'83 - Hilton International's Letter confirming their Profitability Projections of August 1981 [P5] (456 Rooms) *But they revised the 1st Year's Average Room Rate to US \$ 73.0 from the original US \$ 70.0 and this Letter [P6] was copied to Mitsui*

[P7] March '83 - Mitsui's Profitability & Cash Flow Projections based on above [P5] & [P6] for 456 Rooms.

At the time the Preliminary Agreement [P41] was entered into on 30.03.'83 and the Letter of Award for construction given to Mitsui & Taisei

[P7A] Oct.'83 - Mitsui's Profitability & Cash Flow Projections based on above (i.e. [P5], [P6] & [P7]) for 456 Rooms. i.e. at the time the Original Architectural Plans [*now missing*] had been tendered on 19.10.'83 for approval to the UDA.

[P7B] Dec.'83 - Mitsui's Profitability & Cash Flow Projections based on above (i.e. [P5], [P6], [P7] & [P7A]) for 452 Rooms (excluding 4 Rooms as Manager's Apartment) Average Room Rate for 1st Year increased US \$ 73.65 from US \$ 73.0 so that the total Room income level would be the same.

*This Profitability & Cashflow Projections [P7B] based on 452 Rooms and the Original Architectural Plans [*now missing*] were tabled at Board Meeting of HDL on 07.01.'84 [P36] and the Board noted that the Hotel was to have 452 Rooms*

[P191] Aug.'84 - Mitsui & Taisei have forwarded same Profitability & Cash
[P192] Aug.'84 - Flow Projections of December '83 [P7B] based on 452 Rooms to the Ministry of Finance in declarations. [*But elsewhere in the declarations, number of Storeys given as 20 with approx. 400 Guests Rooms*]

[P13] June '87 - Even after the Hotel was completed and opened for operations in July 1987 Mitsui forwarded Revised Profitability & Cash Flow Projections based on 452 Rooms

[P12] } July '87 } Hilton's Monthly Reports on actual Hotel operations
[P12A] } Aug. '87 } after the Hotel opened showing only 387 Rooms
[P12B] } Sep. '87 }

[P14] } Dec '87 } Upon query raised by NSA on the above discrepancy between
[P45] } 452 Rooms and 387 Rooms Mitsui re-submits again revised Profitability & Cash Flow Projections on the basis of 387 Rooms without any satisfactory explanations

[P28] 30.12.'87 - NSA'S Memo to HDL Board on Room discrepancy between 452 Rooms and 387 Rooms

[P27] 30.12.'87 - HDL Board minutes

[P46] Feb '88 - Mitsui re-submits again revised Profitability & Cash Flow Projections on the basis of 387 Rooms

[P164] *Schedule giving computations of Room Income in the above Profitability Projections*

4. PROSPECTUS & MATERIAL CONTRACTS

[P2] 06.03.'84 - Prospectus issued for the Public Issue of Shares.

Main features of Hotel stipulated on Page 8.

- 452 Roomed tower concept construction going up to 22 floors, with covered (basement) car parking for upto 400 vehicles, with recreational, public and service areas, catering for 750 Rooms.

Promoters - Mitsui & Co. Ltd., Taisei Corporation,
Cornel & Co. Ltd. Delmege Forsyth & Co. Ltd.

Signatories - Cornel L Perera, F.G.N. Mendis, Nihal Sri
to Prospectus Ameresekere, M. Radhakrishanan, S.
Rajalingam (Government Director) M.T.L.
Fernando (Government Director) A.Naka
(Mitsui), K. Shimada (Taisei)

Material Contracts stipulated in the Prospectus on Page 21

- [P34] 31.01.'84 - Loan Agreements between HDL, Mitsui & Taisei
[P31] 31.01.'84 - Construction Agreement between HDL, Mitsui & Taisei
countersigned by Japanese Architects (KKS)
[P32] 31.01.'84 - Furnishings, Fixtures & Equipment Supplies Agreement
between HDL & Mitsui
[P33] 31.01.'84 - Design & Supervision Agreement between HDL and Japanese
Architects (KKS)

All of the above Agreements in the preamble referred to an international 5 Star Class Hotel containing 452 bays (i.e. Guest Room Bays) with an area of about 40,000 sq.mt., whilst the Construction Agreement indicated 39,042.3 sq.mt. and 22 storeys containing 452 Bays (i.e. Guest Room Bays)

Construction Agreement [P31] also re-confirm that the Letter of Award for construction was issued to Mitsui & Taisei by HDL on 30.03.'83 i.e. on the date of the Preliminary Agreement.

Construction Agreement price	11,952,000,000 Jap Yen.
F,F & E Supplies Agreement price	1,860,000,000 Jap Yen.
Design & Supervision Agreement	400,000,000 Jap Yen.
Loan Agreement	12,300,000,000 Jap Yen.

[P165] General Conditions of Contract marked again as [H317]

5. ALL COPIES OF ORIGINAL ARCHITECTURAL PLANS OF HILTON HOTEL MISSING, SURREPTITIOUS SUBSTITUTION OF PLANS, MYSTERIOUS FIRE & NON-AVAILABILITY OF FURNISHINGS, FIXTURES & EQUIPMENT SCHEDULE EXHIBIT "A" TO THE SUPPLIES CONTRACT

- [P8] 19.10.'83 UDA paying-in-slip acknowledging receipt of Original Architectural Plans submitted for approval.
[P9] 23.03.'84 UDA Letter of Approval for Original Architectural Plans.
[P10] 19.01.'84 UDA Letter to Fire Brigade forwarding copy of the Original Architectural Plans consisting of 27 Sheets
[P11]} 30.10.'85 HDL's Letter to Tourist Board with copy of Report on
[P11A]} *Fire including Police Report.*
[P16] 08.08.'85 Questionable Letter from HDL to UDA seeking clarification only on procedure to amend the Architectural Plans.
[P16A] 15.07.'85 Purported Schedule of Alteration from Japanese Architects addressed directly to UDA.
[P17] 15.07.'85 Photocopy of "Amended Plan" (*actually a Substituted Plan*) approved by the UDA on 29.04.'86 forwarded to the Ministry of Finance in Feb/Mar '90

These Plans show only 17 Guest Room Floors, including the 3rd Floor used as Committee Rooms & Manager's Apartment.

- [P35] *Fraudulent handwritten Note* in HDL File alleging that the HDL's copy of the Original Architectural Plan was borrowed by the Japanese Architects & got destroyed in the Fire of 1984, *whereas the fire was in 1985*
- [P36] 07.01.'84 HDL Board Minutes - Board noted 452 Rooms
 - Architectural Plans for 452 Room Hotel tabled
 - Mitsui's Profitability & Cash Flow Projections of Dec '83 [P7B] for 452 Rooms tabled.
- This copy of the Original Architectural Plans was an additional copy to the copy forwarded to the UDA in Oct.'83 [P8] and as approved by the UDA in March '84*
- [P20] 05.05.'90 - UDA Letter to Ministry of Finance forwarding copy of purported Original Architectural Plans dated 29.06.'83 consisting of 21 sheets.
- [P22] 17.05.'90 - NSA's Letter to Ministry of Finance rejecting the 21 Sheet Plan as the Original Plan, pointing out that the Original Plan had 27 Sheets [P10] and that the 21 Sheet Plan had no stamp of approval of the UDA
- [P24] June'90 - Upon NSA's refutation [P22] subsequent Letter from UDA to HDL informing that they do not have a copy of the Original Plan.
- [P313]05.07.'90 - HDL's Letter to NSA confirming the non-availability of the Original Architectural Plans.
- [P106]05.09.'90 - HDL's Letter to NSA confirming the non-availability of the Furnishings, Fixtures & Equipment Schedule i.e. Exhibit "A" to the Supplies Contract [P32]
- Also the Letter [P106] confirmed that all Original Contractual Documentations were kept in the custody of the Registered Office of HDL - i.e. at Cornel & Co. Ltd. 16, Alfred Place, Colombo 3.

6. SUPPRESSION FROM HDL BOARD OF ARCHITECTURAL PLAN SUBSTITUTION, 20 STOREYS AS PER ARCHITECTS' MONTHLY REPORTS, HANDING OVER OF HOTEL & CONSTRUCTION SITE MEETINGS

NSA's request to the Board in June '85 and clarifications in July '85 to the Secretaries of the HDL - requesting regular informations to be submitted to the Board, particularly Reports from Architects & Contractors on the progress of Construction.

- [P18] 22.07.'85 - NSA's Letter to Secretaries
 [P19] 25.07.'85 - HDL Board Minutes

Yet the introduction of the new Plans at that very time in July/August 1985 was deliberately suppressed from the Board - disregarding NSA's aforesaid request. WHY ?

- [P38] November '86 } Monthly Reports certified by Architects/
 [P39] April '87 } Contractors forwarded to HDL Board - Storeys certified in their Monthly Reports as 20 but Construction Agreement [P31] had stated 22 Storeys

- [P29] 30.04.'87 Architects' Completion Certificate

i.e. in April '87 Construction of Hotel had been completed and therefore [P39] was the Final Report of Architects.

- [P39] Photograph Shows Cornel Perera taking over the constructed Hotel in April '87 and handing over same to Hilton International

- [P40] 08.06.'87 HDL Board Minutes - Board was informed of taking over and handing over of Hotel only subsequently on 08.06.'87

- [P169]]24/25.03.'88- Minutes of Construction Site Meetings at Final
 [P170] Inspection by Architects - Cornel Perera had chaired the site Meetings

7. CLARIFICATIONS ON ROOMS, FLOORS & SQUARE AREAS, REPORT OF COMMISSION'S ARCHITECTS' PANEL, QUARTERLY REPORTS TO THE TOURIST BOARD

- (A) PROJECT PLAN [P4] - 19 Floors x 12 x 2 = 456 Rooms
But built- 17 Floors x 12 x 2 = 408 Rooms.
i.e. Shortage 2 x 12 x 2 = 48 Rooms.

But 3rd Floor Rooms used as Meeting Rooms and Manager's Apartment and not as Guest Rooms.

AND Actual Guest Rooms as per Architect's Panel Report.
16 Floors (Excluding 3rd Floor as *Committee Rooms*) x 25 = 400 Rooms

[i.e. 1 Extra Room in lift grid area - question of access to 3rd Tower arises ?]

Profitability & Cash Flow Projections after December '87 have been computed on the basis of 387 Rooms - *May be 'Suites' counted as 'one' and Rooms used for other purposes.*

- (B) PROJECT PLAN [P4] - Last Sheet
- Shows Hotel area separately as 51,160 sq.mt. - for 3 Towers
- And shows Car Park area separately as 12,730 sq.mt

Therefore for 2 Towers of the Hotel having 19 Room Floors with 456 Rooms, the Square Area would be = 39,670 sq.mt. (*i.e. excluding the 3rd Tower from the 3rd Floor upward*)

This Area 39,670 sq.mt. would therefore be excluding the Basement Car Parking Area, which had been shown separately.

(C) CLARIFICATIONS ON COMMISSION'S ARCHITECTS' PANEL REPORT

- i. Tourist Board approval had been obtained on the basis of the Schematic Architectural Plans [P4]. This had been submitted in 1983 and 1985 to the Tourist Board.
- ii. The Profitability Projections [P5] *i.e. in March '1983* had been based on the Schematic Architectural Plan [P4] and had accordingly taken into account 456 Rooms to compute Room Income (*i.e. Phase 1*).
- iii. A "Room Bay" or "Module" is an acceptable sized bedroom with an attached toilet that can be rented out to a guest.
- iv. In the Schematic Architectural Plan [P4], the Lobby level had been taken as the 1st Floor, with a 2nd Floor and 19 Guest Rooms Floors *i.e. 21 Floors*. The Machine Room Floor above the 21st Floor had not been shown as the 22nd Floor.
- v. Below the Lobby Floor level there were to be 3 Floors, named as Mezzanine, Ground Floor and Basement.
- vi. The counting of "Penthouse" levels as Floors of a 22 Storey building is not acceptable. The Schematic Architectural Plan [P4] had not considered the machine room slabs *i.e. alleged "Penthouse" as Floors*. According to architectural practice and terminology, the lift machine room slab is not in any way counted as a Floor of a building.
- vii. There is only one Floor below the lobby level named as Ground Floor.
- viii. Indoor car parking had been provided for 136 car parking on the Ground Floor and 56 car parking on a Mezzanine Floor, making a total of 192 indoor (covered) car parks, whereas the Prospectus [P2] had provided for 400 covered car parks.
- ix. Subsequently, part of the Ground Floor/Mezzanine Floor car parking areas have been commercially rented for Offices and outdoor parking provided in the Recreational Area for 96 Cars - still making a total of 196 car parks. [both indoor and outdoor]
- x. 4th to 19th Floors (*i.e. 16 Floors have 25 Rooms i.e. one additional Room on Lift lobby grid area*) making a total of 400 Rooms, as opposed to 456 Rooms *i.e. 19 Floors x 24 Rooms per Floor = 456 Rooms* as per the Schematic Architectural Plan [P4].

- xi. The 3rd Floor has been used for Meeting Rooms and Manager's Apartment
- xii. The 400 Guest Rooms available have been counted as 387, since Rooms Bays/Modules in the 18th and 19th Floors have been combined to form Suites counted as one Room.
- xiii. Accordingly, 2 Guest Rooms Floors had not been constructed.
- xiv. The Construction Agreement indicated 22 Storeys whilst Hilton Familiarisation Hand Book indicated 19 Floors
- xv. The square area of the Hotel constructed, inclusive of the covered car parking area is about 39,245 Sq.Mt., whilst the Hotel intended to be constructed as per the Schematic Architectural Plan [P4] exclusive of the covered car parking area, which had been computed separately, was to have about 39,563 Sq.Mt. for the 2 Towers of Phase 1.
- xvi. From all documents examined, the intention had been to construct a Hotel with about 450 Guest Room Bays.
- xvii. Quarterly Reports submitted by HDL to the Tourist Board for the Quarters Ended [*had report the construction of 452 Rooms*]
 - 31.12.'84 } *These HDL Reports had all confirmed that the number of*
 - 31.03.'85 } *rooms approved by the Tourist Board as 452 Rooms and the*
 - 31.12.'85 } *number of Rooms under construction as 452 Rooms.*
 - 30.06.'86 }
 - 30.09.'86 }
- xviii. However, thereafter, in the Quarterly Reports by HDL to the Tourist Board for the following Quarters ended *had reported the construction of only 386 Rooms.*
 - 31.12.'86 } The number of Rooms approved by the Tourist Board
 - 30.06.'87 } had been changed to 386 Rooms and the number of Rooms under construction had also been changed to 386 Rooms.

Note: K.N. Choksy had been appointed to the HDL Board in December 1986.

8. ROOMS DISCREPANCY, REQUEST FOR INDEPENDENT ENGINEERING EXAMINATION, OBJECTION THERETO BY K.N. CHOKSY & ARCHITECTS' FINAL INSPECTION & CERTIFICATION.

- [P28] 30.12.'87 - NSA's Memo } NSA pointed out discrepancy in the
- [P27] 30.12.'87 - HDL Board Minute } number of Hotel Rooms in December '87
- [P18] 22.07.'85 - NSA's Letter to HDL Secretaries } NSA had previously in 1985 had requested for
- [P19] 25.07.'85 - HDL Board Minutes } Reports from Architects/ Contractors on progress of Construction. But Plans had been surreptitiously substituted in July 1985 without the knowledge of the Board and was discovered only in March 1990.
- [P26] 25.05.'88 - HDL Board Minutes
 - *Thereafter M.T.L. Fernando Govt.Nominee Director & Chartered Accountant in May '88 suggested an independent engineering inspection, alleging that the Architects are more or less connected with the Contractors and that queries may be raised by the Government.*
 - [P42] 08.08.'88 - K.N. Choksy by his Letter stated that an independent engineering inspection was not necessary.
 - [P43] 12.08.'88. HDL Board Minutes - *Cornel thanked K.N. Choksy for clear opinion which prevented an independent engineering examination - HDL Board decided accordingly.*

Though final inspection had been carried out on 24/25th March '88 - vide [P26],[P169], [P170] the Architects had given their Final Certificate [P30] only on 25.08.'88 i.e. after K.N. Choksy's Opinion of 08.08.'88 [P42] - and the Board Decision of 12.08.'88 [P43] not to appoint an independent engineer to inspect

9. ABORTED ATTEMPT TO MORTGAGE HOTEL TO JAPANESE

There was an attempt to Mortgage the Hotel in July '89 to the Japanese, in addition to the Government Guarantees that had been given to them.

[P79] 12.07.'89 - HDL Board Minutes, whereat Draft Debt Rescheduling
[P80] 17.07.'89 } Agreements were tabled

Actually this was a Postponement of all the following defaulted Debts to be paid on 11.03.'90

[P74] - Jap. Yen. 200 Mn. (1) due 11.03.'88 postponed to be paid on 11.03.'90
[P75] - { Jap. Yen. 523.5 Mn. Construction dues from May'87 to March'88
{ postponed to be paid on 11.03.'90
{ Jap. Yen. 279 Mn. FF&E balance due 11.03.'88 postponed to be paid on 11.03.'90
{ Jap. Yen. 597.6 Mn. balance construction due 30.04.'88 postponed to be paid on 11.03.'90
[P76] - Jap. Yen. 600 Mn. (2) due 11.03.'89 postponed to be paid on 11.03.'90
[P77] - Interest Rate of 7.95% p.a. applied quarterly, was reduced to 6.0 % p.a. from 31.07.'89

In addition the following payments were also falling due for payment before 11.03.'90

- Jap. Yen. 700 Mn. (3) due 11.09.'89
- Jap. Yen. 800 Mn. (4) due 11.03.'90

[P80] 17.07.'89 - NSA and Dr. A.C. Randeni objected to Mortgage Clause in Draft Agreements at Board Meeting - But objections not recorded in Minutes.

[H338]20.07.'89 - Dr. A.C. Randeni's Letter to R.Paskaralingam intimating that he had advised the Board against Mortgaging the Hotel.

[P81] 09.08.'89 - Board informed of signing of Agreements but Agreements not tabled.

[H339]30.10.'89 - HDL Board Minutes - NSA and Dr. A.C. Randeni requested for signed Agreements at Board Meeting.

[P73] 06.11.'89 - HDL Board Minutes - Signed Agreements made available.
- Dr. A.C. Randeni & NSA strongly questioned how Mortgage Clause got included disregarding their previous objections at Board. Dr. A.C. Randeni threatened to resign if the Mortgage Clause is not deleted.

The above Agreements had been signed by Mitsui, Taisei, Cornel Perera & R. Paskaralingam (Disregarding [H338] Dr. A.C. Randeni's Letter to R. Paskaralingam. R. Paskaralingam failed to take any action even thereafter until objection taken up.

[P197]24.11.'89 - Dr. A.C. Randeni's Letter to R. Paskaralingam Strongly objecting to the commitment to Mortgage the Hotel, confirming that such Clause had been included notwithstanding the objections thereto by him and NSA

[P83] 20.11.'89 - R. Paskaralingam's Letter to HDL instructing the deletion of Mortgage Clause

[P84] 17.05.'90 - Deletion of Mortgage Clause effected only in May '90
But Japanese demanded full payment threatening the
Finance Ministry that they would invoke the State
Guarantees in March '90

10A. OBJECTIONS BY NSA TO PAYMENTS TO THE JAPANESE UNTIL PROPER
CLARIFICATIONS & DOCUMENTATION ARE FORWARDED

[P52] 13.12.'89 } - HDL Board Minutes
[P47] 13.12.'89 } - By NSA's Memorandum to HDL Board *he stated that he
cannot agree to making any payments to the Japanese
until proper clarifications and documentation are
forwarded.*

[P29] 30.04.'87 - Completion Certificate } *These were "Medical Certificate*
[P30] 25.08.'88 - Final Certificate } *type Letters"*

Reasons for NSA's objections

- Room number material discrepancy
- Absence of supporting documentations for Final & Completion Certificates
- Previous 'Payments' had not been on Interim Certifications but based only on the effluxion of time.
- Doubts caused by the Mortgage Clause "episode"

Refer relevant "Sections" from Design & Supervision Agreement on Architects' responsibilities [P33] and inspection requirements in F.F & E Supplies Contract [P32]

[P89] 27.11.'89 - Previous Memo last para [Read] NSA suggested to refund monies to public Shareholders if there is no proper total resolution.

[P85] 18.12.'89 - HDL Board Minutes
Mr. R. Paskaralingam }
Mr. K. Shanmugalingam } Attended HDL Board
Mrs.V.M.Y. Casie Chitty } Meeting

NSA's Memo 13.12.'89 [P47] was given to R. Paskaralingam.

10B. CONDUCT OF MR. K.N. CHOKSY, M.P.

[P50] 08.02.'90 - HDL Board Minutes
[P53] 02.02.'90 - R. Paskaralingam's Letter to HDL

On 26.01.'90, K.N. Choksy and Cornel Perera without approval of the HDL Board had accompanied the Japanese to a Meeting with R. Paskaralingam at the Treasury causing a payment of US \$ 2.0 Mn. to the Japanese

- [K.N. Choksy was a Member of Parliament at that time]

Note: Article 91 (1)(e) of the Constitution disqualifies a Member of Parliament, if he has an interest in a contract made by or on behalf of the state or a public corporation. K.N. Choksy was a Director of HDL, who accordingly had a contract with the Government on the State Guarantees; HDL was also majority owned by the Government, thus a public corporation/public body.

[P49] - 28.02.'90 - HDL Board Minutes
[P48] 28.02.'90 - K.N. Choksy gave a Letter endorsing full payment to the Japanese, countermending NSA's Memo of 13.12.'89 [P47]. K.N. Choksy confirmed that "the Hotel construction work is in conformity with all the stipulations of the contract and that the owner (HDL) will be justified in making the balance payment to the Japanese"

[Even an Architect or Engineer could not have so certified in the absence of final measurements and specification details]

Note - At the Board Meeting on 28.02.'90 [P49] NSA asserted that the payment of US \$ 2 Mn. should be made only in the context of a fully agreed final re-scheduling with Mitsui & Taisei, this was in accordance with the ongoing discussions at the Ministry of Finance at that time.

[P87] - Feb '90 - Minutes of Discussions at the Ministry of Finance, where discrepancies and clarifications were raised requiring write-offs from the Japanese.

10C. JAPANESE DEMANDED FULL PAYMENT

[P91] 01.03.'90 - Immediately thereafter on i.e. the very day after K.N. Choksy's Letter of 28.02.'90 [P48], Japanese submitted Letters demanding full payment of monies from HDL with copies to R. Paskaralingam.
[P91A]
[P91B]
[P91C]
[P91D]

[P92] 12.03.'90 - Thereafter i.e. the very next day after 11.03.'90 the due date for postponed payments, the Japanese intimated their right to demand monies from the Government, declaring default by HDL, with notice to the Secretary Finance, R. Paskaralingam [P92]

10D. THINKING IN GOVERNMENT AT THAT TIME

[P198] 01.01.'90 - Around the same time a Note to Cabinet on Hilton had been forwarded by Finance Minister D.B. Wijetunge

- Present Re- Scheduling of HDL Debts mere postponement and not meaningful
- Cornel & Co. Ltd. has defaulted UDA & Investment Agreement
- Serious situation - with threat of international cross default

[P199] 28.05.'90 - Around the same time R. Paskaralingam wrote to the Attorney General on 28.05.'90
- Unlikely that HDL can pay Debts
- Sought advice of A.G. to wind-up/liquidate HDL

[Note-This was shortly after R.Paskaralingam invested US \$ 1 Mn. in the Share Capital of HDL]

11. DISCOVERY OF THE SUBSTITUTED PLANS & NSA'S ACTIONS THEREAFTER

In March '90 NSA discovered that the UDA had only a substituted Plan of '85 and did not have a copy of the Original Plan of '83 approved in '84.

[P86] 02.02.'90 - R. Paskaralingam called HDL Directors for a Meeting at the Ministry of Finance on 16.02.90 [P86]. A Japanese delegation was also present.

K. Shanmugalingam, Mrs. V.M.Y Casie Chitty and NSA were appointed as a "Committee" to discuss the Claims with the Japanese

[P87] Feb/Mar'90 - Minutes of such discussions

[P200] 27.02.'90 - During the time of such discussions, Finance Ministry
[P201] 01.03.'90 - called for the Plans from the UDA in the background of the unexplained material discrepancy in the Guest Room numbers

[P25]07.03.'90 - HDL Board Minutes [Important]
NSA informed the HDL Board on the substitution of the Plans [No explanation whatsoever forthcoming at the Board from Cornel Perera, Chairman & Managing Director]

[P55]24.04.'90 - HDL Board Minutes [Important]

[P54]24.04.'90 - NSA's Memorandum [Important]

NSA followed up at next Board Meeting with Memorandum pointing out the gravity of the matter and suggesting Arbitration [No explanation, whatsoever, given at the Board by Cornel Perera, Chairman & Managing Director]

- NSA thereafter addressed a number of Letters to the Directors of the HDL, without any avail, whatsoever. [Important]

[P93] 24.04.'90 - NSA's Letter to HDL Directors

[P95] 31.05.'90 - NSA's Letter to HDL Directors

[P96] 29.06.'90 - NSA's Letter to HDL Directors cc: R. Paskaralingam

[P97] 04.07.'90 - NSA's Letter to HDL Directors cc: R. Paskaralingam

Note - *In the background of this serious discovery in May '90 H.Ogami, the Executive Director left HDL and the country*

12. MR. J.F.A. SOZA'S INQUIRY & REPORT

[P98] 27.04.'90 - NSA also forwarded Letter to R. Paskaralingam forwarding copy of NSA's Memorandum [P54] of 24.04.'90 suggesting Arbitration to the HDL Board and informed R. Paskaralingam that NSA would formulate a Report in this regard and submit shortly .

R. Paskaralingam informed NSA that President Premadasa had required former Supreme Court Judge J.F.A. Soza to inquire into the matter. NSA was requested to forward Report with relevant documents.

[P100] 08.05.'90 - NSA forwarded on Letter + Documents to Ministry of Finance and confirmed that other informations and data would be submitted on 11.05.'90 or 14.05.'90

[P101]]14.05.'90 - Report & Annexures to Ministry of Finance.
[P101A]]
[P101B]]

*[Report inter-alia referred to material discrepancies in Profitability Projections Bays, Prospectus, Fire etc.]
But- This Report had not been forwarded to J.F.A. Soza.*

[P22] 17.05.'90 - NSA also had forwarded this Letter rejecting the UDA Plans (21 Sheets) dated 29.06.'83 as the original approved Plans as had been purported by the UDA Letter [P20].

[P99] 02.05.'90 - R. Paskaralingam's Letter to J.F.A. Soza requesting to conduct an Inquiry, contacting necessary parties

[P102] 28.05.'90 - J.F.A. Soza's Report stated that there had been no irregularities, without clarifying matters complained of from NSA.

NOTES: (i) J.F.A. Soza never met NSA, the complainant, though he had been requested to do so, whilst NSA had informed the Ministry of Finance that he wished to make oral clarifications and explanations.

(ii) Ministry of Finance had not forwarded NSA's Report of 14.05.'90 [P101] [P101A] [101B] to J.F.A. Soza, though it was prepared for the very purpose of such Inquiry and this Report had been specifically referred to in NSA's Letter [P98] forwarded to J.F.A. Soza for the purpose of the Inquiry

(iii) UDA's 21 Sheet Plan had been sent by the Ministry of Finance to J.F.A. Soza, as the originally approved Plans of 1983 - disregarding rejection of same by NSA's Letter of 17.05.'90 [P22]

13. LEGAL ACTION INSTITUTED - D.C. Colombo No. 3155/Sp1.

- i. Material discrepancy in the number of Hotel Rooms and the consequent material change to the Profitability Projections were not satisfactorily explained at the HDL Board.
- ii. New Plan dated 15.07.'85 surreptitiously introduced in August '85, without the knowledge and approval of the HDL Board and without signature of the Owner. - Deliberately suppressed from the HDL Board disregarding requests made at the HDL Board by NSA for informations on the progress of the Hotel construction etc., at that very same point of time in June/July '85].
- iii. Shortfall of 2 Guest Room Floors and absence of basement Car Parking for 400 Vehicles not explained at the HDL Board - Ground & Mezzanine Floor Parking for 192 Vehicles provided in substituted Plan.

- iv. Mysterious Fire in October '85 that was reported to have destroyed the Original Plan at the Construction Site Office.
- v. Copies of Original Plans at other locations i.e. HDL Office and UDA were also not available and copy did not forthcome from the Japanese Architects, when requested. - HDL Office copy alleged to have been borrowed by the Architect and destroyed in Fire of 1984, whereas Fire was in 1985
- vi. Architects Certificates were mere Medical Certificate type Letters with no supporting documentations, and did not disclose the substitution/amendment of the original Architectural Plan.
- vii. Original Schedule of Furnishings, Fixtures and Equipment defined in Exhibit "A" to the Supplies Contract was also missing at the HDL Office, thereby such fixed assets not being verifiable.
- viii. No explanations, whatsoever, forthcame at the Board on the above and no concern or action by Directors, except by K. Shanmugalingam at that time, notwithstanding many representations repeatedly made by NSA, including to refer to Arbitration
- ix. On 30.08.'90 Secretary, Ministry of Finance moved Resolutions to remove NSA as a Director of HDL, amongst others.
- x. NSA on 13.09.'90 instituted D.C. Colombo No. 3155/Spl., as a Derivative Action, on behalf of HDL and in its right.
- xi. District Court issued Enjoining Orders in September '90 and upon Inquiry, thereafter issued Interim Injunctions in October '91, which were later upheld by the Supreme Court in December '92.

[P57]	13.09.'90	- <i>Plaint</i>
[P69, P69A]	28.10.'91	- <i>D.C. Order</i>
[P216]	02.12.'92	- <i>S.C. Judgment</i>
[P118]	11.03.'91	- <i>HDL Answer</i>
[P186]	31.05.'91	- <i>Further Pleadings</i>

- xii. [P117] 27.03.'91 - HDL Board Minutes
 - HDL Draft Answer had been prepared in consultation with the Japanese against whom, NSA's Derivative Action on behalf of HDL and in its right had been instituted. i.e. Collusion
- xiii. HDL represented by the Attorney General did not file any Objections to the issuance of the Interim Injunctions, whereas one Interim Injunction was against HDL, itself.
 - The then Attorney General intimated to NSA that he, the Attorney General, would not oppose the Application for the Interim Injunctions and that in the interest of the Government and the country that he hoped NSA succeeds in obtaining the Interim Injunctions.
- xiv. - The local Directors being Director-Defendants, including Cornel L Perera, K.N. Choksy and F.G.N. Mendis did not file Objections to the issuance of the Interim Injunctions, whereas one Interim Injunction was against HDL itself.
- xv. [P208] 11.03.'91 - Motion filed by Cornel L Perera, K.N. Choksy & F.G.N. Mendis

The local Directors, particularly the Chairman & Managing Director, Cornel L Perera, K.N. Choksy and F.G.N. Mendis, being Director-Defendants neither filed any Objections to the issuance of the Interim Injunctions, nor filed any Answers, to controvert any of the Averments in NSA's Plaint in D.C. Colombo Action No. 3155/Spl.

xvi. [P131] 20.12.'90 - NSA's Memorandum to HDL Directors

Cornel L Perera, K.N. Choksy and F.G.N. Mendis could not and did not controvert NSA's Memorandum addressed to them, nor filed Answer in D.C. Colombo 3155/Spl., though they had been specifically exhorted to do so by NSA by his said Memorandum.

14. CERTAIN EVENTS AFTER NSA'S LEGAL ACTION - D.C. COLOMBO NO. 3155/SPL

- P[59] 24.09.'90 - NSA's Letter to Mrs. Casie Chitty - Ministry of Finance
- P[58] 22.09.'90 - NSA's Fax to IMF (USA) to R. Paskaralingam & K. Shanmugalingam
- P[58A] - *The above was consequent to a telephone message, that President Premadasa wanted N.S.A.'s Action to be withdrawn*
- P[176] 15.11.'90 - Ranjan Wijeratne's Letter to President Premadasa
- P[63] 15.11.'90 - Ranjan Wijeratne's Letter to NSA
- P[62] 14.11.'90 - NSA's Letter to Ranjan Wijeratne
- Consequent to representations made by NSA to Ranjan Wijeratne, NSA was called for discussions by C. Gunasingham, then Economic Advisor to President Premadasa
- [Important]
- P[177] 17.12.'90 - Letter from K.H.J. Wijedasa to R. Paskaralingam
- P[178] 26.12.'90 - Letter from R. Paskaralingam to K.H.J. Wijedasa
- P69A] 28.10.'91 - District Court Order issuing the Interim Injunctions.

OBSERVATIONS MADE BY THE LEARNED DISTRICT JUDGE:

- *there is no acceptable basis, at present, for making payments to Mitsui/Taisei,*
- *the other Defendants, the Directors, as persons having connections and showing interest concerning the Company, acting to obtain monies, had not readily acted to conduct a correct examination,*
- *the said persons having prevented such correct examination were attempting to, howsoever, effect the payment of monies,*
- *whether, these persons are exercising the influence, that they have gained in society, to prevent the raising of questions concerning the matters of work in connection with the Contracts and the Prospectus etc.,*
- *the collaboration of the said persons, was adverse to the interest of the Shareholders of the Company, and that they were acting through such collaboration, in a manner amounting to defeat the interests of the Shareholders of the Company,*
- *if the position, that explains this is correct, then, this actually is an instance of acting in fraudulent collusion,*

P[70A] 20.11.'91 - Important Minutes in Finance Ministry File after the District Court issued Interim Injunctions in NSA's Case on 28.10.'91 preventing payments to the Japanese.

After the District Court, upon Inquiry, issued Interim Injunctions in October '91, immediately thereafter in November '91, there had been much consternation and deliberation at the Ministry of Finance, with decision to support the Japanese in their Leave to Appeal Applications to the Court of Appeal.

Minutes By - Mrs. V.M.Y. Casie Chitty
Mr. K. Shanmugalingam
Mr. R. Paskaralingam

- "Please discuss with K.N. Choksy and map out our strategy"

15. HDL & K.N. CHOKSY, NOT BEING NECESSARY PARTIES, INTERVENED & SUPPORTED THE LEAVE TO APPEAL APPLICATIONS MADE BY THE JAPANESE

[P180] 17.01.'92 } Appeal Court Orders
[P181] 31.01.'92 }

- Consequently HDL, appearing through the then Addl. Solicitor General, having not filed Objections against the issuance of the Interim Injunctions in the District Court, one of which Interim Injunctions was against HDL itself, and nor having filed any papers in the Court of Appeal, intervened and participated to support the Japanese in the Leave to Appeal Applications made by the Japanese in the Court of Appeal.
- K.N. Choksy, having not filed Objections and/or a Answer in the District Court, notwithstanding being a *Director-Defendant*, wherein one Interim Injunctions was against HDL itself, and not having filed any papers in the Court of Appeal, intervened and participated to support the Japanese in the Leave to Appeal Applications made by the Japanese in the Court of Appeal.
- K.N. Choksy, appearing through Counsel submitted that:

"a right to bring a Derivative Action does not exist under Sri Lankan Law. He submitted that the Companies Act of Sri Lanka is comprehensive on the rights of the Shareholders. He further argued that the only rights available to a Shareholder are those specified in SS 210 and 211 of the Companies Act, in this regard. Those rights he pointed out could only be exercised by a Shareholder having a minimum of five percent of Shares of the Company."

Note - [As a then Member of Parliament, K.N. Choksy ought have acted to protect public interest]

[P216] 02.12.'92 - SUPREME COURT JUDGMENT

The Supreme Court, however, refused to allow HDL and K.N. Choksy to be heard in the Special Leave to Appeal Hearings and upheld the issuance of the Interim Injunctions, inter-alia, observing that;

- *" the Plaintiff had succeeded in establishing that he has a legally enforceable right and that there is a serious question and prima-facie case under circumstances of wrong-doer control, and that the Plaintiff has a reasonable and real prospect of success, not fanciful, even in the light of the defenses raised in the pleadings, objections and submissions of the Defendants"*
- *" Interim Injunctions had been issued to prevent the devious "syphoning of foreign exchange" from the Company and the Country but for the Interim Injunctions, the Company, like Pyrrhus after the battle of Asculum in Apulia, might well be constrained to say, "One more such victory and we are lost "*
- *" in the circumstances of the Case, the Directors, including the Government's representatives on the Board will not assist or are helpless to intervene and that this could not entirely be a matter of indifference to the Government the Government became the major shareholder and issued Letters of Guarantees, making itself eventually responsible for the repayment of the monies borrowed by the Company "*

Even after the Supreme Court Judgment, the Ministry of Finance and HDL did not take any action, whatsoever, as warranted into this matter, eventhough HDL in its Answer filed in the District Court, through the Attorney General, by way of a "prayer" had stated:

" Moreover this Defendant (HDL) states that in the event that this Court finds that the averments made by the Plaintiff are legitimately entitled to succeed, this Defendant will as a matter of course take immediate action to protect its interest and those of its Shareholders as circumstances would deem fit." [P118]

[P70A] 20.11.'91 - Minutes in Finance Ministry File.
However thereafter R. Paskaralingam, K. Shanmugalingam & Mr. C. Cassie Chitty had minuted as follows:

R. Paskaralingam *" Please discuss with Mr. Choksy and map out our strategy"*

K. Shanmugalingam *" Request Attorney General to take a fair view of this situation and support the Japanese Firms to the extent possible, in their Appeal to the Supreme Court. I think we should take a positive stand on this."*

Mrs. Cassie Chitty *" 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. Mr. Aziz is also, of the view that we should support the Appeal of the Japanese. He is studying the matter and will get back to us. I think it is reasonable to support the Appeal, if Attorney General considers if proper to do so."*

16. APPLICATION FOR PHYSICAL INSPECTION & EXAMINATION OF HOTEL BY A COMMISSION OF COURT WAS OPPOSED BY HDL

After the District Court, upon Inquiry, had issued Interim Injunctions in October '91, inter-alia, observing that, there is no basis to making payments to the Japanese, NSA attempted to have a physical inspection and examination of the Hotel and an inventory of the fixed assets carried out by a Commission issued by Court.

[P71] 20.01.'92 - NSA's Lawyers' Letter to Ministry of Finance and HDL requesting to arrange for the carrying out of a physical inspection and examination of the Hotel. [NSA's Lawyers Letter [P71] was specifically also copied to all Government Nominee Directors of HDL]

[P314] 29.01.'92 - HDL Board Minutes
- NSA's Lawyers' Letter [P71] of 20.01.'92 had been tabled at HDL Board Meeting.

[P72] 31.01.'92 - R. Paskaralingam's reply to NSA stating that, he had no authority to grant permission to carry out a physical inspection and examination of the Hotel.

[P182] 28.02.'92 - NSA's Lawyers Letter again to HDL stating that, a physical inspection and examination is imperative, with copies to Government Nominee Directors of HDL.

[P183] 03.03.'92 - NSA made an Application to Court for the issue of a Commission to physically inspect and examine the Hotel, with notice to all Directors of HDL, including Cornel L Perera, K.N. Choksy and F.G.N. Mendis. [They failed to support such Application]

[P185] 13.03.'92 - D.C. Proceedings re- Application for Inspection

- The then Addl. Solicitor General appearing for HDL objected to the physical inspection and examination, inter-alia, on grounds that it would affect the interest of the Japanese.

Who gave such instruction to Mr. Shibly Aziz, the Addl. Solicitor General to oppose a physical inspection? It had been the Ministry of Finance, who had been in constant contact with Mr. Shibly Aziz.

[P248] 19.03.'92 - NSA's Lawyer's Letter to State Attorney for HDL
- Inquiring as to, who had given instructions on behalf of HDL to oppose the Application for a physical inspection and examination?

[P184] 14.10.'92 - D.C. Order in Application for Inspection

- The Court disallowed NSA's Application, observing in the Order, that the Addl. Solicitor General appearing for the Government had objected.

17. HDL & ITS DIRECTORS TAKE ACTION AGAINST NSA

Without taking Action on the wrong-doings against the wrong-doers, even after the Supreme Court Judgment, HDL/its Directors took baseless and malicious Action against NSA in July/August 1994

[P244] 04.08.'94 - D.C. Colombo 15322/MR - baseless & malicious Plaint filed against NSA by HDL.

[P244A] 18.11.'94 - Answer & Claim in Reconvention filed by NSA in D.C. Colombo 15322/MR.

[P309] 28.06.'95 - Letter from Asoka De Z. Gunasekera, former Director
[P309A] 23.06.'95 - HDL to NSA's Lawyers & NSA's Lawyers' Letter to Asoka De Z. Gunasekera.

[P310] 03.07.'95 - Letter from J.R. De Silva Director HDL to NSA's
[P310A] 23.06.'95 - Lawyers & NSA's Lawyers' Letter to J.R. De Silva.

[P245] 29.07.'94 - Complaint to the Chartered Institute by John Wilson, Attorney-at-law, purporting to be on behalf of HDL

[P311] 23.06.'95 - Letter from Chartered Institute to NSA stating no basis to have an inquiry on complaints made.

18. CERTIFICATION OF HDL ANNUAL ACCOUNTS OF 31.03.'90 & THE ATTEMPTED ADOPTION OF SAME TO COVER UP FRAUD

After the Court had at that time issued Enjoining Orders in September '90 in D.C. Colombo 3155/Sp1., on the premise of prima-facie fraud under circumstances of "wrong-doer control", as a Derivative Action on behalf of HDL and in its right, the Directors of HDL and the Auditors had certified in November '90 the Annual Accounts of HDL for the Year ended 31.03.'90 and had thereafter endeavoured to adopt same, whilst NSA as a Director and also a Chartered Accountant had rejected the said Annual Accounts.

[P119] 26.09.'90 - NSA's Letter to HDL Auditors, Ford, Rhodes, Thornton & Co. notifying of D.C. Colombo Case No. 3155/Sp1

[P120] 11.10.'90 - NSA's Letter to HDL disagreeing with the Annual Accounts of 31.03.'90

- [P108] 11.10.'90 - NSA's Memo to HDL Board requesting an examination and Report from the Auditors on the Annual Accounts of 31.03.'90
- [P107] 11.10.'90 - NSA's Memo to HDL Board
Re-Cornel L. Perera & K.N. Choksy's conflict of interest in reference to Averments in D.C. Colombo Case No. 3155/Spl. and that they should not participate in HDL Board Meetings and nor the Representatives of Mitsui & Taisei
- [P109] 16.10.'90 - HDL Board Minutes - "NSA's Memo no relevance to Accounts"
- [P110] 30.10.'90 - NSA's Memo to HDL Board - refer paras re-Accounts
- [P111] 30.10.'90 - HDL Board Minutes - Minutes re-Accounts -
- Note: K.N. Choksy prompted Article 129 of the Articles of Association of HDL i.e. veto power of the Japanese
- [P121] 07.11.'90 - Letter from Auditors to HDL re-Accounts
- [P141A] 04.03.'91 - Minute in Finance Ministry File re-Accounts 14.03.'91?
- [P141B] 12.11.'90 - Letter from Mrs. Cassie Chitty to Attorney General
- [P122] 19.11.'90 - Letter from Ministry of Finance to HDL
- [P125] 17.11.'90 - NSA's Letter to Auditors (To G.C.B.W., R.N.A. & R.S.)
- [P126] 17.11.'90 - NSA's Letter to HDL
- [P126A] 19.11.'90 - HDL's Letter to Auditors requesting an examination on NSA's Letter of 17.11.'90 [P126]
- [P126B] 20.11.'90 - HDL's further Letter to Auditors re-NSA's Letter of 17.11.'90 [P126]
- [P127] 19.11.'90 - NSA's Letter to Auditors (To G.C.B.W., R.N.A. & R.S.)
- [P114] 22.11.'90 - NSA's Memo to HDL Board
- [P113] 22.11.'90 - HDL Board Minutes
- [P123] 22.11.'90 - Mitsui's Memo to HDL - Vide Article 129 of the Articles of Association of HDL [This had been prompted by K.N. Choksy at previous HDL Board Meeting on 30.10.'90]
- [P115] 27.11.'90 - NSA's Memo to HDL Board
- [P116] 27.11.'90 - HDL's Board Minutes
- [P124] 31.03.'90 - HDL Annual Accounts
- [P128] 17.12.'90 - NSA's Letter to R.Paskaralingam
- [P129] 18.12.'90 - NSA's Memo to HDL Board
- [P130] 18.12.'90 - NSA's Letter to R.Paskaralingam
- [P133] 18.12.'90 - NSA's Letter to HDL
- [P146] 22.12.'90 - Letter from Cornel L. Perera to HDL - *Removing NSA as a Director of HDL*
- [P134] 11.01.'91 - Plaint in 3231/Spl.- Enjoining Orders issued by Court preventing adoption of HDL's Annual Accounts

- [P247] 06.02.'91 - Letter from NSA's Lawyers to Auditors
- [P247A] 11.02.'91 - Letter from NSA's Lawyers to Auditors
- [H346] 10.03.'92 - Letter from NSA to Auditors
- [P135] 14.02.'94 - Petition to add Ford, Rhodes, Thornton & Co., Auditors of HDL as Defendants in 3231/Sp1.
- [H347] 24.03.'94 - Affidavit filed by Rajan Asirwatham, Partner of Ford, Rhodes, Thornton & Co., the Auditors of HDL, stating that they were "unaware". Therefore they had certified the accounts blindly, eventhough they had been put on notice to investigate and inquire.
- [P132] 1990 - The Annual Returns of Sanken Lanka Ltd. (Formerly
 [P143] 1991 known as Mitsui Construction Co. Ltd.)
 - Also Ford, Rhodes, Thornton & Co. Auditors

CLARIFICATIONS RE - HDL's ANNUAL ACCOUNTS

- i. The Annual Accounts had been certified and endeavoured to be adopted, whilst NSA as a Director and as a Chartered Accountant, had rejected such Accounts
- ii. NSA had made many representations to HDL Directors and also to the HDL Auditors in regard to such Accounts, objecting to its certification
- iii. The Audit is a statutory requirement under the Companies Act No.17 of 1982 and the Audit Report specifically refer to such Act
- iv. The HDL Audit Report certifies that proper books of accounts had been maintained by HDL
- v. As per Section 143 (1) (c) of the Companies Act No. 17 of 1982, titled "Accounts and Audit" the proper books of accounts that every Company is required to keep, include, in respect of assets and liabilities
- vi. HDL in its Answer [P118] filed in D.C. Colombo No. 3155/Sp1. at paragraph 54 had admitted, that it had no account or a reconciled inventory of its Fixed Assets
- vii. HDL also had admitted that it did not have the Original Schedule of Fixed Assets forming a part of the Supplies Contract [P32]
- viii. Therefore, these certified Accounts, suppressed the fact that HDL had no proper books of accounts in respect of its fixed assets, as required under the aforesaid specific provisions of the Companies Act
- ix. HDL in its same Answer [P118] at paragraph 51, had also admitted that it had no copy of the Original Architectural Plans
- x. The HDL Board on 7th March '90 [P25] had been made aware that the Original Architectural Plans had been unauthorisedly substituted and that there were material discrepancies in the number of rooms, floors and basement car parks bays
- xi. These certified Annual Accounts did not disclose such material discrepancies and irregularities
- xii. Therefore, these certified Accounts, that NSA also as a Chartered Accountant had rejected, suppressed these materials discrepancies and irregularities from the HDL Shareholders
- xiii. HDL had defaulted on Loans and other commitments demanded by the Japanese by 31st March 1990, the Balance Sheet date in a sum of approximately Rs. 1,200 Mn.

- xiv. HDL having been unable to meet such payments, the major Shareholder, the Secretary to the Treasury by [P199] had requested the Attorney General to consider taking action to wind-up HDL, under such bankrupt circumstances. These certified Accounts of HDL did not disclose such serious position

[Whilst the net Current Assets should have been shown as a deficit of around Rs. 1400 Mn. it had been shown as surplus of Rs.171 Mn.]

- xv. According to statute, these Accounts had to be certified as per the Accounting Standards and the Auditing Standards of the Institute of Chartered Accountants
- xvi. These Auditors should have strictly ensured the adherence to such Accounting Standards mandated upon Auditors by the Securities & Exchange Commission, particularly moreso, as one of the Senior Partners of these very Auditors had been a Council Member of the said Commission
- xvii. As a Fellow Chartered Accountant and a former Member of the Council of Chartered Accountants, NSA's professional opinion is that these Annual Accounts and its Audit had not conformed to the statutorily stipulated standards
- NSA cited extensive references to statutes, standards, relevant authorities and case law to support his opinion
- xviii HDL's Letters dated 19.11.'90 [P126A] and 20.11.'90 [P126B], had required the Auditors to examine in detail the material discrepancies, shortcomings and irregularities, particularly, set out in NSA's Letter of 17.11.'90 [P126]. The Auditors had failed and neglected to carry out such detail examination or inquiry as had been required of them and report thereon
- xix. NSA had adequate grounds to make a complaint to the Institute of Chartered Accountants of Sri Lanka against these Auditors, but he had not done so. This is a case where the Auditors had been put on inquiry, but had colluded with the Directors to suppress the real facts from the Shareholders of HDL
- xx. [P132] and [P143], the Annual Returns of Sanken Lanka Ltd., formerly known as Mitsui Construction Co. Ltd., disclose that M/s Ford, Rhodes, Thornton & Co. had been their Auditors also, giving rise to a question of conflict.

19. INITIAL BOARD MEETINGS OF HDL IN JANUARY 1984, TAKING OVER HILTON HOTEL PROJECT PROMOTED BY CORNEL & CO. LTD., EXECUTION OF LEGAL AGREEMENTS, GOVERNMENT BECOMING A PARTY TO THE INVESTMENT AGREEMENT, AS MAJOR SHAREHOLDER ALSO ISSUING STATE GUARANTEES TO MITSUI & TAISEI ON BEHALF OF HDL.

[P36] 07.01.'84 - HDL Board Minutes

[P37] 31.01.'84 - HDL Board Minutes

- Hilton Hotel to be developed on 2 parcels of Echelon Square Land (6.6 acres), promoted by Cornel & Co.Ltd. was taken over to be implemented by HDL
 - The Hilton Hotel was to be a 5-Star international class hotel and was to comprise of 452 Rooms
 - A set of Architectural Plans and Construction Drawings provided by the Japanese Architects were tabled
 - The final Cash Flow for the Hilton Hotel prepared by Mitsui & Co. Ltd. dated 26.12.'83 was tabled
 - Copy of the Preliminary Agreement [P41] dated 30.03.'83 entered into between Mitsui & Co. Ltd., Taisei Corporation and Cornel & Co.Ltd. for the Hilton Hotel was tabled
- [The prices for Construction, FF&E, Design & Supervision Fees and the amounts of Loans from Mitsui & Taisei were all defined as per the Preliminary Agreement based on the Design of Japanese Architects and the Letter of Award for construction had been issued to Mitsui & Taisei on 30.03.'83 as per Article 3.03 of the Preliminary Agreement, also confirmed subsequently in the Preamble of the Construction Agreement [P31]-31.01.'84]*

- The following Draft Agreements finalised between HDL's Lawyers, D.N. Thurairajah & Co., the Lawyers of Mitsui & Taisei and M/s Hamada & Matsumoto, Japanese Lawyers retained by the Ministry of Finance & Planning on behalf of the Government of Sri Lanka, had been tabled at the HDL Board Meeting on 07.01.'84 [P36]. These Draft Agreements had then been awaiting the approval of the Attorney General. Subsequently, the Approved Agreements by the Attorney General had been tabled at the HDL Board Meeting on 31.01.'84 [P37] and the Chairman informed of the Cabinet Approval for the Project

- Investment Agreement [P3]
- Loan Agreement [P34]
- Construction Agreement [P31]
- Supplies Agreement [P32]
- Design & Supervision Agreement [P33]
- Underlease of Land
- State Guarantee, Attorney General's Opinion
- Management Agreement [P166]

- The Draft Amended Memorandum and Articles of Association of HDL to be adopted on 15.02.'84 were also tabled at HDL Board Meeting on 31.01.'84 [P37]

- *The above Agreements had been executed on 31.01.'84 the Government also being a signatory to the Investment Agreement*

- [H351] 03.01.'84 - HDL had employed a full time Legal Officer,
- [H352] 10.01.'84 R.Chula Bandara, Attorney-at-Law to handle
- [H353] 12.01.'84 all its Legal Agreements. These are some of
- [H354] 25.01.'84 the Letters he had forwarded as the Legal
- [H355] 02.02.'84 Officer of HDL to the Ministry of Finance
- [H356] 06.02.'84 in regard to the Legal Agreements.
- [H357] 29.07.'85

[R. Chula Bandara, Attorney-at-Law has been appearing as Counsel for Respondent Cornel L. Perera before the Special Presidential Commission]

- [H348] 06.01.'84 - Some of the Letters submitted by Cornel L. Perera
- [H349] 26.01.'84 to the Ministry of Finance re-Legal Agreements
- [H350] 10.02.'84 and Articles 79 & 129 of the Articles of Association

By [H348] Cornel L Perera had submitted Amended Hotel Management Agreement without the knowledge of the Board.

- [H358] 10.02.'84 - Letter from Attorney General to Ministry of Finance approving Article 129 of the Articles of Association of HDL giving *Veto Power* to the Japanese

20. CONTRACTUAL REQUIREMENTS FOR ANY AMENDMENTS TO AGREEMENTS AND/OR ARCHITECTURAL PLANS AND THE DUTIES AND RESPONSIBILITIES OF THE JAPANESE ARCHITECTS & INSPECTION OF FF&E AND 5-YEAR LIABILITY OF MITSUI & TAISEI

[P3] 31.01.'84 - *Investment Agreement*

- Article 6 [iv] [f]:
"The following matters shall require the unanimous approval by written voting agreement of the parties hereto and the parties shall act and/or they shall cause the Company to act accordingly - [f] the cancellation or amendment [in any substantial manner] or conclusion of any contract, the effect of which would have a material adverse effect on the financial condition, properties or operation of the Company"
- Articles 12.02:
"No amendment to or modification of this Agreement shall be effective for any purpose whatsoever, if not confirmed in writing by the duly authorised representative of each of the parties hereto"

All other Agreements formed part and parcel of this Investment Agreement [P3]

Example of Amendment: - Amendment executed on 30.04.'90 to Investment Agreement [P3] by written Agreement between all parties to the Investment Agreement, when Mitsui & Taisei give up their right to have an Executive Director in HDL

[P165] 31.01.'84 - General Conditions of Contract

Clause 18 [2] - Variations:

"Except where the Contract Documents otherwise provide, the variations in the Works shall be made only when such variations are

- a) necessary for proper execution of the Contract
- b) necessary by reason of unavoidable circumstances which the consortium could not have unforeseen at the time of signing of the Contract
- c) economically and technically favourable both to the Employer and to the Consortium

Such variations to the Works shall be made only upon mutual Agreement among the Employer, the Architect and the Consortium, same as the case provided in paragraph (3) of this Clause taking into consideration the financial effect of each variation"

[P33] 31.01.'84 - Design and Supervision Agreement

Article 6.02 - Architects Power:

"The Architect shall have neither authority to relieve the Consortium of any of his duties or obligations under the Construction Contract nor, except as expressly provided in the Construction Contract or elsewhere, to order any work involving delay or any extra payment by the Employer to the Consortium, nor make any variation of or in the works without written approval of the Employer"

ARCHITECTS DUTIES AND RESPONSIBILITIES

[P33] 31.01.'84 Design and Supervision Agreement

Article 6.01 [a] - Obligations & Responsibilities of the Architect:

"The Architect shall carry on the Services with due diligence and efficiency and in conformity with sound engineering and administrative practices"

Article 6.04 - Records:

"The Architect shall keep accurate and systematic records and Account with respect to Services in such form and detail acceptable to the Employer"

Article 6.05 - Information:

"The Architect shall furnish the Employer with such information relating to the Services as the Employer may from time to time request"

INSPECTION OF FURNISHING FIXTURES & EQUIPMENT

[P32] 31.01.'84 Supplies Agreement

Article 14 - Inspection:

"The Company shall make an inspection of each item of FF&E in the presence of the representative or the person to be nominated by Mitsui as follows

- 1) upon arrival at the Site for the items for which setting in place, fitting or fixture are not required as describe in Exhibit "A" attached hereto

2) upon completion of such setting in place, fitting or fixture for the item for which such setting in place, fitting or fixture are required as described in Exhibit "A" attached hereto

The method of inspection shall be decided by the parties hereto and after such inspection, the Company shall furnish the Inspection Certificate within 14 days after such inspection"

5 - YEAR LIABILITY OF MITSUI & TAISEI

[P165] 31.01.'84 General Conditions of Contract

Clause 17 [6] - Liability after the Final Certificate

"Unless otherwise provided hereunder, a Consortium shall be under no liability in respect of defects in or damages to the Works or any part thereof or damages or losses resulting therefrom to the Employer or any other party appearing or occurring after the Final Certificate for the Works or any Section thereof has been issued.

Provided however, that if such defects, damages or losses were caused or incurred due to latent defects in the Works or any part thereof found within five [5] Years after the issuance of the Final Certificate and such latent defects were attributed to the malicious intent of gross negligence of the Consortium in the execution of Works hereunder the Consortium shall be liable to the Employer in respect of such defects, damages or losses"

Note: Final Certificate [P30] was issued on 25.08.'88. NSA instituted Legal Action on the premise of fraud on 13.09.'90 i.e. within 5 years.

21. DISCREPANCIES IN HILTON MANAGEMENT AGREEMENTS & OTHER AGREEMENTS

A. Hilton Management Agreements [P166] & [P168]

[P195] 06.01.'84 - Letter from Cornel I. Perera to the Ministry of Finance forwarding an amended Hilton Management Agreement

[P166] 31.01.'84 - Amended Hilton Management Agreement

[P168] 19.01.'80 - Original Hilton Management Agreement

[P167] 20.11.'90 - NSA's Counter-Affidavit in this regard, refuting the Amended Hilton Management Agreement, filed in D.C. Colombo Case No. 3155/Spl., upon which Mitsui & Taisei dropped this aspect as one of their defences in the said Case

[P167A] 24.04.'90 - NSA's Letter to HDL} - Re - Above Hilton Management Agreement
[P167B] 30.04.'90 - HDL's Letter to NSA} Matter

B. Supplies Agreement [P32]

Supplies Agreement [P32] on 31.01.'84 at Article 4 gives the total price of FF&E supplies by Mitsui as Jap. Yen. 1,860,000,000, whereas the Preliminary Agreement [P41] on 30.03.'83, when the Hilton Hotel Project was then defined and all prices agreed upon and the Letter of Award for construction was also then issued to Mitsui & Taisei, stipulates at Article 4 that the FF&E Supplies price by Mitsui & Co. Ltd. was to be Jap. Yen. 1,680,000,000

C. Construction Agreement [P31]

The Construction Agreement [P31] on 31.01.'84 had questionably excluded the Recreational Area, including the Swimming Pool, from the Scope of Work as per Clause 3 [2] [d], whereas the Hilton Hotel was clearly defined as a 5-Star international class Hotel with all such facilities stipulated on Page 8 of the Prospectus, of which the Construction Agreement [P31] was a part and parcel of, as stipulated under Material Contracts on Page 21 of the Prospectus, wherein Mitsui & Taisei were named as Promoters and were Signatories to the Prospectus

22. ACTION AGAINST CORNEL L PERERA AND CORNEL & CO. LTD., HAD BEEN DECIDED UPON BY THE FORMER GOVERNMENT. PRESENT GOVERNMENT DIRECTED IMPLEMENTATION OF THESE VERY DECISIONS.

- [P56] } 30.08.'90 - R. Paskaralingam, Secretary Ministry of Finance
[P56A]} moved Resolutions to remove right of Cornel & Co. Ltd. to nominate Directors to HDL and to remove Cornel L Perera, F.G.N. Mendis & Nihal Sri Ameresekere.
- [P66] 22.10.'90 - R.Paskaralingam, Secretary Ministry of Finance withdrew the above Resolutions, on the basis of Agreement that had been reached with Cornel & Co.Ltd., at discussions had together with the Attorney General, to amend the Investment Agreement and Share Transfer Agreement.
- [H320A] 10.08.'90 - Letter from Secretary Ministry of Finance to Cornel & Co. Ltd. notifying default of the Investment Agreement by Cornel & Co. Ltd.
- [H320] 13.09.'90 - Letter from Secretary Ministry of Finance to Cornel & Co. Ltd. directing to pay up immediately Rs. 85.7 Mn. the shortfall in the Public Share Issue that had been underwritten by Cornel & Co. Ltd.
- [H319] 28.11.'90 - Letter to Attorney General from Secretary Ministry of Finance informing of the Cabinet Decision to amend the Investment Agreement and Share Transfer Agreement with Cornel & Co. Ltd., to ensure 51% ownership of HDL by the Government and the Government to have a majority of 6 out of 11 Directors on the Board of Directors of HDL, and requesting for requisite Resolutions and amended Agreements.
- [H316] 21.12.'90 - Minutes of Extra-Ordinary General Meeting of HDL increasing number of Government Directors to 6 and Cornel L Perera confirming that the Government owned 65% of the Shareholding of HDL.
- [H319A] 13.02.'91 - Letter from Attorney General to Secretary Ministry of Finance with drafts of amended Investment Agreement and Share Transfer Agreement.
- [H321] 06.03.'91 - Telex to Secretary Ministry of Finance from Mitsui & Taisei agreeing to the above Amendments to the Investment Agreement and Share Transfer Agreement.
- [H322] 24.05.'91 - Letter from Secretary Ministry of Finance to Cornel & Co. Ltd. informing of Government's decision to amend the Investment Agreement and Share Transfer Agreement and had directed Cornel & Co. Ltd. to submit written confirmation.
- [H323] 13.06.'91 - Letter to Secretary Ministry of Finance from Cornel & Co. Ltd. agreeing to the above amended Investment Agreement and Share Transfer Agreement, *but appealing to retain the post of Chairman & Managing Director as a "figurehead" since Government is major Shareholder with a majority of Government Directors on HDL Board.*
- [H324] 26.09.'91 - Letter from Secretary Ministry of Finance to Cornel & Co. Ltd. requiring that the amended Investment Agreement and Share Transfer Agreement be signed within two weeks, and refusing to accede to the request to permit Cornel L Perera to continue to be Chairman & Managing Director of HDL.
- [H325] 08.10.'91 - Letter from Secretary Ministry of Fiance to Cornel & Co. Ltd. threatening alternate action will be considered to be taken if the above amendments to Investment Share Transfer Agreements are not effected.
- [H326] 09.10.'91 - Letter to Secretary Ministry of Fiance from Cornel & Co. Ltd. once again affording for the Cornel L Perera to refrain the position of Chairman & Managing Director of HDL.

- [H327] 23.01.'92 - Letter from Secretary Ministry of Finance to Cornel & Co. Ltd. stating that if date for signing above amended Investment Agreement and Share Transfer Agreement were not sign within 3 days, that alternate agreements will be made to conclude this action.
- [H328] 05.02.'92 - Letter from Secretary Ministry of Finance to Mitsui & Taisei, requesting them to be present at the Ministry of Finance on 20.02.'92 at 10.00 a.m. to sign to above amended Investment Agreement.
- [H329] 05.02.'92 - Letter from Secretary Ministry of Finance to Cornel & Co. Ltd. requesting them presence at the Ministry of Finance on 20.02.'92 at 10.00 a.m. to sign the above amended Investment Agreement and Share Transfer Agreement.
- [H330] .09.'92 - Letter from Secretary Ministry of Finance to Cornel & Co. Ltd. stating that the Government will proceed to make alternation agreement if the amended Investment Agreement and Share Transfer Agreement are not signed immediately.
- [H331] 17.08.'92 - Member of Meeting at Ministry of Finance with Mitsui & Taisei to reach agreement on write-off reported by NSA at that time at panelled discussions had with NSA by the Ministry of Finance & Attorney General Amended to Investment Agreement and Share Transfer Agreement one of the decision made at this Meeting.
- [H332] 09.09.'92 - Letter to Attorney General from Secretary Ministry of Finance on the matter of the cancellation of the UDA Land lease on Hilton to Cornel & Co. Ltd. and the violation of the investment Agreement by Cornel & Co. Ltd., requiring Resolution to be forwarded to remove Cornel L Perera as a Director of HDL.
- [H332A] 09.10.'92 - Attorney General's Letter to Secretary Ministry of Finance forwarding requested Resolutions to remove Cornel L Perera as a Director to HDL and the right of Cornel & Co. Ltd. to nominate Director to HDL.

ACTION FOLLOWED UP BY NEW GOVERNMENT

- [P305] 10.09.'94 - Memorandum to Hon. Minister of Finance & Prime Minister from Secretary Ministry of Finance.
- directs
- i. Cancel UDA Land Lease for default.
- ii. Remove Mr. & Mrs. Cornel L Perera right of Cornel & Co. Ltd. to nominate Directors to HDL.
- iii. Action to be taken by the Securities & Exchange Commission, as HDL is a public listed Company.
- [H333] 23.09.'94 - Letter from Secretary Ministry of Finance to Secretary Ministry of Housing & Construction in follow up of (i) above.
- [H334] 21.03.'95 - Letter from Chairman UDA to Cornel & Co. Ltd. accepting the repudiation of the UDA Land Lease by Cornel & Co. Ltd.
- [H335] 22.06.'95 - Letter from Chairman UDA to Attorney General seeking opinion on the under-lease of the UDA land by Cornel & Co. Ltd. to HDL under circumstances of above repudiation.

- [H336] 05.07.'95 - Attorney General's opinion that the said under lease of land is null and void.
- [H361] 23.09.'94 - Letter from Secretary Ministry of Finance to Chairman Securities & Exchange Commission to investigate the Hilton matter in accordance with (iii) above.
- [H360] 19.10.'94 - Letter from Secretary Ministry of Finance to Attorney General directing that the Hilton Settlement Agreement be proceeded with and concluded early on the basis of the Agreements that had been formulated by then by the Ministry of Finance in accordance with previous discussions had improving upon the financial terms with the Japanese.
- [H303] 09.06.'95 - Letter to Attorney General from Secretary Ministry of Finance forwarding Draft Settlement Agreements.
- [H304] 15.06.'95 - Letter from Attorney General to the Secretary Ministry of Finance, approving the above Settlement Agreements to be executed.