

SUBMISSIONS TO THE PANEL OF ARCHITECTS APPOINTED BY THE COMMISSION

SIGNIFICANCE AND RELEVANCE OF THE PROJECT PLAN

Significance and relevance of the PROJECT PLAN (P4), (P4A) is that there had been no other Plans as at March 1983, when the Hilton Hotel Project had been finalised and the fixed price of the Contract agreed upon.

- i. Preliminary Agreement (P41) dated 30.03.1983 defined the fixed price for the Construction and Furnishings, Fixtures & Equipment of the Hotel. The Investment Agreement (P3) dated 31.01.'84 had adopted the Preliminary Agreement as a part and parcel thereof. Therefore the said Agreement had been on the basis of the Project Plan.
- ii. Letter of Award for Construction, referred to in the Preliminary Agreement (P41) Article 3.03 and the Construction Agreement (P31) in the Preamble had been issued to Mitsui/Taisei by Hotel Developers (Lanka) Ltd. then known as Lanka-Japan Hotels Ltd. on 30.03.1983. Therefore the said Letter of Award for construction had been on the basis of the Project Plan.
- iii. Hilton International had based its Profitability Forecasts (P5), (P5A)) on the basis of the Project Plan and had re-confirmed such Profitability Forecasts, as per Hilton International's Letter dated 31.03.'83 (P6).
- iv. Mitsui's Cashflow Projections (P7),(P7A),(P7B),(P13) had been based on Hilton International's Profitability Forecast (P5),(P5A) and therefore had also been on the basis of the Project Plan. (Revenue on 4 Rooms had been excluded since set apart for the Manager's Apartment).

The computations of the Room Revenues are set out in Schedule P164 attached.

- v. Tourist Board application and approval had also been on the basis of the Project Plan.
- vi. Prospectus (P2) dated 06.03.'84 giving the specifications of the Hotel at page 8 therein, inter-alia, specifying going up 22 Floors, 452 Rooms and covered (i.e. basement) parking for 400 Vehicles had been on the basis of the Project Plan.
- vii. Architectural Plans, on the basis of the Project Plan, to be submitted to the UDA, as per the scales required by the UDA had been done in August'83 and submitted to the UDA in October'83 and approved in March '84 as per (P9). However, all copies of this Approved Architectural Plans are reported missing (P24),(P35).

The Board noting 452 guest rooms had approved these Architectural Plans in January 1984 (P36).

- viii. The Schedule of Amendments (P16A) forwarded to the UDA together with the surreptitiously submitted unauthorised set of Plans described as "Amended Plans", (P163) show the relationship between the said Amended Plans and the Project Plan, particularly in the room lay out. The Amended Plans mysteriously has not shown the basement. Shelton Wijayaratne's Report (P15) has compared the Amended Plans and the Project Plan.

- ix. The Japanese Architects in their Affidavit (P162) filed in Court have confirmed that "one bay or module is in fact a unit of a standard size room", which has been corroborated by Mr. Shelton Wijayarathne's Report that "one room bay is in actual practice one standard guest room".
- x. Construction Agreement (P31) cannot be relied upon, since it had surreptitiously excluded from the Scope of Works at Clause 3(2) (d) the entire recreation area, including the swimming pool, which had been depicted in the Project Plan and stipulated in the Prospectus and which are very much a part and parcel of a 5-star Hotel.
- xi. Inventory of the Fixed Assets defined in Exhibit "A" to the Supplies Contract (P32 Article I) cannot be verified since such Exhibit "A" is also reported missing and hence a separate physical inventorisation would have to be carried out. The price agreed upon in the Preliminary Agreement (Article 4) and adopted by the Investment Agreement had been Japanese Yen. 1,680,000,000 the Supplies Agreement (Article 4) surreptitiously interpolating 2 digits had stipulated Japanese Yen. 1,860,000,000.

MR. GAMINI FERNANDO, GENERAL MANAGER, COLOMBO HILTON

- i. Mr. Gamini Fernando of Hilton International, the General Manager of the Colombo Hilton for a considerable number of years has worked in close relationship with Mr. Cornel L. Perera, Chairman & Managing Director, Hotel Developers (Lanka) Ltd.
- ii. Mr. Gamini Fernando and Bert Jayatunga, Controller, Colombo Hilton, when noticed in writing by the Finance Ministry in March 1990 to call over to meet the then Committee going into the matter, avoided attending such meeting and was reportedly away from the Hotel, when telephoned by the Finance Ministry. (See Letter attached Folios 78 & 77 of Finance Ministry File No. IV).
- iii. In the questionable Casino Contract with Mr. Johannes Bovens of Holland, Mr. Gamini Fernando and Mr. Cornel L Perera had acted together. Mr. Bovens has made serious allegations against both of them concerning a Deposit of Rs. 3 Mn. paid and acknowledged in the Agreement, not accounted to the Company.
- iv. Accordingly, Mr. Gamini Fernando should not be a party from whom the panel of Architects should seek any clarifications, except giving access to the Hotel premises.
- v. Mr. Bert Jayatunge, who had been there from the very inception had confirmed to Mr. Ameresekere that 2 guest room floors had been reduced and accordingly, there are only 408 room bays/modules and not 456 as depicted in the Project Plan.

MR. K.N. CHOKSY P.C., M.P. 7TH DEFENDANT IN D.C. COLOMBO 3155/SPL

- i. If Mr. K.N. Choksy is to make any representations to the panel of Architects, the background of his conduct and actions should also be made known to the panel.
 - a). he opposed the call by Government Nominee Director, Mr. M.T.L. Fernando, Chartered Architect for an independent engineering inspection and examination in May 1988, thereby misleading the Board P(42).

- b). he opposed Mr. Nihal Sri Ameresekere in seeking clarifications from the Japanese Architects, as regards the original Architectural Plans, Bills of Quantities and Final Measurements, prior to making any payments to Mitsui/Taisei in February 1990 and he confirmed that the owning company was justified in making payments of the full balance to Mitsui/Taisei (P48).
- c). having not participated in the District Court though noticed, however, he participated through Counsel in the Court of Appeal to support Mitsui/Taisei in their Leave to Appeal Applications, stating that Mr. Ameresekere had no legal right to institute this Action and wanted such Action dismissed (P181).
- d). as a Director of Hotel Developers (Lanka) Ltd., caused the Counsel of the Company to oppose the Application made by Mr. Ameresekere in March '92 to have the Court issue a Commission, to cause a physical inspection and examination of the Hotel (P183),(P184),(P185).
- e). persistently had obstructed Mr. Ameresekere's actions, influencing the then Government not to take requisite action, as evidenced by the Finance Ministry records (P70A).

Nihal Sri Ameresekere

04.10.1995

1704

(P5)

PROFITABILITY PROJECTIONS

(1) Extracts from Hilton International's Forecast of August '81- 456 Rooms

<u>Year</u>		<u>1st</u>	<u>2nd</u>	<u>3rd</u>
Total No. of Rooms (Room Days) Available (for Year)				
i.e. <u>456 Rooms</u> x 365 Days	(A)	166440	166440	166440
Room Occupancy - %	(B)	65%	70%	75%
Average Room Rate - US \$	(C)	70.00*	75.60	81.64
Room Revenue - US\$ '000 (A) x (B) x (C)				
		7573	8808	10191

(2) NOTE* 1st Year Room Rate changed to US \$ 73.0 from US \$ 70.0, as per Hilton International's Letter dated 31.03.'83 copied to Mitsui.

(3) Extracts from Mitsui's Profitability Forecast & Cash Flow Projections of March '83 - 456 Rooms

<u>Year</u>		<u>1st</u>	<u>2nd</u>	<u>3rd</u>
Total No. of Rooms (Room Days) Available (for Year)				
i.e. <u>456 Rooms</u> x 365 Days	(A)	<u>166440</u>	<u>166440</u>	<u>166440</u>
Room Occupancy - %	(B)	65%	70%	75%
Average Room Rate - US \$	(C)	<u>73.00*</u>	78.84	85.15
Room Revenue - US\$ '000 (A) x (B) x (C)				
		7898	9185	10629

Net Funds Available

US\$ '000		<u>5180</u>	6403	7651
Jap Yen '000 (1 US\$ = 230 Jan. Yen)		<u>1191400</u>	<u>1472690</u>	<u>1759730</u>

(P7A)

4) Extracts from Mitsui's Profitability Forecast & Cash Flow Projections of October'83 - 456 Rooms

<u>Year</u>		<u>1st</u>	<u>2nd</u>	<u>3rd</u>
Total No. of Rooms (Room Days) Available (for Year)				
i.e. <u>456 Rooms</u> x 365 Days	(A)	166440	166440	166440
Room Occupancy - %	(B)	65%	70%	75%
Average Room Rate - US \$	(C)	<u>73.00</u>	78.84	85.15
Room Revenue - US\$ '000 (A) x (B) x (C)		7898	9185	10629
<u>Net Funds Available</u>				
US\$ '000		<u>5180</u>	6403	7651
Jap Yen '000 (1 US\$ = 230 Jan. Yen)		<u>1191400</u>	<u>1472690</u>	<u>1759730</u>

(P7B)

(5) Extracts from Mitsui's Profitability Forecast & Cash Flow Projection of December '83 - 452 Rooms

<u>Year</u>		<u>1st</u>	<u>2nd</u>	<u>3rd</u>
No. of Rooms (Room Days) Available (for Year)				
<u>452 Rooms</u> x 365 Days	(A)	<u>164980</u>	<u>164980</u>	<u>164980</u>
Room Occupancy - %	(B)	65%	70%	75%
Average Room Rate - US \$ '000	(C)	<u>73.65*</u>	79.53	85.90
Room Revenue - US\$ '000 (A) x (B) x (C)		7898	9185	10629
<u>Net Funds Available</u>				
US\$ '000		<u>5180</u>	<u>6403</u>	<u>7651</u>
Jap Yen '000 (1 US\$ = 230 Jan. Yen)		<u>1191400</u>	<u>1472690</u>	<u>1759730</u>

NOTE: * 1st Year Room Rate increased to US \$ 73.65 from US \$ 73.00 previously, to give the same Net Funds Available, since Revenue from 4 Rooms had been excluded as Manager's Apartment.

(P13)

Extracts from Mitsui's Profitability Forecast & Cash Flow Projections dated 26.06.87 for 452 Rooms given after the opening of the Hotel in July '87

<u>Year</u>		<u>1st</u>	<u>2nd</u>	<u>3rd</u>
No. of Rooms (Room Days) Available (for Year)				
<u>452 Rooms</u> x 365 Days	(A)	<u>164980</u>	<u>164980</u>	<u>164980</u>
Room Occupancy - %	(B)	50%	55%	65%
Average Room Rate - US \$	(C)	50.00	54.00	73.65
Room Revenue - US \$ '000 (A) x (B) x (C)		4125	4900	7898

(P14)

(7) Extracts from Mitsui's Revised Profitability Forecast & Cash Flow Projections of December '87 - 387 Rooms (After queries were raised by me, in comparison with Hilton International's Monthly Reports on actual Hotel Operations)

<u>Year</u>		<u>1st</u>	<u>2nd</u>	<u>3rd</u>
No. of Rooms (Room Days) Available (for Year)				
<u>387 Rooms</u> x 365 Days	(A)	<u>141255</u>	<u>141255</u>	<u>141255</u>
Room Occupancy - %	(B)	20%	30%	65%
Average Room Rate - US \$ '000	(C)	<u>40.00</u>	45.00	73.65
Room Revenue - US\$ '000 (A) x (B) x (C)		1130	1907	6762

(P46)

(8) Extracts from Mitsui's Profitability Forecast & Cash Flow Projection of February '88 - 387 Rooms

<u>Year</u>		<u>1st</u>	<u>2nd</u>	<u>3rd</u>
No. of Rooms (Room Days) Available (for Year)				
<u>387 Rooms</u> x 365 Days	(A)	<u>141255</u>	<u>141255</u>	<u>141255</u>
Room Occupancy - %	(B)	20%	30%	40%
Average Room Rate - US \$ '000	(C)	<u>40.00</u>	50.00	60.00
Room Revenue - US\$ '000 (A) x (B) x (C)		1130	2119	3390

1st March, 1990.

Mr. Gamini Fernando,
General Manager,
Colombo Hilton Hotel,
COLOMBO - 01.

Dear Sir,

HILTON HOTEL PROJECT

I shall be grateful if you will meet Mrs. V.M.Y Casiechitty, Director of Economic Affairs, on 2nd March 1990, at 10.30 a.m. at her office for a discussion on the above matter.

Yours faithfully,



for Director
Economic Affairs Division

1st March, 1990.

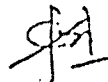
Mr. Bert Jayatunge,
Comptroller,
Colombo Hilton Hotel,
COLOMBO - 01.

Dear Sir,

HILTON HOTEL PROJECT

I shall be grateful if you will meet Mrs. V.M.Y
Casiechitty, Director of Economic Affairs, on 2nd March 1990,
at 10.30 a.m. at her office for a discussion on the above
matter.

Yours faithfully,



for Director
Economic Affairs Division.



INTERNATIONAL

Ref: WW/gc

3rd July 1990

COMMUNICATIONS HAD WITH
HILTON INTERNATIONAL
14 1990

Mr Nihal Sri Ameresekere FCA, FCMA
Comindtax Management Service Ltd
16/4 Sri Vipulasena Mawatha
Colombo 10
Sri Lanka

(PRIOR TO INSTITUTING
COURT ACTION)

Dear Sir,

Our corporate offices have now been relocated to England so unfortunately your letter was delayed.

I have checked our files without success as during our move not all documents were relocated. In the case of Hilton International Colombo we have all mechanical and electrical drawings on micro film but not architectural.

The Forecast of Income and Expenses would not have come from the Technical Services Department but if you have a specific question regarding this issue I could forward it to the relevant people.

Would C.Itoh & Company Ltd be of any help to you regarding the drawings?

Yours faithfully,

BILL WEBSTER
Vice President
Technical Services

HILTON INTERNATIONAL

International Court 2-3 Rhodes Way Watford Herts WD2 4WY England
Telephone: (0923) 31333 Telex: 917887 Fax: (0923) 33358

Hilton International Co. Incorporated with limited liability in Delaware, USA Head Office: 605 Third Avenue New York NY 10158 USA

Hotel Developers (Lanka) Ltd.

Head Office: C/o Colombo Hilton, Echelon Square, Lotus Road, Colombo 1, Sri Lanka.
Tel: 546545-546552-433435

Registered Office: 16, Alfred Place, Colombo 3, Sri Lanka. Tel: 574924 - 574926 - 574927. Telex: Colombo 21224 Cornol CE

REGISTERED POST

15th June 1990

Hilton International Co.,
Waldorf-Astoria Hotel,
301, Park Avenue,
New York,
New York 10022,
U.S.A

Dear Sirs,

HILTON INTERNATIONAL COLOMBO

Technical Assistance Services

We refer to the Forecast of Income & Expenses forwarded by you in 1981 for a configuration of 456 Rooms; the average Room Rate in respect of the first full year of operation was revised from US \$ 70.00 to US \$ 73.00 by your Letter dated 31st March '83.

A set of these Architectural Plans would have been also submitted to you in 1983 as provided for in the Technical Assistance Services under the Management Agreement.

We shall be grateful if we could kindly receive a copy of the relevant Architectural Plans referred to above, based upon which the Forecast under reference would have been formulated by you.

The Hotel Developers (Lanka) Ltd., Office is unable to trace the relevant copy of the above mentioned plans.

We wish to have a copy of this document at the very earliest.

Thanking you,
Yours faithfully,

Nihal Sri Ameresekere F.C.A., F.C.H.A.
DIRECTOR
Hotel Developers (Lanka) Ltd.

Hilton International Co.,
International Court,
2/3 Rhodes Way,
Waldorf, Harts WD2 4WY,
U.K.

OWNERS OF COLOMBO HILTON

Hotel Developers (Lanka) Ltd.

ational Office: C/o Colombo Hilton, Echelon Square, Lotus Road, Colombo 1, Sri Lanka.
Tel: 546545-546552-433435

Registered Office: 16, Alfred Place, Colombo 3, Sri Lanka. Tel: 574924 - 574926 - 574927. Telex: Colombo 21224 Cornet CE

REGISTERED POST.

30th August 1990.

Mr. Bill Webster,
Vice President
Hilton International
International Court 2-3 Rhodes Way
Watford, Herts WD2 4WY
England.

NO REPLY WAS
RECEIVED.

Dear Sir,

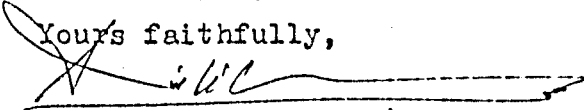
We thank you for your Letter dated 3rd July 1990, in response to our letter dated 15th June 1990. We enclose a copy of your letter dated 31st March 1983 submitted by Mr. Kenneth S. Moss Senior Vice President referred to in our earlier letter, for your easy reference.

The Forecast of Income and Expenses that was formulated and submitted by you and referred to the letter under reference, had been based on a configuration of 456 Rooms, in accordance with the Architectural Plans finalised at that point of time.

We wish to obtain a copy of the relevant Architectural Plans based upon which the Forecast of Income and Expenses referred to above had been prepared.

Thanking you,

Yours faithfully,


Nihal Sri Ameresekere FCA, FCMA
DIRECTOR
HOTEL DEVELOPERS (LANKA)LTD.

OWNERS OF COLOMBO HILTON



International

The Hongkong Hilton, 2 Queen's Road, Hong Kong Tel 5-233111 Cable: Hotels • Hong Kong Telex: HX 73355

March 31, 1983

Mr. Cornel L. Perera
Managing Director
Cornel & Co. Ltd.
15 Alfred Place
Colombo-3, Sri Lanka

Dear Cornel,

It was a pleasure talking to you last week and to hear that things are going ahead in Sri Lanka. You certainly have had a long hard struggle but I am glad everything now has been put to bed from the financial side.

As per your request, we are willing to change the forecast made on August 12, 1981 of which the average rate for the first full year operation will be US\$73.00 instead of US\$70.00.

Mr. Oskar von Kretschmann and myself will be making a trip to Sri Lanka at a time suitable to you, preferably sometime after April 15.

Best regards.

Yours sincerely,

Kenneth S. Moss
Senior Vice President
Asia and Australia

KSM/aw

cc. Mr. Akio Kato
Mr. Oskar von Kretschmann

KANKO KIKAKU SEKKEISHA

Y. SHIBATA & ASSOCIATES ARCHITECTS & DESIGNERS

September 20, 1990

COMMUNICATIONS HAD WITH
JAPANESE ARCHITECTS IN P

(PRIOR TO INSTITUTING
CANCELLATION)

Mr. Nihal Sri Ameresekere FCA, FCMA
Director
HOTEL DEVELOPERS (LANKA) LTD.
c/o Colombo Hilton
Echelon Square
Lotus Road
Colombo 1
SRI LANKA

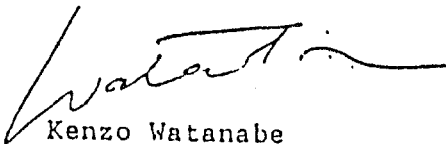
Dear Sir:

Subject: HILTON INTERNATIONAL COLOMBO

With reference to your letter dated 30th August 1990, we wish to inform you that we have nothing to further add to our letter to you dated 20th June, 1990.

Very truly yours,

KANKO KIKAKU SEKKEISHA



Kenzo Watanabe
Architect
Executive Director



Hotel Developers (Lanka) Ltd.

Operational Office: C/o Colombo Hilton, Echelon Square, Lotus Road, Colombo 1, Sri Lanka.
Tel: 546545-546552-433435

Registered Office: 16, Alfred Place, Colombo 3, Sri Lanka. Tel: 574924 - 574926 - 574927. Telex: Colombo 21224 Cornol CE

REGISTERED POST.

30th August, 1990.

Kanko Kikaku Sekkeisha
Y. Shibata & Associates
Architects & Designers
No.9, Mori - Bldg.
2-2 Atago 1-Chome
Minato-Ku
Tokyo 105
Japan.

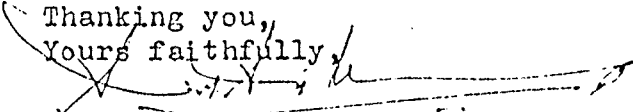
Dear Sirs,

We write in reference to your letter dated 20th June 1990, which was received in response to our letter dated 5th June 1990.

We wish to bring to your kind attention the following and would be grateful for your early reply.

1. By our letter dated 5th June 1990, we requested you for a copy of the original Architectural Plans, submitted to the U.D.A. in 1983, approval upon which construction commenced in March 1984 under your supervision. Please furnish us urgently a set of original Architectural Plans, as was primarily requested by our letter under reference.
2. It would be noted that the Letter of Award to Mitsui Taisei Consortium had been issued on 30th March 1983.
3. Since your Completion Certificate and the Final Certificate are mere letters, in the light of certain clarifications and queries that have now surfaced, a copy of the Final Bill of Quantities and Measurements / Final Report based upon which you have given such Certifications is required, together with a copy of the original Bill of Quantities and Measurements as per Original Architectural Plans, based upon which the Letter of Award for construction had been issued.

Thanking you,
Yours faithfully,


Nihal Sri Ameresekere FCA, FCMA
DIRECTOR
Hotel Developers (Lanka) Ltd.



OWNERS OF COLOMBO HILTON

67 JUN 1990

KANKO KIKAKU SEKKEISHA

Y.SHIBATA & ASSOCIATES ARCHITECTS & DESIGNERS

June 20, 1990

Mr. Nihal Sri Ameresekere F.C.A., F.C.M.A.
Director
HOTEL DEVELOPERS (LANKA) LTD.
c/o Colombo Hilton
Echelon Square
Lotus Road
Colombo 1
SRI LANKA

Dear Sir:

Subject: CONTRACT FOR DESIGN AND SUPERVISION
HILTON INTERNATIONAL COLOMBO

With reference to your letter dated June 5, 1990, we have already provided the clarifications which you have sought to us by our letter dated March 1, 1990 and March 5, 1990. This assignment has been completed by us in terms of our agreement with H.D.L. We have duly submitted to you the final certificate of completion thereon.

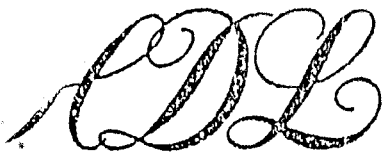
Kindly note that we have fulfilled our all contractual responsibility with regard to this project.

Very truly yours,

KANKO KIKAKU SEKKEISHA



Kenzo Watanabe
Architect
Executive Director



Hotel Developers (Lanka) Ltd.

Operational Office: C/o Colombo Hilton, Echelon Square, Lotus Road, Colombo 1, Sri Lanka.
Tel: 546545-546552-433435

Registered Office: 16, Alfred Place, Colombo 3, Sri Lanka. Tel: 574924 - 574926 - 574927. Telex: Colombo 21224 Cornel C

REGISTERED POST

5th June '90

Kanko Kikaku Sekkeisha
Y. Shibata & Associates
Architects & Designers,
No. 9 Mori - Bldg. 2-2 Atago
1-Chome, Minato-Ku
Tokyo 105
Japan.

ATTN : Mr. Yozo Shibata

Dear Sirs,

CONTRACT FOR DESIGN AND SUPERVISION

Hilton International Colombo

Certain clarifications had been raised at the Board of Directors in relation to the Hilton Hotel construction, notwithstanding the Completion and Final Certificates issued, which however do not provide the requisite details.

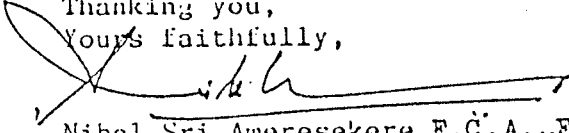
Your Letters dated 1st March '90 and 5th March '90 have also not afforded clarifications of what had been sought.

Prior to forwarding you the relevant clarifications, we would be grateful if you would kindly furnish us, with a copy of the set of an original Architectural Plans, in accordance with which the Letter of Award had been issued to the Construction Consortium and it would have been this set of Architectural Plans that would have been submitted to the UDA in 1983 to receive Construction Approval in March '84. The HDL Office does not appear to have a copy of this set of Architectural Plans.

Could you also please furnish a copy of the Final Bill of Quantities & Measurements/Final Report.

On receipt of the above documents we shall forward the relevant clarifications sought. Please furnish the above as a matter of urgency

Thanking you,
Yours faithfully,


Nihal Sri Ameresekere F.C.A., F.C.M.A.
DIRECTOR
Hotel Developers (Lanka)

HILTON

OWNERS OF COLOMBO HILTON