

10th June '98

The Secretary,
Special Presidential Commission of Inquiry, 1995
Room No. 4-115, Bandaranaike Memorial International Conference Hall,
Buddhaloka Mawatha, Colombo 7.

Dear Sir,

Inquiry No. 1/95

As you are aware, the Inquiry pertaining to the Hilton Hotel, owned by Hotel Developers (Lanka) Ltd., [hereinafter referred to as "HDL"], commenced as the very first Inquiry by the Special Presidential Commission in March '95. I wish to bring the following matters to the kind attention of Their Lordships of the Commission.

The Commission to Investigate Allegations of Bribery or Corruption had commenced an Inquiry into the same subject matter and I was required under Section 5 (1)(b) of Act No. 19 of '94 to appear before the said Commission in January '95 with the relevant documents to give evidence and as directed I tendered an Affidavit in February '95 setting out the salient facts. In view of the Inquiry commenced before the Special Presidential Commission in March '95, the said permanent Commission informed me, that they would not proceed with their Inquiry to avoid duplication and returned the relevant documents.

The Special Presidential Commission proceeded to record my evidence and that of several other Witnesses and obtained a Report from a Panel of Architects in November '95 and thereafter in December '95 issued Show Cause Notices setting out several charges, on four persons, requiring them to show cause as to why they should not be found guilty of misuse and abuse of power and/or corruption and/or commission of fraudulent acts, that were detrimental to the interest of HDL and/or the Government as its major Shareholder, causing financial loss and damage to HDL and/or the Government

In addition to charges pertaining to the fraudulent construction of the Hilton Hotel and the fraudulent income and cash-flow projections, there was a charge pertaining to the endeavour to adopt the audited Annual Accounts of HDL with the object of suppressing the fraudulent acts and a charge pertaining to a fraudulent and/or dishonest arrangement with the object of receiving Jap.Yen. 340 million (today about Rs. 170 million) for procuring concessions from the Government and thereby compromise the interest of HDL and the Government, evidence in relation to which was given in camera by one A.B. Senaratne, who had handled such transaction.

In deference to the request made by Counsel of the parties noticed, my evidence was re-led in May '96. Subsequently, I was under cross-examination by the Counsel of one party, Counsel of one other party having concluded my cross-examination. Counsel for one other party and Counsel for the Japanese Architects informed the Commission that they would not cross-examine my evidence. One of the Commissioners having fallen ill, the said Inquiry was post-poned in October '96 to be re-commenced thereafter. During the final stages of my cross-examination the Commission discovered that the *elevations* shown on the floor sheets of the plan approved by the UDA as an "amended plan" were at variance with the *elevations* shown in respect of the corresponding floors in the cross-sectional sheets of the very same plan. The said Inquiry has not re-commenced since. However, I forwarded further submissions *vide* my letters dated 9th March '97 and 14th October '97 to the Deputy Solicitor General, assisting the Commission.

In the meanwhile, several litigations had been instituted by Cornel & Co. Ltd., one of the promoters of HDL, with Affidavits in support thereof sworn by its Chairman & Managing Director, Mr. C.L. Perera, one of the parties on whom a Show Cause Notice had been issued by the Commission.

In a recent Case No. 1/98 (2) instituted by Cornel & Co. Ltd., in the High Court [Civil] Western Province, paragraph 40 of the *Plaint*, a copy annexed hereto, supported by the Affidavit of Mr. C.L. Perera, has stated as follows:

*"40 (a) A Special Presidential Commission of Inquiry has been appointed to inquire into the irregularities of certain public bodies. The matters referred to in the *Plaint* in Case No. 3155/Spl. is also subject of inquiry by the said Commission. N.S. Ameresekere had been called upon by the said Commission to give evidence. Ameresekere's cross-examination has not been concluded. However, the inquiry into matters relating to the Hilton Hotel Project is not concluded and is in abeyance.*

- (b) *The original plans and the model of the Hilton Hotel were produced at the said Special Presidential Commission of Inquiry and the Plaintiff went before the said Special Presidential Commission of Inquiry. The Plaintiff states that there were no floors missing in the said Hilton building as falsely alleged by the 4th Defendant in the said Action No. 3155/Spl., the very filing of the said Action itself by the 4th Defendant was a fraud on the Shareholders of HDL, the public and the Government of Sri Lanka.*
- (c) *The Plaintiff's Chairman and Managing Director had stated before the Special Presidential Commission that he is anxiously and impatiently awaiting to give evidence which the Special Presidential Commission was appreciative of but, however, the Commission on the Hilton Project is in abeyance and the opportunity for the Plaintiff's Chairman and Managing Director to give evidence is still being awaited. "*

Mr. C.L. Perera had not disclosed the totality of the true and correct facts, including that he had made a statement as had been directed to the inquiring Officers of the Commission. HDL and the Government Directors consequently filed Statement of Objections, supported by my Affidavit, in which paragraph 11 stated as follows:

"11. These Defendants state that;

- 11(a) *Her Excellency President Chandrika Bandaranaike Kumaratunge appointed a Special Presidential Commission of Inquiry 1995, under the Special Presidential Commissions of Inquiry Law No. 7 of 1978 [SPC Law No. 7 of 1978], as per the Warrant proclaimed by the President published in Gazette Extraordinary No. 858/4 of 14.2.'95. Item 2 of the Schedule to the said Warrant specified – " 2. Hotel Developers (Lanka) Ltd., - Matters relating to the Hilton Hotel Project and acts of commission and omission by the Government and Public bodies in connection therewith "*
- 11(b) *The said Special Presidential Commission commenced the Inquiry into the aforesaid HDL matter, as Inquiry No. 1/95. The 4th Interim Report submitted to the President by the said Presidential Commission published as Sessional Paper No. 1-1997 dated 2.3.'97 at page 229 lists the 24 Witnesses, who had testified before the said Commission at the said HDL Inquiry. In addition to the 4th Defendant, the said Witnesses included, amongst others, officials of the Ministry of Finance & Planning, Urban Development Authority [UDA], Ceylon Tourist Board, Colombo Municipal Council, Ceylon Electricity Board, Fire Brigade and Fort Police.*
- 11(c) *The said Special Presidential Commission on 25.9.'95 also appointed a panel of 3 Chartered Architects headed by Prof. Nimal De Silva, present Chairman, UDA, and comprising Upali Iddawala and Dudley Waas, to investigate and report on the said Hotel, which said Report was issued by the said panel of Architects on 14.11.'95. The said C.L. Perera and K.N. Choksy, amongst others, who had been parties noticed since 17.7.'95 under Section 16 of the SPC Law No. 7 of 1978, had been permitted, upon their request, to make representations to the said panel of Architects, through the said Special Presidential Commission.*
- 11(d) *Upon the said Special Presidential Commission having carried out preliminary inquiries and investigations, with the assistance of officers from the Criminal Investigation Department and after the evidence of the aforesaid Witnesses and the receipt of the aforesaid Report from the panel of Architects dated 14.11.'95, the said Special Presidential Commission on 8.12.'95 served Show Cause Notices under Section 9 of the aforesaid Act, on the said C.L. Perera, K.N. Choksy, F.G.N. Mendis [HDL Directors] and R. Paskaralingam former Secretary, Ministry of Finance & Planning - vide Page 227 of the aforesaid 4th Interim Report of the said Special Presidential Commission.*
- 11(e) *The said Show Cause Notices setting out several charges, served as aforesaid by the said Special Presidential Commission,, inter-alia, stated;*

"The aforesaid acts of commission and/or omission on your part were fraudulent and were detrimental to the interests of the said Company and/or the Government of Sri Lanka, in its capacity as the major Shareholder, causing financial loss and damage to the said Company and/or the Government of Sri Lanka"

"Having regard to the matters set out hereinabove, you are hereby required to show cause as to why you should not be found guilty of misuse or abuse of power and/or corruption and/or commission of fraudulent acts in terms of Section 9 of the Special Presidential Commission of Inquiry Law No. 7 of 1978, as amended "

The said Show Cause Notices were widely published in the media, The said Show Cause Notices served on the said C.L. Perera and the K.N. Choksy are annexed hereto marked as 4D9(c1) & 4D9(c2) respectively.

One of the charges [No.5] against the said K.N. Choksy is based on his own said Letter dated 28.2.'90 endorsing the full payment to the 1st & 2nd Defendants referred to at paragraph 5(b) hereinabove. One of the charges [No.9] against the said C.L. Perera is that he entered into an arrangement with the object of receiving Jap.Yen 340,000,000 for procuring concessions from the Government, compromising the interest of HDL and the Government

- 11(f) *The aforesaid persons so noticed, including the said C.L. Perera, on or about 30.1.'96 tendered Written Submissions, as required, on the aforesaid Charges, refuting and/or denying the same, [whilst, inter-alia, by his Affidavit dated 21.7.'95, the said C.L. Perera, as morefully referred to in paragraph 14(f) hereinbelow, had affirmed and/or concurred with the averments in 4th Defendant's said D.C. Colombo Case No. 3155/Spl.] and objected to the said Presidential Commission conducting the said Inquiry on grounds of jurisdiction, and on or about 18.3.'96 tendered further Written Submissions on the matter of jurisdiction. Nevertheless, the said Inquiry was proceeded with.*
- 11(g) *The Solicitor General tendered Written Submissions, particularly in reply to the submissions made by the said K.N. Choksy. In a postscript made in March '96, published in the Daily News of 30.3.'96, the said Presidential Commission had made observations on submissions made by the said K.N. Choksy, inter-alia, stating ;*

"In the course of the proceedings of February 29, 1996 the Commission has adverted to the provisions of Rules 15, 50 and 51 of the Supreme Court (Conduct of and Etiquette for Attorneys-at-Law) and to two Dicta pronounced by two eminent Judges presiding over the Superior Courts of the Great Britain."

"A Court of Law, a Tribunal, or a Statutory Commission ought to, in the course of its Proceedings, apply and enforce such rules of Conduct and Etiquette. A Court must not only be concerned with punishing Counsel for breach of such rules, but must ensure that such rules are observed in proceedings conducted before it."

"In addition to the dicta of Lord Reid and Lord Esher to which the Commission has already referred to in the Proceedings, this Commission wishes to place on record certain decisions which lay down valuable pronouncements in regard to the paramount duty of Counsel to Court. Lord MacMillan on Ethics of Advocates, states thus: - ' In the discharge of his office, the Advocate has a duty to his Client, a duty to the State, and a duty to himself '. This passage was cited with approval by Lord Justice Willmer in Meek vs. Flemming."

"We are of the unanimous view that in this respect he [reference being to the said K.N. Choksy] has stated untrue, erroneous and false facts, which necessarily has the tendency to mislead and deceive the public in general, and the members of this Commission"

The said Commission in another written observation made on or about 1st March 1996, inter-alia, stated as follows;

"Thus, the Supreme Court has in effect upheld the law as laid down the aforesaid English decisions and the law as set out in the Provisions of Article 106. This Commission is surprised to ascertain and note that Mr. K.N. Choksy P.C. was one of the Junior Counsel who appeared for the 2nd, 3rd and 7th respondents at the argument of this appeal before the Supreme Court. In these circumstances, it surprises and startles this Commission how Mr. Choksy with a consience and consistent with his duties as Counsel to the Commission, making submissions to the effect that the Supreme Court refused to adopt the English law as laid down in these two English Cases and held that the English law did not coincide with the law of Sri Lanka."

- 11(h) *The 4th Defendant was under cross-examination in October '96, when one of the Commissioners fell ill seriously and the said Inquiry was postponed. These Defendants have been made aware that in March '98 the Warrant of the said Special Presidential Commission has been extended by 1 year and these Defendants verily believe, that the said Inquiry would be resumed and concluded.*
- 11(i) *The 4th Defendant pleads that, R. K.W. Gunasekera P.C., Counsel for then HDL Director, F.G.N. Mendis, a party noticed and L.C. Seneviratne P.C., Counsel for the Japanese Architects, both informed the said Special Presidential Commission, that they do not wish to cross-examine the 4th Defendant, which fact the said Special Presidential Commission had recorded.*
- 11(j) *The 4th Defendant pleads that, during the cross-examination of the 4th Defendant the said Special Presidential Commission discovered that the floor elevations depicted on the floor sheets of the substituted architectural plans of the Hotel, described as "amended plans" and approved by the UDA on 29.4.'86, are not the same floor elevations given in respect of the corresponding floors on the cross-sectional sheets forming a part and parcel of the very same UDA approved plans. The 3rd and 4th floors were shown to be at the same elevation of 24.5 meters, whilst the 19th floor and the Roof of the 19th floor were shown to be at elevations of 72.7 meters and 72.5 meters, respectively. S. C. Crossette Thambiah, Attorney-at-Law, appearing for the said C.L. Perera, when questioned by Their Lordships of the said Special Presidential Commission on the said serious discrepancies, replied that he had no explanation.*

11(k) *The 4th Defendant pleads that, the said Special Presidential Commission observed the above to be an inherent, intrinsic impossibility, raising the question, as to how the UDA could have ever approved such a plan. The 4th Defendant has submitted to the said Special Presidential Commission, a statement identifying and reconciling the floor elevations depicted on the floor sheets, with the floor elevations given on the cross-sectional sheets of the Project Plan, inter-alia, upon which, the aforesaid D.C. Colombo Case No. 3155/Spl., had been instituted."*

A copy of the Statement of Objections is annexed hereto. The Documents marked thereto and my Affidavit are submitted separately.

At the very same time, a similar Action has also been instituted by Cornel & Co. Ltd., supported by the Affidavit of Mr. C.L. Perera, in the District Court of Colombo, Case No. 5095/Spl. also containing the identical paragraph No. 40 referred to hereinabove. *A copy of the Complaint is annexed hereto.*

In both the above Actions, Enjoining Orders have been issued restraining the implementation and/or giving effect to the Settlement Agreements that had been concluded in June '95 with disclosure to the Special Presidential Commission. The gravity of the consequences of the said Enjoining Orders is borne out by the Petition filed in D.C. Colombo Case No. 5095/Spl., supported by the Affidavit of Mr. D.Y. Liyanage, Deputy Secretary to the Treasury and Chairman of HDL. *A copy of the Petition is annexed hereto.*

The said Petition and paragraph 14 of the aforementioned Statement of Objections refer to 8 Cases that have been instituted since July '95 pertaining to the same subject matter, supported essentially by the same Counsel, upon diametrically opposed and totally contradictory positions taken, as demonstrated in the said Petition and paragraph 14 of the said Statement of Objections.

In addition to the aforesaid misleading representations made in relation to the Inquiry by the Special Presidential Commission, the several Cases referred to above have also been based, as extensively pleaded therein, on the conduct/actions of and the pronouncements/statements made by the Minister of Justice & Constitutional Affairs and Deputy Minister of Finance, Mr. G.L. Peiris, who notwithstanding having been an interested and/or affected person, wrongfully and/or unlawfully, intervened to suspend, I am advised, without a legal basis to have done so, signed Settlement Agreements that had been finalised since '93 by the Attorney General, who had examined all relevant matters. Such intervention by Mr. G.L. Peiris has caused considerable financial loss to HDL and further set-back to HDL's re-structuring, that had been specifically envisaged in the Settlement, thereby jeopardising the viability of HDL.

Nevertheless, on the intervention in March '96 by the President, the Minister of Finance, the said Settlement was given effect to in October '96, on the basis of an Addendum signed thereto in October '96 excluding only one condition therefrom, that personally affected Mr. G.L. Peiris and with arrangements provided in the said Addendum to ensure and secure the implementation of the conditions precedent.

Having willfully made a statement false to his knowledge in Parliament on 8th August '95, to a question significantly raised on the very previous day, 7th August '95, thereafter, regardless of the official answer prepared on the directions of the President, the Minister of Finance, by the then Secretary, Ministry of Finance, Mr. A.S. Jayawardena, Mr. G.L. Peiris, rejecting such official answer, made his own further false statement in Parliament on 19th September '95, seriously affecting my professional standing, name and reputation.

Mr. G.L. Peiris' conduct and actions, moreso particularly he being the Minister of Justice & Constitutional Affairs, subsequently in November '95, in refusing to present the Budget as Deputy Minister of Finance, demanding the resignation of Mr. A.S. Jayawardena, Secretary, Ministry of Finance, concerning the Affidavit filed by Mr. A.S. Jayawardena, as Secretary to the Treasury, in the aforesaid D.C. Colombo Case No. 4414/Spl., to protect the interests of the Government, I am advised, raises the questions of intimidation of a party before Court and the implied direction to and/or interference with the judiciary, in violation of Article 116 of the Constitution. Consequently, Mr. A.S. Jayawardena was promoted, as the Governor of the Central Bank.

In regard to the aforesaid, I particularly refer to paragraphs 10, 12, 13, 15, 18 & 19 of the Statement of Objections and more particularly paragraphs 10(f), (g), 15(e) to (j) thereof, including the Complaint & Documents referred to therein, in D.C. Colombo Case No. 19849/MR filed in July '97 by me against Mr. G.L. Peiris.

To afford Their Lordships a reckoning of the financial benefit to the country of the write-off of foreign debt amounting to Rs. 10,200 Mn., achieved by the Settlement in June '95, I cite the recent sale of 40% shareholding of Air Lanka Ltd., for US \$ 70 Mn., which in terms of deferred payment afforded, *discounted at 7% p.a.*, would give a total value today of Rs. 10,300 Mn. (*US \$ @ Rs. 62/-*) for the 100% value of Air Lanka Ltd., and comparatively, at June '95 values, this would be equivalent to Rs. 8,300 Mn. (*US \$ @ Rs. 50/-*). *i.e. the aforesaid write-off has been greater than the total value placed on 100 % of Air Lanka Ltd.* In this connection, I particularly refer to paragraphs 5, 13 and 15 of the Statement of Objections annexed hereto.

The Statement of Objections annexed hereto, set out the totality of the facts pertaining to this matter of national economic proportions, where socio-political influences, on both sides of the political divide, have prevented and/or inhibited the authorities concerned from taking legitimate actions as warranted, to uphold the rule of the law, irrespective of the status of the personalities concerned. It is in such circumstances, that I was compelled to devote much time and efforts, amidst pressures and obstructions, to successfully prosecute and achieve the aforesaid benefits for the country protecting public interest. Regrettably, even thereafter, in such very same circumstances of undue interferences and influences, I have been compelled to devote much time and efforts, to deal with vexatious litigations, since the relevant law enforcement authorities had failed and neglected to have acted in the very first instance, due to undue socio-political influences and/or pressures, ironically by persons who held public office, and who, on the contrary ought to have, themselves, acted to protect public and national interests.

Having acted to the immense benefit of the country, protecting national interests, whilst facing pressures and obstructions, resulting in the affectation of interested socio-politically powerful and/or influential persons, as a consequence, I have continued to be subjected to, undue pressures and stress, including injury to my integrity, reputation and standing, and public scandal, odium and contempt, with further harassment, through baseless/malicious and/or vexatious litigations, in circumstances of the authorities concerned having failed to take effective action in the first instance, as warranted, against wrong-doers, due to socio-political pressures and/or influences, by interested and/or affected parties, on both sides of the political divide.

In the face of the controversies created by interested and affected parties and splashed in the media, I was advised to refrain from making public pronouncements, in view of the pending Special Presidential Commission Inquiry, before which I was a Witness. I have, however, instituted Action against Mr. G.L. Peiris, Minister of Justice & Constitutional Affairs and Deputy Minister of Finance, for defamation. By way of disclosure, particularly to His Lordship the Chairman of the Commission, I state that, in the given circumstances, I have submitted an Affidavit dated 18th May '98 to His Lordship the Chief Justice concerning the conduct of certain persons.

Cabinet Memorandum dated 21st June '95 submitted by Her Excellency the President, as the Minister of Finance, approved by the Cabinet on 28th June '95, inter-alia stated:

“A Special Presidential Commission is carrying out an inquiry into the totality of this matter and the Government and the public would be afforded a report thereon. The Government would consider taking appropriate action, based on the findings and recommendations of the Commission. The Solicitor General has kept the Commission apprised of this settlement.”

The Minister of Justice & Constitutional Affairs/Deputy Minister of Finance, Mr. G.L. Peiris,

i. at the press conference on 30th June '95, inter-alia, stated:

“however this settlement has nothing to with the punitive action which the legal machinery will take against the offenders by the Special Presidential Commission of Inquiry and the Permanent Commission on bribery and corruption”

ii. in Parliament on 8th August '95, inter-alia, stated:

“The People's Alliance promised to uncover the facts behind this episode during the election campaign and in keeping with its pledge, set up a Special Presidential Commission of Inquiry to inquire into the circumstances behind the transaction. It must be reiterated that this Commission will continue with its inquiries into this matter and that the Government will take all necessary action to ensure that the wrongdoers are dealt with under the laws of this country.”

“However, it must be reiterated that there was no intention or understanding whatsoever at any stage, to either slow down or shelve the work of the Special Presidential Commission Inquiring into the circumstances relating to the alleged fraud and misdeeds behind the Hilton project and that it remained the intention of the Government, that if any wrongdoing is discovered or found by the Commission, such activity will be dealt with severely under the laws of the country.”

iii. in Parliament on 19th September '95, inter-alia, stated:

“The signing of the settlement agreements by the Secretary to the Treasury will not and should not in any way affect, slow down or influence the inquiries conducted by the Special Presidential Commission into the circumstances relating to the alleged frauds and misdeeds behind the Hilton Project. It remains the intention of the Government that, if any wrongdoing is discovered or found by the Commission, the wrongdoers will be dealt with severely under the laws of the land.”

iv. in Parliament on 13th December '96 tabled a Statement, inter-alia, stating:


"Show Cause Notices, setting out acts of commission and/or omission that were fraudulent and detrimental to the interests of Hotel Developers (Lanka) Ltd., and/or the Government have been served on several persons. The Inquiry is proceeding."

The Special Presidential Commission, I believe, the public expected would be the last resort or recourse to correct injustice in the public interest, particularly where the operation of the normal rule of the law had been subverted by socio-political influences by persons, who ironically advocate today, that the Special Presidential Commissions are unwarranted and that the normal rule of the law ought to take its course. I had put in tremendous amount of time and efforts in placing evidence before the Commission. On the other hand, awaiting the findings and recommendations of the Commission, no action had been taken in regard to the matters before the Commission.

If I, as a professional accountant/consultant, have been subjected to such pressures, obstructions and consequences, in a matter pertaining to white-collar crime of public concern and of national economic proportion affecting national interests, one wonders, how an ordinary citizen could ever be expected to come forward and lay bear such crimes ?

I shall therefore, most respectfully urge, that Their Lordships of the Commission give serious consideration to the matters aforesaid to ensure that justice prevails.

Yours faithfully,


Nihal Sri Ameresekere