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**IN THE DISTRICT COURT OF COLOMBO**

In the matter of **HOTEL DEVELOPERS (LANKA) LIMITED**, C/o Colombo Hilton Sports Complex, 55, Echelon Square, Lotus Road, Colombo.

In the matter of an application for the Winding-up by Court under Part IX of the Companies Act, No.17 of 1982

Case No. 217/CO

**NIHAL SRI AMERASEKERE**,  
No.167/4, Viupulasena Mawatha,  
Colombo 10.

**PETITIONER**

I tender herewith the Affidavit-in-Opposition of Cornel Lionel Perera dated 17<sup>th</sup> May, 2007 together with the documents marked "Z1" to "Z34" objecting to the Winding-up of the above Company on his behalf as well as on behalf of Cornel & Company Limited two of the Parties Opposing the Winding-up and MOVE that Your Honour's Court be pleased to accept the same.

In view of the several actions pending in relation to the Company sought to be wound-up between Cornel & Company Limited, Cornel Lionel Perera, Mitsui & Company Limited, Taisei Corporation, Government of Sri Lanka and the Petitioner, Nihal Sri Amerasekere in the District Court of Colombo, High Court, Court of Appeal and the Supreme Court, it was not possible to ascertain the various status of the cases and the Opposing Parties on whose behalf this Motion is being filed have not been able to obtain the particulars in time and in the circumstances, the delay in filing this Motion and the Affidavit-in-Opposition.

I respectfully move that Your Honour's Court be pleased to act in terms of Rule 172 of the Winding-up Rules read together with Section 91(A) of the Civil Procedure Code to accept the said Affidavit in-Opposition.

On this 17<sup>th</sup> day of May, 2007.

  
**ATTORNEY-AT-LAW ~~FOR TWO OF THE PARTIES~~  
OPPOSING THE WINDING-UP, NAMELY  
(1) CORNEL & COMPANY LIMITED,  
(2) CORNEL LIONEL PERERA.**

Copies of this Motion and Affidavit and the documents have been hand delivered to the Attorney-at-Law for the Petitioner and the Attorney-at-Law for the Company sought to be wound-up.

**IN THE DISTRICT COURT OF COLOMBO**

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In the matter of an application for the Winding-up by Court under Part IX of the Companies Act, No.17 of 1982

Case No. 217/CO

**NIHAL SRI AMERASEKERE**,  
No.167/4, Viupulasena Mawatha,  
Colombo 10.

**PETITIONER**

I, **CORNEL LIONEL PERERA** of First Floor, No.188, Vauxhall Street, Colombo-2 being a Christian do hereby make oath and state as follows:-

01. ✓ I am the Chairman and Managing Director of Cornel & Company Limited, the Party Opposing the Winding-up and the Deponent hereof and depose hereto from my own personal knowledge and from books, records, documents, correspondence and files that are available with me. I have been authorised by Cornel & Company Limited to make this Affidavit and I make this Affidavit on behalf of Cornel & Company Limited and me.
02. ✓ In limine I am advised to state and I state that the Petitioner cannot have and maintain this application inasmuch as -
- (a) the Petitioner has no status to bring this application;
  - (b) there exists no reason whatsoever to wind-up the Company sought to be wound-up, namely Hotel Developers Lanka Limited.;
  - (c) there exists no just or equitable reason to wind-up Hotel Developers Lanka Limited.;
  - (d) the equity in this case is that the Company sought to be wound-up ought not to be wound-up for the various reasons set out in this Affidavit.
03. ✓ By way of further Preliminary Objections, I am advised to state and I state that -
- (a) the Petitioner has deliberately and fraudulently suppressed and misrepresented several facts and materials in the Petition;
  - (b) the Petitioner has deliberately and fraudulently not disclosed several of the relevant matters to this Court in this application;

- (c) the purported application to wind-up is yet another threat by the Petitioner motivated by improper motivation;
- (d) the Petitioner has not come into Court with clean hands and thus, is not entitled to any reliefs;
- (e) the Petitioner has instituted this action to blackmail some of the parties including me in order to have a settlement which will benefit the Petitioner;
- (f) the motive for institution of this application is improper and is tainted with mala fide;
- (g) there are alternative remedies available and thus, the Petitioner is not entitled to have and maintain this action.

- 04 ✓
- (a) Hotel Developers (Lanka) Limited (hereinafter referred to as the "HDL") is a Public Company duly incorporated and existing under the Laws of Sri Lanka.
  - (b) HDL was incorporated originally under the name "LANKA JAPAN HOTELS LIMITED" which name was duly altered to "HOTEL DEVELOPERS (LANKA) LIMITED" on 20<sup>th</sup> October 1983.
  - (c) Lanka Japan Hotels Limited., now known as HDL was formed and incorporated for the purpose of promoting and owning a first class Hotel to be built at the Echelon Square, Colombo-1, Sri Lanka, to be managed by Hilton International, New York and internationally known Hotel Management Company.
  - (d) I conceived, founded, structured and realised the Colombo Hilton assisted by other Directors of Cornel & Co., Ltd., having been actively involved in the promotional work of the Hilton Hotel project since 1979. I and another Director of Cornel & Co., Ltd., in addition to being subscribers to the Memorandum & Articles of Association, were two of the first Directors of HDL.

- 05 ✓
- (a). MITSUI AND COMPANY LTD., (hereinafter referred to as "MITSUI") is a Company organised and existing under the Laws of Japan.
  - (b) TAISEI CORPORATION (hereinafter referred to as "TAISEI") is a Company organised and existing under the Laws of Japan.

06 ✓ The Petitioner abovenamed is a minority Shareholder holding less than 0.1% of the Ordinary Shares of HDL which shares were gifted by Cornel & Co., Ltd., to the Petitioner and the Petitioner paid no consideration in respect of the same. The Petitioner functioned as a Nominee Director of the Government of the Democratic Socialist Republic of Sri Lanka on the Board of Directors of HDL for several years. The Petitioner was a Nominee Director of Cornel & Co., Ltd. He was paid, inter alia, by Cornel & Co., Ltd., for his services. The Petitioner was an employee of Cornel & Co., Ltd., and its associates till December, 1990.

- 07 ✓
- (a) MITSUI is a Shareholder and is represented on the Board of Directors of the HDL and was one of the Contractors, the Supplier and one of the Lenders to the HDL for

constructing and equipping a Hotel Project hereinafter referred to as the Hilton Hotel Project.

- (b) TAISEI is a Shareholder and is represented on the Board of Directors of the HDL and was one of the Contractors, the Supplier and one of the Lenders to the HDL for constructing and equipping a Hotel Project hereinafter referred to as the Hilton Hotel Project.
  - (c) Cornel & Co., Ltd., MITSUI & TAISEI were Promoters named in the Prospectus for the Hilton Hotel Project.
  - (d) On or about 30<sup>th</sup> March, 1983, a Preliminary Agreement was entered into by and between Cornel & Co., Ltd., Mitsui & Taisei to construct and operate an International Five Star Class Hotel. A true copy of the Preliminary Agreement is annexed hereto marked "Z1" and pleaded as part and parcel hereof.
  - (e) In terms of the said Preliminary Agreement, Cornel & Co., Ltd., secured the lease of approximately 6.6 acres of land from the Government of the Democratic Socialist Republic of Sri Lanka.
  - (f) True copies of the said Lease Agreements Nos.41 and 42 are annexed hereto marked "Z2" and "Z3" and pleaded as part and parcel hereof.
  - (g) In consideration of the allotment to Cornel & Co., Ltd., of 25,089,750 shares in the capital of HDL, the Cornel & Co., Ltd., by Lease Agreement No.2294 dated 15<sup>th</sup> February 1984 under leased the said lease of the said land to HDL. A true copy of the said Lease Agreement No.2294 is annexed hereto marked "Z4" and pleaded as part and parcel hereof.
  - (h) A true copy of the Share Certificate issued in favour of Cornel & Co., Ltd., is annexed hereto marked "Z5" and pleaded as part and parcel hereof.
  - (i) Thereafter, Cornel & Co., Ltd., purchased a further 298,713 shares in the capital of HDL. A true copy of the said Share Certificate issued in favour of Cornel & Co., Ltd., is annexed hereto marked "Z6" and pleaded as part and parcel hereof.
  - (j) Thus, Cornel & Co., Ltd., became the major shareholder of HDL owning over 52% share of HDL.
08. (a) In terms of the Preliminary Agreement entered into, Mitsui & Taisei agreed to invest moneys in HDL provided Letters of Guarantee were issued by the Government of the Democratic Socialist Republic of Sri Lanka and Cornel & Co., Ltd., fulfilling all prerequisite conditions stipulated in the Preliminary Agreement (Clause 1.08 of the Preliminary Agreement).
- (b) In terms of the Preliminary Agreement and in terms of Clause 2.09, it was agreed between Cornel & Co., Ltd., and Mitsui & Taisei, inter alia, as follows:-

“The New Company shall furnish the Japanese Partner with an irrevocable and unconditional letter of guarantee for the full and punctual repayment of the Loan and the payment of the interest thereon to be issued by the Government of Sri Lanka in a form acceptable to the Japanese Partner and Japanese governmental lending institution(s).”

09. ✓ (a) On or about 31<sup>st</sup> January 1984, an agreement for the investment in Hotel Developers (Lanka) Limited was entered into between Cornel & Co., Ltd., the Government of Sri Lanka and Mitsui & Taisei. A true copy of the said Investment Agreement dated 31<sup>st</sup> January, 1984 is annexed hereto marked “Z7” and pleaded as part and parcel hereof.

(b) Articles 2.04, 3.03, 4 and 5 of the said Investment Agreement provide as follows:-

“2.04 As soon as practicable after the effective date of this Agreement as provided in Article 17 hereof, CORNEL shall cause the Company to increase the issued and fully paid-up capital of the Company to the Issued Capital. Shares having the aggregate nominal value equal to the Issued Capital less Seventy (70) Rupee shall be issued at par value and subscribed to so that the percentage shareholding in the Company after issue will be:

CORNEL:	52.62%
Other Sri Lankan Investors:	22.38%
MITSUI:	11.11%
TAISEI:	11.11%
Other Japanese investors to be introduced by the Japanese Partners:	2.78%

3.03 CORNEL shall cause the Company to issue twenty-two point three eight percent (22.38%) of the Issued Capital to the Other Sri Lankan Investors at par value in accordance with Article 2.04 hereof. Any such shares not subscribed and paid for the Other Sri Lanka Investors shall be issued to and paid for CORNEL within a reasonable period of time.

#### Article 4. Transfer of Shares to Government of Sri Lanka.

4.01 As soon as practicable after the issue of shares pursuant to Article 1 hereof, CORNEL shall in consideration of the granting by the Government of Sri Lanka (hereinafter referred to as the “Government”) of the Letter of Guarantee referred to in Article 2.09 of the Preliminary Agreement (hereinafter referred to as the “Letter of Guarantee”) transfer to the Government free of charge from the shares issued to CORNEL pursuant to Article 3.01 hereof such number of shares being fully paid-up shares as shall result in the Government being the holder of fifty one (51%) percent of the total shares of the Company and CORNEL shall ensure that the shareholding of the Government shall at no stage be reduced below such percentage, and such shares shall be re-transferred by the GOVERNMENT to CORNEL on the full repayment of the guaranteed indebtedness and all sums due as costs and expenses under the Guarantee by the

Company being the Borrower under the Loan Agreement and the release of the Letter of Guarantee granted by the Government.

Article 5. Shareholding Ratio of the parties

5.01 After completion of the transactions contemplated in Articles 2, 3 and 4 hereof, the shareholding ratio of the parties shall be:-

Government:	51 %
CORNEL:	1.62%
Other Sri Lanka Investors:	22.38%
Japanese Investors:	<u>25 %</u>
	<u>100 %</u>

- (c) In terms of the Investment Agreement, Mitsui & Taisei specifically represented and agreed, inter alia, that -
- (i) the Directors of HDL shall be 8.
  - (ii) that out of the 8 Directors Cornel & Co., Ltd., shall be entitled to appoint 3 Directors (Clause 11.01 of Investment Agreement).
  - (iii) no amendment or modification of the Investment Agreement shall be effective if not confirmed in writing by each of the parties (Clause 12.02 of the Investment Agreement).
  - (iv) a party to the said Agreement was entitled to require full performance thereof of the other parties. (Clause 14.01 of the Investment Agreement).
- (d) Mitsui & Taisei requested and demanded from Cornel & Co., Ltd., in terms of the Preliminary Agreement and the Investment Agreement to cause the Government of Sri Lanka to issue the Bank Guarantee.
- (e) In view of the said request and keeping in line with the Preliminary Agreement and the Investment Agreement, Cornel & Co., Ltd., who was the major shareholder of HDL agreed to transfer its holding in HDL to the Government of Sri Lanka so that the Government of Sri Lanka could in turn guarantee the repayment of the Loan to Mitsui and Taisei.
- (f) By memorandum in writing dated 5th March 1984 signed by all parties, amendments and modifications were made to the Investment Agreement. A true copy of the memorandum dated 5th March 1984 and amendment to the Investment Agreement is annexed marked "Z7A".
- (g) By Memorandum dated 30<sup>th</sup> March 1984 signed by all parties amendments and modifications were made to the Investment Agreement. A true copy of the memorandum dated 30<sup>th</sup> March 1984 and amendment to the Investment Agreement is annexed hereto marked "Z7B".

- (h) In terms of the aforesaid Preliminary Agreement Investment Agreement on or about 24<sup>th</sup> February 1984 a SHARE TRANSFER AGREEMENT was entered into between Cornel & Co., Ltd., and the Government of Sri Lanka by which Cornel and Co. Ltd, made a purported transfer of 25,388,463 ordinary shares of Rs.10.00 each amounting to Rs.253,884,630/= which amounts to 51% of the Issued Share Capital of the Hotel Developers (Issued Share Capital being Rs.497,813,000/=) to the Government of Sri Lanka. A true copy of the said Share Transfer Agreement is annexed hereto marked "Z8" and pleaded as part and parcel hereof.
- (i) A true copy of the purported Transfer of Shares Form is annexed hereto marked "Z9" and pleaded as part and parcel hereof.
- (j) The subscribed capital of Hotel Developers is Rs.452,261,410/= thus, the unsubscribed Share Capital amounts to Rs.45,551,590/=.
- (k) I state that the Government of Sri Lanka did not pay any money whatsoever for the purported transfer of 25,388,463 shares for the value of Rs.253,884,630/= nor did the Government expend any money whatsoever to promote, develop, structure the Colombo Hilton or in any matter related to the Colombo Hilton. Even the legal fees incurred by the Government for hiring of a Japanese firm of Lawyers, M/s.Hamada-Matsumoto, to look after the interests of the Government in preparing and executing the agreements and documents in relation to the Hilton was not paid for by the Government.
- (l) From late 1978 till March, 1984, all expenses including part of technical fees to Hilton and other comprehensive work including the full and final architectural plans and drawings etc., worth over \$ 2 million was only from Cornel & Co., Ltd., resources and/or its own sources.
- (m) The said purported transfer was effected only for the reasons to satisfy the Foreign Loans Act, where it was necessary for a non-government institute to be issued a guarantee at least 50% of its share must be held by the State and the Government of Sri Lanka wanted a security for the issue of the letters of guarantee by the Government of Sri Lanka in favour of the MITSUI & TAISEI. True copies of guarantees given in favour of MITSUI & TAISEI are annexed hereto marked "Z10A" and "Z10B" respectively and pleaded as part and parcel hereof.
- (n) Previously on or about 31<sup>st</sup> January,1984 among others a Loan Agreement was entered into between Mitsui, Taisei and HDL. A true copy of the Loan Agreement is annexed hereto marked "Z11" and pleaded as part and parcel hereof.

10. I state that Mitsui & Taisei having been satisfied that -

- (a) Cornel & Co., Ltd., had complied with all the conditions and prerequisites stipulated in the Preliminary Agreement,
- (b) Cornel & Co., Ltd., as agreed in the Preliminary Agreement and Investment Agreement furnished the Guarantee of the Government of Sri Lanka,

- (c) the Guarantee is acceptable to the Japanese Governmental Lending institutions,
- (d) all the terms and conditions in the Investment Agreement have been complied with by Cornel & Co., Ltd.

invested moneys in terms of the Preliminary Agreement and the Investment Agreement for the construction of the Hilton Project.

11. (a) Article 18 of the Investment Agreement provided as follows:-

“Article 18. Terms of this Agreement

18.01 If and after this Agreement takes effect pursuant to Article 17 hereof, this Agreement shall continue and be binding upon each of the parties hereto as long as such party remains a shareholder of the Company.”

- (b) In relation to 3.03 of the Investment Agreement the Secretary to the Ministry of Finance sent a letter to Cornel & Co., Ltd., dated 28<sup>th</sup> April, 1987 stating that such letter should be treated as a Notice in writing as required under Article 15 of the Investment Agreement.
- (c) This was the period the JVP activities were peaking and the country was in a war-like situation surfacing on “force majeure”. In the circumstances, Cornel & Co., Ltd., was able to make the Government and the Secretary see these facts in the correct light by explaining same to the Secretary and officers of the Ministry of Finance, assisted by the officers of the Tourist Board and the Ministry of State who fully well understood the country situation and was sympathetic to and supportive of Cornel & Co., Ltd.
- (d) Cornel & Co., Ltd., having made representations to the concerned authorities that the shortfall in the shares was due essentially to the country situation and beyond the control of Cornel & Co., Ltd., or the Government, was requested therefore, to write in to the Government. This Cornel & Co., Ltd., did by its letter of 8<sup>th</sup> September, 1987.
- (e) The Secretary, Ministry of Finance & Planning letter dated 28<sup>th</sup> April, 1987 is marked “Z12A” and Cornel & Company Limited’s letter dated 8<sup>th</sup> September, 1987 is marked “Z12B” respectively and pleaded as part and parcel hereof.

12. I respectfully state that -

- (a) whilst HDL is a Company quoted in the Stock Exchange, the number of shares of the Company offered to the public is less than 5% (five percent) and the balance is held as follows (of the subscribed capital) approximately:-

Transferred to the Government by Cornel & Company Ltd., and re-transferable upon the Guarantee lapsing or becoming invalid.	-	56.13%
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Government on its own right. - 8.85%

Cornel & Company Ltd. and  
its Associates. - 2.66%

Japanese Investors/Lenders/  
Contractors/Architects:  
(Mitsui & Taisei) - 27.52%  
95.16%

- (b) thus, over 75% of its shares (in effect over 90%) are held by the parties to the aforesaid agreements, namely Preliminary Agreement, Investment Agreement and Share Transfer Agreement.
- (c) the Preliminary Agreement states that I shall be the Managing Director of the Company (Clause 1.03).
- (d) the Investment Agreement states that the parties to the said Agreements shall have the right to nominate Directors as follows. (Article 101(1) of the Articles of Association of H.D.L:-

Cornel & Company Ltd. - Three Directors (which was subsequently changed to Two).

The Minister of Finance of the Government so long as the Government holds 51% of the shares. - Two Directors (which was subsequently changed to Six).

Mitsui & Company Ltd. - One Director

Taisei Corporation. - One Director

- (e) The Share Transfer Agreement (Z8) provided that the Government will re-transfer the shares to Cornel & Company Ltd., on the full repayment of the guaranteed indebtedness and the sums due as cost and expenses under the Guarantee and the release of the letter of Guarantee issued by the Government of Sri Lanka to the lenders.
- (f) It is in the aforesaid background, the Articles of Association of the Company were drafted and the Articles adopted the terms of the above agreement and provided as follows:
- (i) Cornel & Co., Ltd., shall have the right to nominate three Directors to the Board of Directors of the Company (changed to two on 21.12.1990).
- (ii) Nominee Directors shall not be liable to retirement by rotation and shall hold office until it is vacated in terms of Article III.
- (iii) None of the provisions contained in Articles 105, 106, III(d), (e) and (g) and Articles 112 to 118 both inclusive shall apply to a Nominee Director.

- (g) Articles 105 and 106 provided for the appointment and removal of Directors. Article 106 provided for the removal of Director by Ordinary Resolution of which special notice has been given in accordance with Section 138 of the Companies Act.
- (h) Even the public shareholders who invest in the HDL do so with full knowledge of the aforesaid facts particularly the fact that even if they purchase the entirety of the shares offered to the public they will not be able to pass an ordinary resolution inasmuch as the entirety of the shares offered to the public is less than 5% of the ordinary share capital.
- (i) In the aforesaid circumstances, the aforesaid Agreements entered into between the parties to the said Agreements are binding and enforceable between the said parties who are the major shareholders of HDL. The parties to the said Agreements are not permitted to violate or even vary the terms and the spirit of the said Agreements unless by unanimous consent expressed in writing..
- (j) By an amendment executed by all parties to the Investment Agreement on 30th April 1990, Article 11.5 of the said Investment Agreement was annulled and voided, whereby the MITSUI & TAISEI gave up their right to have a full time Executive Director in Colombo.
- (k) The said Investment Agreement marked "Z7" includes the following provisions in respect of any Amendments:-

- (i) Article 6 Special Covenants  
6.01 (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 a contract, the effect of which would have a material adverse effect on the financial condition, properties or operation of the Company".

- (ii) Article 12.02

"No amendment 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."

- (iii) Article 14. No Implied Waivers.

"Except as provided herein, the failure of one party hereto at any time to require performance by the other of any provision hereof shall in no way affect such party's right to require full performance thereof at any time thereafter; nor shall the waiver by one party hereto of a breach of any provision hereof be taken or

held to be a waiver by such party of any succeeding breach of such provision on a waiver of the provision itself.”

13. ✓ (a) The Petitioner was a member of the Board of HDL from its inception as one of the Nominees of Cornel & Co., Ltd., and he so remained a member until he was removed by Cornel & Co., Ltd., on 22<sup>nd</sup> December, 1990.
- (b) I state that the guarantees have not been enforced by the said MITSUI & TAISEI.
14. ✓ (a) The Petitioner instituted action by Plaint dated 13<sup>th</sup> September, 1990 in the District Court of Colombo bearing Case No.3155/Spl., against Mitsui, Taisei, the Architects, HDL and other Directors of HDL stating, inter alia, that there has been a fraud by Mitsui & Taisei and obtained an Interim Injunction in terms of prayers (g) and (h) of the Plaint in the said Case No.3155/Spl. The prayers (g) and (h) of the said Plaint read as follows:-
- “(g) for an Interim Injunction restraining the said Mitsui/Taisei Consortium and the said Architects, (1<sup>st</sup>, 2<sup>nd</sup> and 3<sup>rd</sup> Defendants) respectively, by themselves their representatives, servants and agents or otherwise howsoever, from demanding, claiming, drawing, receiving and/or collecting any monies, whatsoever in any manner howsoever, under the said Contracts and Agreements, namely; the Constructions Agreement, Supplies Contract, Design & Supervision Contract, Loan Agreement and the said two Guarantees and referred to in the plant, until the final determination of this action.
- (h) for an Interim Injunction restraining the 4<sup>th</sup> Defendant Company by itself, its Directors, servants and agents or otherwise, howsoever, from entertaining any demand and/or claim from the 1<sup>st</sup> and/or the 2<sup>nd</sup> and/or the 3<sup>rd</sup> Defendants abovenamed in relation to the said claims and payments allegedly due to the 1<sup>st</sup> and/or the 2<sup>nd</sup> and/or the 3<sup>rd</sup> Defendants and/or paying any monies, whatsoever in any manner, howsoever, under the said Construction Agreement, Supplie. Contract, Design & Supervision Contract and Loan Agreement referred to in the Plaint until the final determination of this action.”
- (b) True copies of the Plaint in D.C.Colombo Case No.3155/Spl., and the Enjoining Order issued in the said case are annexed hereto marked “Z13A” and “Z13B” respectively and pleaded as part and parcel hereof. Notice of Interim Injunction was also issued.
- (c) The Directors named in the said action did not file statement of objections and/or answer as they were advised by the lawyer since no relief is claimed they need not participate in the proceedings. The representatives of Cornel & Co., Ltd., in the Board of Directors of HDL who were made parties in the said case did not file Statement of Objections and/or Answer inasmuch as in the said case -
- (i) no allegations and/or accusations were made against the Nominees of Cornel & Co., Ltd.;

- (ii) the Nominee of Cornel & Co., Ltd., had been only made parties for the purpose of notice;
- (iii) no relief had been claimed against the said Nominees of Cornel & Co., Ltd.;
- (iv) this Court and/or the Court of Appeal and/or the Supreme Court has not stated that the Nominees of Cornel & Co., Ltd., had been guilty and/or were wrongdoers and/or had been part of the purported fraud alleged in Case No.3155/Spl.
- (d) The other Defendants in the said case filed Statement of Objections and Answer.
- (e) After inquiry the Learned District Judge issued an Interim Injunction in the said case No.3155/Spl., on or about 9<sup>th</sup> September, 1991 in terms of prayers (g) and (h) of the Plaintiff in the said case.
- (f) Mitsui and Taisei who were the 1<sup>st</sup> and 2<sup>nd</sup> Defendants in Case No.3155/Spl., sought Leave to Appeal to the Court of Appeal from the Order of 9<sup>th</sup> September, 1991 in Case No.3155/Spl., issuing the Interim Injunction.
- (g) Similarly, the 3<sup>rd</sup> Defendant in the said case also filed a separate Leave to Appeal application to the Court of Appeal against the said Order in Case No.3155/Spl.
- (h) The Court of Appeal granted Leave to Appeal on 31<sup>st</sup> January, 1992 in both the applications filed by Mitsui and Taise and the 3<sup>rd</sup> Defendant in the said Case No.3155/Spl.
- (i) N.S.Ameresekere who was the Plaintiff in Case No.3155/Spl., sought special Leave to Appeal to the Supreme Court from the said Orders of the Court of Appeal granting Leave to Appeal.
- (j) The Appeals in the Supreme Court were taken up together and heard.
- (k) The Supreme Court on 2<sup>nd</sup> December, 1992 delivered its judgement which is reported in 1993 1 SLR page 22, a copy of which is annexed hereto marked "Z14" and pleaded as part and parcel hereof. By the said judgement, the Supreme Court set aside the Order of the Court of Appeal granting Leave to Appeal from the Order of the learned District Judge dated 9<sup>th</sup> September, 1991 issued the Interim Injunction and affirmed the Order of the learned District Judge dated 9<sup>th</sup> September 1991.

15. ✓ The Supreme Court in its judgement marked "X14" held, inter alia, as follows:-

- (a) The Plaintiff (Petitioner in this action) has succeeded in establishing that he has a legally enforceable right and that there is a serious question and prima-facie case of fraud and wrongdoer control and that the Company is entitled to the reliefs claimed - (The relief claimed being that the Japanese Collaborators, Mitsui & Taise are not entitled to any payments whatsoever).

- (b) The Plaintiff has a reasonable and real prospect of success, even in the light of the defences raised in the pleadings, objections and submissions of the Defendants.
- (c) The Plaintiff's prospect of success was real and not fanciful and that he had more than a merely arguable case.
- (d) Because in the circumstances of the case, the Directors, including the Government's representatives on the Board will not assist or are helpless to intervene.
- (e) Interim Injunctions were granted to prevent the "Siphoning out of money" from the Company and the country.
- (f) 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".

- (g) it might be pointed out that it could not entirely be a matter of indifference to the Government ..... the Government made itself eventually responsible for the repayment of the monies borrowed by the Company.

16. After the election of the new Government in August 1994, the Minister of Finance purported to remove the nominees to the Board of HDL and purported to nominate the following persons to the Board of HDL:-

- (1) N.S.Ameresekere - (Plaintiff in 3155/Spl., and the Petitioner in this action).
- (2) Suren Wickremasinghe (now resigned).
- (3) K.Kanag Isvaran, P.C. - (Counsel for Plaintiff in 3155/Spl., and Petitioner in this action).
- (4) Mrs.Padma Maharaja
- (5) A.S.M.Perera, Deputy Solicitor-General (now removed).
- (6) Dr.P.B.Jayasundera.

- 17 (a) A Special Presidential Commission of Inquiry was 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. The Petitioner was called upon by the said Commission to give evidence. The cross-examination of the Petitioner 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 I went before the said Special Presidential Commission of Inquiry. I state that there were no floors missing in the said Hilton building as falsely alleged by the Petitioner in the said action No.3155/Spl., the very filing of the said action itself by the Petitioner was a fraud on the shareholders of HDL, the public and the Government of Sri Lanka.
  - (c) I have stated before the Special Presidential Commission that I am 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 me to give evidence is still being awaited.

18. (a) By Plaintiff dated 7<sup>th</sup> October 1988, Urban Development Authority instituted action in the District Court of Colombo No.5419/MR against Cornel & Co., Ltd., claiming arrears of instalments in respect of Lease Agreements Nos.41 and 42. A true copy of the said Plaintiff in Case No.5419/MR is marked “Z15A” and pleaded as part and parcel hereof.
- (b) Cornel & Co., Ltd., filed Answer, a true copy of which is annexed hereto marked “Z15B” and on a trial date, as the UDA was not ready, the UDA’s said action No.5419/MR was dismissed.
- (c) The UDA on 3<sup>rd</sup> March 1994 filed application to the Court of Appeal by way of revision bearing No.160/94. The said application in the Court of Appeal was also on 18th July, 1994 dismissed. A true copy of the said Court of Appeal judgement is annexed hereto marked “Z15C” and pleaded as part and parcel hereof.
19. (a) By Plaintiff dated 4th April 1994, the UDA filed another action in the District Court of Colombo bearing No.14933/MR against Cornel & Co., Ltd., for damages and for cancellation of the said Lease Agreements Nos.41 and 42 and for ejection. A true copy of the said Plaintiff in Case No.14933/MR is annexed hereto marked “Z16A” and pleaded as part and parcel hereof.
- (b) Cornel & Co., Ltd., in this action filed Answer in Case No.14933/MR, a true copy of which is annexed hereto marked “Z16B” and pleaded as part and parcel hereof.
- (c) UDA without notice to Cornel & Co., Ltd., filed a Motion to withdraw the said action No.14933/MR on the basis that Cornel & Co., Ltd., has repudiated the Lease Agreement. Cornel & Co., Ltd., filed a motion denying the repudiation of the said lease and the court subject to the said motions dismissed the UDA’s said action with costs. True copies of the motion filed by the Plaintiff and the UDA in the said case are annexed hereto marked “Z16C” and “Z16D” respectively and pleaded as part and parcel hereof. At this point of time the Chairman of the UDA was Suren Wickremasinghe who was one of the Government nominee Directors of HDL as aforesaid and aspirant for the position of Chairman of HDL. Further, Mr.K.Kanag-Isvaran, President’s Counsel appeared for UDA who was the Counsel for the Petitioner in 3155/Spl., and a Nominee Director of HDL.
20. The UDA has now filed a further action in the District Court of Colombo bearing No.16716/MR against Cornel & Co., Ltd., for, inter alia, damages. Cornel & Co., Ltd., had denied the said claim and also denied the alleged repudiation. A true copy of the Plaintiff and the Answer filed in the said case No.16716/MR are annexed hereto marked “Z17A” and “Z17B” respectively and pleaded as part and parcel hereof.
21. (a) On or about 26<sup>th</sup> June 1995 the Secretary to the Treasury instituted action in the District Court of Colombo bearing Case No.4386/Spl. under Sections 210 and 211 of the Companies Act against, inter alia, me, being the Chairman and Managing Director of HDL, who was appointed by Cornel & Co., Ltd., to the Board of Directors of HDL.
- (b) In the said action the Secretary to the Treasury also made an application under Section 213 of the Companies Act for an interim order restraining me from functioning as a Director of HDL

until the determination of the Main Petition under Sections 210 and/or 211 of the Companies Act, and for other reliefs.

- (c) A true copy of the Petition filed under Sections 210 and 211 of the Companies Act in D.C.Colombo Case No.4386/Spl. is annexed hereto marked “Z18A” and pleaded as part and parcel hereof.
- (d) A true copy of the Petition filed under Section 213 of the Companies Act in Case No.4386/Spl., is annexed hereto marked “Z18B” and pleaded as part and parcel hereof.
- (e) The application for interim order in the said case No.4386/Spl., was supported on 27<sup>th</sup> June, 1995 and a Proxy was filed on my behalf in that case and objections raised to the interim relief being granted. After hearing submissions, this Court granted time for me to file objections on 13<sup>th</sup> July, 1995 and the inquiry was fixed for the 17<sup>th</sup> July, 1995.
- (f) In the said action No.4386/Spl., the Secretary to the Treasury wrongfully, unlawfully and maliciously sought to remove me from the Board of Directors of the HDL, the Nominee of Cornel & Co., Ltd., to the Board of HDL, only on the alleged basis that I had admitted to Suren Wickremasinghe that I was aware of the fraud alleged to have been committed by the Japanese Contractors, the said Mitsui and Taisei on 17th January, 1995 and was therefore, not a fit and proper person to be a Director of HDL.
- (g) I filed objections in the said Case No.4386/Spl. A true copy of the Statement of Objections and Affidavit filed with regard to the application under Section 213 of the Companies Act is annexed hereto marked “Z18C” and pleaded as part and parcel hereof. A true copy of the Statement of Objections filed with regard to the application under Section 210/211 of the Companies Act is annexed hereto marked “Z18D” and pleaded as part and parcel hereof.
- (h) In the said Statement of Objections and Affidavit annexed thereto I had more fully dealt with the conversation I had with Suren Wickremasinghe in the Air Lanka flight.
- (i) Mitsui and Taisei (who were 4<sup>th</sup> and 5<sup>th</sup> Respondents in that case) filed a proxy and did not file any objections.
- (j) HDL abovenamed (who was the 6<sup>th</sup> Respondent in that case) only filed a statement. A true copy of the statement filed by HDL in that case is annexed hereto marked “Z18E” and pleaded as part and parcel hereof.
- (k) I was questioned by the Investigating Officers of the Special Presidential Commission as to whether Suren Wickremasinghe’s allegation was true, and I was asked what I had to say. In my statement to the Investigating Officers I denied making such a statement and/or the alleged disclosure to Suren Wickremasinghe.
- (l) I denied that I ever made any admissions and that Suren Wickremasinghe has made a false statement and such false assertions have been fraudulently made by Suren Wickremasinghe as of design and for other considerations such as becoming Chairman and Managing Director of HDL, which he was able to wrongfully manipulate and manouvre surreptitiously with the connivance and assistance of the then Secretary to the Ministry of Finance (A.S.Jayawardena), had himself purportedly appointed Chairman and Managing Director at the hurriedly and

irregularly summoned purported Board Meeting of 28<sup>th</sup> June, 1995 on the basis of a totally fabricated, false affidavit sworn by Suren Wickremasinghe. I filed action against Suren Wickremasinghe claiming Rs.10 Million as damages in the District Court of Colombo and the said action is presently pending.

- (m) I state that in the course of the conversation, Suren Wickremasinghe on his own suggested that if there was a massive fraud as claimed by the Petitioner, why is it that the Petitioner and the Government of Sri Lanka are trying to settle this matter by paying any monies to the Japanese?
- (n) I state that Suren Wickremasinghe, a nominated Director of the Minister of Finance on 27<sup>th</sup> June 1995, after A.S.Jayawardena, the Secretary to the Treasury failed to obtain an interim order in Case No.4386/Spl., (which was supported on 27<sup>th</sup> June, 1995), wrongfully, unlawfully and maliciously purported to summon a Board Meeting for 28<sup>th</sup> June 1995 giving not even 24 hours notice.
- (o) True copy of the said letter of 27<sup>th</sup> June 1995 addressed to me and received by me on 27<sup>th</sup> June, 1995 at 3.25 p.m. is annexed and marked "Z18F" and pleaded as part and parcel hereof.
- (p) A similar letter was received on 27<sup>th</sup> June 1995 at 6.00 p.m. by Mrs.T.P.Perera, my wife, the other Nominee Director of Cornel & Co., Ltd., on the Board of HDL.
- (q) I state that by letters dated 27<sup>th</sup> June 1995 (Hand Delivered and sent by Fax) I and Mrs.T.P. Perera informed Suren Wickremasinghe that we were not in a position to attend the said Board Meeting as the notice convening the said meeting was insufficient and that the purported notice was invalid in law and that the summoning of the said meeting was not genuine. True copies of the said letters dated 27<sup>th</sup> June 1995 are annexed hereto and marked "Z18G" and "Z18H".
- (r) I state that the Director elected by the shareholders, Romesh de Silva, P.C. who is one of the leading practitioners in this Court, did not attend the purported Board Meeting on 28<sup>th</sup> June 1995, not only as it was a working day and as he had to appear in court but also because it was short notice and the venue was the Ministry of Finance. A true copy of the letter written by Romesh de Silva, P.C. to HDL is annexed hereto marked "Z18I" and pleaded as part hereof.
- (s) I state that the aforesaid purported Board Meeting summoned by Suren Wickremasinghe for 28<sup>th</sup> June 1995 without even giving 24 hours notice, was the first time that the Board of Directors were to meet since the constitution of the new Board after the election of the People's Alliance Government in August 1994.
- (t) I state that although in Case No.4386/Spl., the Secretary to the Treasury has stated that the two Japanese Directors of Mitsui and Taisei are and were refusing to attend the Board Meetings apart from the said six Directors nominated by the Minister of Finance, it was only the said two Japanese Directors and the Government nominee Directors who attended the said purported Board Meeting.
- (u) I was thereafter reliably informed that at the said purported Meeting that I, the Nominee of Cornel & Co., Ltd., in the Board of Directors of HDL and the Chairman and Managing Director of HDL purported to have been removed from Chairman and Managing Director and that Suren Wickremasinghe the person who convened the Board Meeting purported to have been appointed Chairman and Managing Director.



- (v) I state that the Petitioner manipulated all the aforesaid matters in order to mislead the Board of Directors and to pass the alleged Agreements referred to hereinafter.
- (w) A.S.Jayawardena, Secretary to the Treasury on or about 17<sup>th</sup> July, 1995 filed a Motion to withdraw the action in D.C.Colombo Case No.4386/Spl. A true copy of the Motion filed by A.S.Jayawardena in D.C.Colombo Case No.4386/Spl., is annexed hereto marked "Z18J" and pleaded as part and parcel hereof. The Learned District Judge dismissed the said action No.4386/Spl., of the Secretary to the Treasury with costs. A true copy of the said Order in Case No.4386/Spl., is annexed hereto marked "Z18K" and pleaded as part and parcel hereof.
- (x) I further state that fraudulent conduct on the part of the Secretary to the Treasury has been now established in the Court of Law in view of the motion withdrawing the action No.4386/Spl., in which it is stated that the Secretary to the Treasury acting by himself and/or by the nominee directors of the Minister of Finance, have now come to some sort of arrangements with Mitsui and Taisei.
- (y) I state that the Secretary to the Treasury having instituted the aforesaid D.C.Colombo Case No.4386/Spl., maliciously and vexatiously solely for the purpose of obtaining ex parte interim orders, having failed to obtain such orders thereafter hurriedly convened a Board Meeting to purportedly remove me as the Chairman and Managing Director and to approve the purported fraudulent settlement, has on 17th July,1995 withdrawn the said case.
- (z) The aforesaid act of instituting an action to endeavour to obtain ex parte interim order on the basis of a fraud for extraneous purposes and having failed to obtain such orders withdrawing the said case after settling with the Japanese companies is a total fraud practised and/or an abuse of the process of Court motivated by mala fide intentions all of which were manipulated and masterminded by the Petitioner for his personal gain and profit.
22. In this background, I instituted action in the District Court of Colombo bearing No.4413/Spl., against Mitsui & Taise and HDL and the Directors of HDL challenging the purported Board of Directors meeting of 28<sup>th</sup> June, 1995. Enjoining Orders were obtained. Subsequently, the same were vacated. The action is still pending in the District Court. A true copy of the Plaint in Case No.4413/Spl., is annexed hereto marked "Z19" and pleaded as part and parcel hereof.
23. (a) Cornel & Co., Ltd., filed action in the District Court of Colombo bearing No.4414/Spl., against A.S.Jayawardena, Secretary to the Treasury, and obtained an Enjoining Order in terms of the prayers (j), (k), (l) and (m) to the Plaint. True copies of the Plaint in Case No.4414/Spl., and the Order of 21<sup>st</sup> July, 1995 are annexed hereto marked "Z20A" and "Z20B" respectively and pleaded as part and parcel hereof.
- (b) The Defendant in D.C.Colombo Case No.4414/Spl., objected to the extension of the Enjoining Order and also filed Statement of Objections. The Plaintiff filed Counter Affidavit. The District Court extended the Enjoining Order after hearing. The Defendant in the said Case No.4414/Spl., made an Application in Revision and Leave to Appeal Application to the Court of Appeal. After hearing, the Court of Appeal dismissed the Defendant's application. True copies of the said Orders in C.A.Revision Application and C.A.Leave to Appeal are annexed

hereto marked “Z20C” and “Z20D” and pleaded as part and parcel hereof. The Defendant did not appeal to the Supreme Court.

(c) The Enjoining Order in Case No.4414/Spl., is in operation and the Defendant informed that he is not moving for an order into the application for Interim Injunction and the action is still pending.

24. (a) Thereafter, Cornel & Co., Ltd., and I requested from Corporate Services Ltd., who were purported to have been appointed at the meeting of 28<sup>th</sup> June 1995 to forward the minutes and copies of all the agreements purported to have been signed at the said meeting. The Secretaries have only forwarded the minutes of the meeting of 28<sup>th</sup> June 1995. A true copy of the purported minutes of the meeting of 28<sup>th</sup> June 1995 is annexed hereto marked “Z21” and pleaded as part and parcel hereof.

(b) In terms of the purported minutes, it is recorded that the two nominee Directors of Mitsui and Taisei have also attended, participated and wrongfully and unlawfully purported to act to remove me from the post of Managing Director fraudulently and contrary to the terms and conditions of the Preliminary Agreement and the Investment Agreement.

(c) Although several agreements have been referred to in the purported minutes of the meeting of 28<sup>th</sup> June 1995, the purported Secretaries have failed to forward the same, though requested by me.

25. (a) Nevertheless, I have been thereafter able to obtain copies of the said purported agreements, four in number, purported to have been entered into on 28<sup>th</sup> June 1995. I annex hereto the following and plead the same as part and parcel hereof.

Agreement No.1 as “Z22”

Agreement No.2 as “Z23”

Agreement No.3 as “Z24”

Agreement No.4 as “Z25”

(b) The Petitioner manipulated these Agreements without documents to the Board of Directors of HDL.

(c) I state that Mitsui, Taise and the Government of Sri Lanka have wrongfully, unlawfully and fraudulently and contrary to the express terms of the Preliminary Agreement, Investment Agreement and the Share Transfer Agreement purported to enter into the aforesaid agreements.

26. (a) I further state that although Nihal Sri Ameresekere, the Petitioner in this action alleged fraud on the part of the 1st and 2nd Defendants in Case No.3155/Spl. and although prima facie the fraud has been established as held by the Supreme Court the said Mitsui & Taise and Nihal Sri Ameresekere have had discussions in order to settle the case wherein Mitsui & Taise have wrongfully, unlawfully and fraudulently and contrary to the Preliminary Agreement and the Investment Agreement, inter alia, agreed to breach and/or violate some of the conditions of the Preliminary Agreement and Investment Agreement.

(b) I became aware that the said Nihal Sri Ameresekere had withdrawn action No.3155/Spl. and the connected Case No.3231/Spl. True copies of letters dated 29th October 1996 and 30th October 1996 from the Attorney-General's Department to the HDL are annexed hereto marked "Z26A" and "Z26B" respectively and pleaded as part and parcel hereof. Certified copy of the proceedings of H.C.(Civil) Case No.116/96(1) (formerly D.C.Colombo Case No.3155/Spl.) and H.C. (Civil) Case No.134/96(1) (formerly D.C.Colombo Case No,3231/Spl., dated 23rd October,1996 annexed hereto marked "Z26C" and "Z26D".

27. (a) In the said Case No.3155/Spl., the Supreme Court (document marked "Z14") has already held that there is a serious question to be tried and a prima facie case of fraud and wrong doing against the Japanese collaborators, namely Mitsui & Taisei.
- (b) The Supreme Court found that prima facie fraud and wrong have been committed. According to the Petitioner who was the Plaintiff in the said case no money was due and all monies paid by HDL ought to be returned (please see prayers (a), (b), (d) and (e) and specifically (f) of the Plaint in D.C.Colombo Case No.3155/Spl., to date no answer has been given even by the Petitioner as to -
- (i) Why were the Agreements Z22, Z23, Z24 and Z25 entered into thereby committing HDL to make a payment of over US\$ 98 Million. (Please see annexure "A" to document Z22 regarding the repayment schedule)?
  - (ii) Why were contents of Z22, Z23, Z24 and Z25 not discussed at any Board Meeting and brought to the notice of any directors including Mr.Romesh de Silva, P.C., the only Director representing the Public Shareholders?
  - (iii) Why were the purported amendments made regarding the contents of the Preliminary Agreement, Investment Agreement and Share Transfer Agreement without the consent, knowledge, notice or approval of Cornel & Co., Ltd., or its Nominee Directors?
  - (iv) Why has the Petitioner purported to be made a Director who cannot be removed and why was the Petitioner given a further additional Director to be nominated by him in terms of the purported documents Z22, Z23, Z24 and Z25?
  - (v) Why were the purported Agreements Z22, Z23, Z24 and Z25 secretly, hurriedly and surreptitiously without the participation of Cornel & Co., Ltd., who admittedly had transferred 51% of shares to the Government of Sri Lanka and who is entitled for the re-transfer of the shares from the Government of Sri Lanka kept away?
  - (vi) Why was D.C.Colombo Case No.3155/Spl., not proceeded to trial notwithstanding a Supreme Court Order?
- (c) The aforesaid matters will only establish mala fide motives and the mala fide intentions of the parties who have got together in order to violate the provisions of the Preliminary

Agreement, Investment Agreement and Share Transfer Agreement for their personal benefit and personal gain.

(d) The current large outstanding to the Government of Sri Lanka by HDL is a direct result of the terms of settlement entered into by the Petitioner marked Z22, Z23, Z24 and Z25.

(e) Thus and otherwise I state that the equity is against the Petitioner in this case.

28. (a) H.E. the President, Mrs.Chandrika Bandaranaike Kumaratunge, in her capacity as Finance Minister has directed that no implementation of any aspect of the Hilton settlement reached on 28th June 1995 should take place until all the relevant issues are fully canvassed and decided upon by the Special Presidential Commission which is inquiring into the Hilton matter.

(b) The President's announcement to this effect was publicised in most of the newspapers and annexed hereto are copies of the relevant articles from the "Daily News" papers of 25th July 1995, and the "Island" newspapers of 25th July 1995, marked "Z27A" and "Z27B" respectively and pleaded as part and parcel hereof.

(c) The "Daily News" newspaper of the 25th July, 1995 quotes the Hon. G.L.Peiris, the Minister of Justice and Constitutional Affairs and Deputy Minister of Finance, as having said -

"The government's commitment to transparency is deep and unequivocal. It is of the greatest importance to us that no irrevocable step should be taken until the controversies which are involved in current judicial proceedings are resolved. In particular, the President's directive is that, with immediate effect, no payment which is contemplated by the settlement will be made nor will any other aspect of the settlement be implemented in any way, until the conclusion of the inquiry by the special presidential commission into the Hilton case."

(d) It was also reported in the said report that the Hon.G.L.Peiris had stated categorically -

"that neither the Minister of Finance (Mrs.Chandrika Bandaranaike Kumaratunge) nor the Deputy Minister of Finance (Mr.G.L.Peiris) participated in any manner in the negotiations which preceded this settlement. Neither of them had at any time met any agent or representative of Mitsui or Taisei, directly or indirectly, for the purpose of any discussion whatsoever with regard to the settlement. They are both (Mrs.Chandrika Bandaranaike Kumaratunge, and Mr.G.L.Peiris) eager that all the relevant issues should be fully examined before the settlement is given effect."

(e) Neither the President of Sri Lanka, Mrs.Chandrika Bandaranaike Kumaratunge nor the Deputy Minister G.L.Peiris has denied any of the matters stated in the said articles "Z27A" and "Z27B".

(f) The Deputy Minister of Finance, Prof.G.L.Peiris, has admitted that there were several unacceptable obligations and there were other wrongful agreements which had been brought into the purported Hilton settlement. In this connection, the following newspaper articles are annexed hereto and pleaded as part and parcel hereof:-

- (i) "Island" newspaper of 3rd August 1995 marked "Z27C".
- (ii) "Daily News" paper of 9th August 1995 marked "Z27D".
- (iii) "Island" newspaper of 9th August 1995 marked "Z27E".
- (iv) "Daily News" paper of 12th August 1995 marked "Z27F".
- (v) "Island" newspaper of 12th August 1995 marked "Z27G".
- (vi) "Sunday Leader" paper of 13th August 1995 marked "Z27H".

(g) To the best of my knowledge and belief none of the contents of the said article has been refuted and or controverted.

(h) The Hon.G.L.Peiris in Parliament, inter alia, stated as follows:-

"Having considered these factors, Her Excellency the President and the Cabinet decided to approve the settlement in principle, on the basis of the terms set out above, and authorised the Secretary to the Treasury to execute agreements incorporating the said terms. It was also on the basis of these terms that the announcement of the settlement was made to the media on 30th June.

Subsequently, however, it was discovered by the Deputy Minister of Finance and brought to the notice of the Minister of Finance that the agreements signed by the Secretary to the Treasury on behalf of the Government of Sri Lanka in the course of this settlement committed the Government to a number of obligations of an unacceptable nature, that had not been disclosed to the Minister of Finance or the Deputy Minister of Finance, nor been approved by the Cabinet of Ministers. These include the requirement that the Government of Sri Lanka shall and will assist Mr.Ameresekere in settling three cases filed against him by the People's Bank and two cases filed in the Magistrates Court of Negombo by the Commissioner of Labour and to have him released and/or held harmless and/or indemnified therefrom and from any other proceedings and/or actions presently instituted and/or to be instituted in the future by the Commissioner of Labour and/or others, in connection with, Sun Cornel Textiles Limited and/or the Colombo Apothecaries' Company Limited. No sooner this was discovered and brought to the notice of Her Excellency the President, Her Excellency ordered that the implementation of the agreements should be halted forthwith.

On 27<sup>th</sup> June, 1995, a sum of Rupees 6,983,839.00 had been paid to Mr.Nihal Sri Ameresekere on the basis of the agreement and the recommendation of the Director, Internal Audit and Investigation of the Ministry of Finance. On 5<sup>th</sup> July a sum of Rupees 2,327,946.33 was received from Mitsui, Sri Lanka on behalf of Mitsui-Taisei, Japan, representing one-third of the above amount. All other aspects of the agreement have been suspended. Thank you, Mr.Deputy Speaker." (Emphasis is ours).

(i) I annex hereto marked "Z27I" true copies of pages 703 to 708 of the Parliamentary Debate (Hansard) Vol.100-No.5 and plead the same as part and parcel hereof.

29. (a) I further state that a shareholder instituted action in the District Court of Colombo Case No.4392/Spl., against Mitsui & Taisei and other Directors of HDL and obtained almost identical reliefs prayed for in Case No.3155/Spl. A copy of the Plaintiff in Case No.4392/Spl., is annexed hereto marked "Z28".

- (b) On a preliminary objection taken by some of the Defendants in that case, the said action was dismissed and the said shareholder/Plaintiff in that case had filed Petition of Appeal the matter is pending in the Court of Appeal.
- (c) I state that when the said Case No.4392/Spl., came up, Counsel for the Petitioner too objected to the said action being having and maintained.
- (d) The mala fide and fraudulent conduct of the Petitioner was further established in view of the Petitioner's conduct in objecting to Case No.4392/Spl., and further objecting on the basis that improper procedure had been followed. Case No.4392/Spl., was on the same and identical basis as that of the Petitioner's own Case No.3155/Spl., in which the Supreme Court had issued an Interim Injunction. However, when the said Case No.4392/Spl., came up, the Petitioner took up objections regarding the procedure.
30. (a) The Plaintiff in the said case No.4392/Spl., upon the said action being dismissed, filed another action in the District Court of Colombo bearing No.4447/Spl. A copy of the Plaint in Case No.4447/Spl., is annexed hereto marked "Z29" and pleaded as part and parcel hereof.
- (b) Some of the Defendants in that action No.4447/Spl., and some of the other Defendants in the said action 4447/Spl., filed objections and after hearing the action was dismissed in limine.
- (c) The Plaintiff in the said action has filed a Petition of Appeal and the same is pending.
- (d) The Petitioner in this action who was also a Defendant in the said Case No.4447/Spl., objected to the Court exercising jurisdiction and also associated himself with the preliminary objections taken by the other Defendants.
- (e) The basis upon which D.C.Colombo Case No.4447/Spl., was instituted was on identical grounds as in Case No.3155/Spl. Nevertheless, the Petitioner in this action though he was the Plaintiff in Case No.3155/Spl., objected to the maintainability of the D.C.Colombo Case No.4447/Spl.
- (f) Both in Case No.4392/Spl., and Case No.4447/Spl., the Plaintiffs in that case alleged that Mitsui & Taisei had committed a fraud and that the Supreme Court of this country had held that prima facie fraud has been established and therefore, there was no monies payable to Mitsui & Taisei and that no further payment should be made.
- (g) Notwithstanding these specific averments and the fact that the Plaintiffs in that case stated that they were relying on the facts and circumstances of Case No.3155/Spl., and as Case No.3155/Spl., had been fraudulently and improperly settled, it has become necessary to file Case No.4392/Spl., and Case No.4447/Spl. The Petitioner in this action who was a Defendant in both those cases insisted upon those actions being dismissed. I state that the Petitioner in this action manipulated these objections to be raised in the said two cases in order to ensure that he personally benefited out of the settlement Agreement.
- (h) In view of the purported settlement Agreement referred to hereinbefore, the Petitioner received a sum of over Rs.6.9 Million.

31. (a) As Mitsui & Taise were acting contrary to and in breach of the terms and conditions of the Preliminary Agreement and the Investment Agreement referred to above and in violation of the rights of Cornel & Co., Ltd., thereunder Cornel & Co., Ltd., believing that Mitsui & Taise would continue to violate the Preliminary Agreement and the Investment Agreement, filed action in the District Court of Colombo bearing No.4785/Spl., against Mitsui & Taise. A true copy of the Plaint in Case No.4785/Spl., is annexed hereto marked "Z30A" and pleaded as part and parcel hereof.
- (b) After a full inter partes inquiry and after Written Submissions were filed, the Learned Additional District Judge issued an interim injunction as prayed for in the Plaint in the said action. A certified copy of the Order is annexed hereto marked "Z30B" and pleaded as part and parcel hereof.
- (c) Mitsui & Taise have filed C.A.Application No.883/96 and C.A.L.A.No.325/96 to the Court of Appeal against the Order of the Learned Additional District Judge. A copy of the Petition in C.A.Application No.883/96 is annexed hereto marked "Z30C" and pleaded as part and parcel hereof. Cornel & Co., Ltd., has filed objections and the hearing is pending in the Court of Appeal. Mitsui & Taise and some others have violated the Interim Injunction and the Plaintiff has filed contempt proceedings both in the District Court and in the Court of Appeal and the Contempt application are also pending.
32. (a) Cornel & Co., Ltd., also filed action in the District Court of Colombo bearing No.4791/Spl., against B.C.Perera, Secretary to the Treasury and obtained an Enjoining Order in terms of the prayer to the Plaint from, inter alia, voting at the purported Extraordinary General Meeting. A true copy of the Plaint in Case No.4791/Spl., is annexed hereto marked "Z31A" and pleaded as part and parcel hereof.
- (b) The Defendant in D.C.Colombo Case No.4791/Spl., moved that the Enjoining Order be vacated. After inquiry, the Learned Additional District Judge refused to vacate the Enjoining Order and the Enjoining Order is still operative.
- (c) The Defendant in the said Case No.4791/Spl., filed C.A.Application No.19/97 and C.A.L.A. No.334/96 both of which are pending in the Court of Appeal. True copy of the Petition in C.A. Revision Application No.334/96 is annexed hereto marked "Z31B" and pleaded as part hereof.
- (d) The Defendant in Case No.4791/Spl., has filed Statement of Objections and the inquiry into the application for Interim Injunction is pending.
33. (a) Cornel and Co. Ltd., also instituted action in the District Court of Colombo bearing Case No.5095/Spl., against Mitsui & Taisei, Honourable Attorney General representing the Government of Sri Lanka, Mr.N.S.Amerasekere (Petitioner in this action) and HDL. A certified copy or true copy of the Plaint is annexed hereto marked "Z32A" and pleaded as part and parcel hereof.
- (b) The application for Enjoining Order was supported and the Court being satisfied issued Enjoining Order.

- (c) The Defendants filed objections and after inquiry the Learned District Judge issued Interim Injunction. A certified copy or true copy of the Order issuing the Interim Injunction is annexed hereto marked **“Z32B”** and pleaded as part and parcel hereof.
- (d) Mr.K,Kanag-Isvaran, P.C. who appeared for Mr.N.S.Amerasekere alleging fraud and fraudulent conduct on the part of Mitsui & Taisei in Case No.3155/Spl., and who established that there was a prima facie fraud by Mitsui & Taisei appeared in Case No.5095/Spl., for Mitsui & Taisei. At that stage Mr.K,Kanag-Isvaran, P.C. was also a Director of HDL.
- (e) The Interim Injunction that was prayed for and issued by the Learned District Judge is as follows:-
- “(j) for an Interim Injunction until the final determination of this action restraining the Government of Sri Lanka and its servants or agents including the Secretary to the Treasury and the nominee Directors on the Board of Directors of HDL from implementing and/or giving effect to any and/or all of the terms and/or provisions of the ‘purported Agreements’ filed marked “P36”, “P37”, “P38” and “P39”;
- (k) for an Interim Injunction until the final determination of this action restraining the 1st, 2nd, 4th and 5th Defendants and the Government of Sri Lanka their servants, agents and all other representatives including their nominee Directors on the Board of Directors of HDL from implementing and/or giving effect to any and/or all of the terms and/or provisions of the ‘purported Agreements’ filed marked “P36”, “P37”, “P38” and “P39”;
- (f) By the said Interim Injunction Cornel and Co. Ltd., restrained the implementation of the purported settlement Agreements “Z22”, “Z23”, “Z24” and “Z25” referred to hereinbefore.
- (g) From the Order issuing the Interim Injunction separate Leave to Appeal and Revision Applications were filed by -
- (i) Mitsui & Taisei jointly;
- (ii) Honourable Attorney General representing the Government of Sri Lanka;
- (iii) Mr.N.S.Amerasekere and HDL together.
- (h) When the aforesaid Court of Appeal Applications (in all 6 matters) came up for support and inquiry, it was contended, inter alia, on behalf of the Petitioner in this action that the injunction should be vacated and that in any event payment should be made to Mitsui & Taisei in terms of the settlement Agreement.
- (i) It was also contended on behalf of the Petitioner, Mr.N.S.Amerasekere that unless payments were made Japanese funding will not be given to the Government of Sri Lanka and insisted upon the Enjoining Order being vacated insofar as even to facilitate the payments in terms of the purported settlement Agreement.



- (j) Their Lordships having heard submissions delivered judgment confirming the Interim Injunction that was issued. However, made order allowing payments to be made to the Japanese in terms of the purported settlement Agreement. A certified copy of the Order issued by Their Lordships of the Court of Appeal is annexed hereto marked "Z32C" and pleaded as part and parcel hereof.
- (k) Being dissatisfied from the said Order of Their Lordships of the Court of Appeal, Special Leave Applications had been filed by the following persons to the Supreme Court:-
- (i) Mitsui & Taisei jointly;
  - (ii) Honourable Attorney General representing the Government of Sri Lanka;
  - (iii) Mr.N.S.Amerasekere and HDL together.
- (l) These Special Leave Applications are still pending.
34. I state that Cornel and Co., Ltd., also instituted action in the Commercial High Court bearing Case No.1/98(2). A certified copy of the Plaint in the said case is annexed hereto marked "Z33" and pleaded as part and parcel hereof. The said action is also pending.
35. (a) I state that the Petitioner who has no right whatsoever to get involved and/or participate in the management and control of HDL in his own right has held the Government, Mitsui & Taisei and the investors to ransom and without disclosing the correct facts and/or misleading the parties, forced the Government and the other parties to enter into the 4 purported agreements referred to above. (Referred to as the "purported Agreements").
- (b) It is subsequent to purportedly entering into the said agreements, that the Government had realised and discovered that the said agreements had committed the Government to number of obligations of an unacceptable nature. In fact a sum of Rs.6,983,839.00 had been paid to the Petitioner by the Government, Mitsui & Taisei and HDL as costs of the said action No.3155/Spl, which was filed on the basis of alleged fraud on the part of Mitsui and Taisei and that no money whatsoever is due to them and all monies paid should be returned and further that the Government Guarantee is invalid. However, the said actions were not proceeded with and were withdrawn and dismissed. I state that the very institution of the said action No: 3155/Spl., itself was a fraud on the shareholders of HDL, the public and the Government as the Petitioner represented that it was a public interest litigation when in fact it was not so but an illegal and wrongful strategy to gain personal advantage and benefits for himself. The Company, the shareholders and the Government of Sri Lanka did not benefit by the purported Agreements.
- (c) I state that the manner in which the said settlement agreements were placed before the Board of Directors of HDL on the 28th of June 1995 at a hurriedly convened meeting without proper notice and an agenda in my absence as Chairman and Managing Director, and Mrs.T.P.Perera (the two Nominee Directors of Cornel & Co., Ltd.) and also in the absence of Romesh de Silva, P.C., Director representing the public shareholders and purportedly concluded amply demonstrate the mala fide and fraudulent intention of the parties to the said agreements and that they were acting for their personal benefit and advantage on the false pretext of public interests and best interests of HDL and its shareholders.

36. (a) I state that the said Special Leave having been granted from the Order of Their Lordships of the Court of Appeal in C.A.Application Nos.721/99, 728/99 and 731/99. The said Special Leave numbers in respect of the Appeal being granted were S.C. Application Nos.99/99, 100/99, 101/99, 102/99, 103/99 and 135/99.
- (b) The said Supreme Court Appeal came up from time to time in the year 2005 to ascertain whether the parties were able to negotiate a settlement.
- (c) I state that Mitsui & Taisei, the Government of Sri Lanka and I had negotiated a settlement. When the Petitioner became aware that there was a settlement to be reached the Petitioner intervened and objected to the Government of Sri Lanka entering into such settlement.
- (d) However, the settlement process on behalf of the Government of Sri Lanka was referred to a Cabinet appointed Negotiating Committee. Subsequent to the Cabinet appointed Negotiating Committee having submitted the Terms of Settlement, the Secretary, Ministry of Finance had suggested a settlement. When these terms were brought to the attention of Their Lordships of the Supreme Court, His Lordship the Chief Justice on 10<sup>th</sup> October, 2005 having recognised the main players in the dispute were the Government of Sri Lanka, Mitsui & Taisei and Cornel and Co., Ltd., suggested a formula of settlement. His Lordship the Chief Justice according to the formula suggested by him, among other matters, stated as follows:-

“The next aspect to be considered is the interest of Cornel. The services of Cornel in promoting the investment has to be appreciated since it took place as noted above soon after the ethnic conflict in 1983. Therefore a certain percentage of shares would necessarily be retransferred to Cornel by Government. The recommendation of the CANC is for a retransfer of 1½% shares of the restructured capital which amount has been increased to 10% by the Secretary to the Ministry of Finance in recommendation suggested by him. The Court does not expect Cornel to agree to such a settlement. In the circumstances it is suggested that the Government will transfer less than 20% of the shares (about 19%) to Cornel which would be accepted in full and final settlement and all claims.”

- (e) A certified copy of the proceedings of 10<sup>th</sup> October, 2005 of Their Lordships' Court in S.C.Application Nos.99/99 - 103/99 is annexed hereto marked as **“Z34”** and pleaded as part and parcel hereof.
- (f) Their Lordships also recognized the professional input by Mr.N.S.Amerasekere, the Petitioner in this application and stated at page 7 of the said proceedings as follows:-

“The next interest is of Mr.Nihal Sri Amerasekere who arranged the restructure of the loan with a write off of a certain percentage of loan at the time the payments were rescheduled. Under the agreement, already Rs.7 million has been paid to him. In the circumstances Mr.Nihal Sri Amerasekere could compute the value of his professional input and submit to the Treasury a reasonable claim.”

- (g) On 10<sup>th</sup> October, 2005 Mr.Nihal Sri Amerasekere was a Director of HDL as well as the Chairman of PERC.

- (h) Subsequently, Mr.Nihal Sri Amerasekere made representations and had made an exorbitant amount of claim from the Secretary to the Treasury.
  - (i) When the amount claimed by Mr.Nihal Sri Amerasekere was brought to the attention of Their Lordships' Court, His Lordship the Chief Justice in open Court informed the Mr.K,Kanag-Isvaran, P.C. who was appearing for Mr.Nihal Sri Amerasekere that Mr.Nihal Sri Amerasekere's claim was improper and that he would be dealt with as he is the Chairman of PERC and being in such a position to make these claims.
  - (j) Immediately after the adjournment of proceedings, Mr.Nihal Sri Amerasekere resigned from the Board of Directors of HDL as well as from the PERC and all other positions he held.
  - (k) Thereafter, Mr.Nihal Sri Amerasekere, the Petitioner had made representations to the Secretary to the Treasury who increased the percentage from 1½% as suggested by CANC to 10% and reduced the percentage as suggested to Cornel and Co., Ltd., to 4%.
  - (l) In view of the change stance taken by the Secretary to Treasury which was at the instance of the pressure exerted by the Petitioner, Cornel and Co., Ltd., informed Their Lordships that they were not in position to accept 4% as suggested by the Secretary to Treasury. However, the parties nevertheless informed that they would consider an appropriate settlement and negotiations were being carried out to arrive at a mutual settlement.
  - (m) I state that every attempt made by the parties to enter into a settlement was obstructed and prevented by the Petitioner for his personal gain. Thus, the Petitioner's conduct is improper.
37. Subject to the aforesaid and subject to the matters stated hereinafter, I deny all and singular the several matters stated in the Petition of the Petitioner and the purported verifying Affidavit.
38. I admit paragraphs 1, 2 and 3(a) of the Petition of the Petitioner.
39. Replying paragraph 5 of the Petition, I state that the 70,000 shares in the name of the Petitioner were gifted by me to the Petitioner when the Petitioner was working for my Company, Corn & Co., Ltd.
40. (a) The Petitioner has signed as a subscriber as I who incorporated the Company HDL and I who wanted him to sign the said Memorandum & Articles of Association.
- (b) I further state that whilst the Petitioner was a Director of HDL as referred to in the Petition, the Petitioner manipulated the activities of HDL for his benefit.
- (c) I reiterate that the Petitioner resigned from the Board of Directors of HDL after Their Lordships of the Supreme Court made their observations in Court as hereinbefore set out.
41. I specifically deny the matters pleaded in paragraph 8(c) of the Petition. I further state that HDL in view of the purported settlement entered into was not in a position to redevelop itself in view of the commitments which were thrust upon HDL by the Petitioner.

42. (a) I specifically deny the matters stated in paragraph 12(a) of the Petition. What I have set out in paragraphs 56 and 59 of the Affidavit in Case No.4414/Spl., is that in view of the findings in Case No.3155/Spl., there was a probability that the fraud will be established.
- (b) Notwithstanding the findings of Their Lordships' of the Supreme Court of the alleged fraud by Mitsui & Taisei to the Petitioner went against the findings of Their Lordships and purported to settle the dispute and entered into a settlement Agreement by which the Petitioner benefited and gained enormously.
43. (a) With regard to the Special Presidential Commission the Petitioner was always making ex-parte statements and gave wide publicity to such ex-parte statements. The evidence of the Petitioner was never tested under cross-examination.
- (b) To date none of the allegations of the Petitioner with regard to the Hilton project has been tested under cross-examination. In none of the cases the Petitioner has gone to trial. In none of the cases the Petitioner has given evidence to substantiate any of the claims of the Petitioner.
- (c) Even at the Special Presidential Commission the cross-examination of the Petitioner had not concluded. However, the Special Presidential Commission had a natural death.
44. I state that the Petitioner manipulated all the matters with regard to the Hilton project and had at all times been misleading the Directors, Public and the Special Presidential Commission.
45. (a) Subject to the aforesaid, I deny the matters pleaded in paragraphs 3(b) to 24(f).
- (b) I further state that the Petitioner is not entitled to have and maintain this application.
46. The Petitioner has not come into Court with clean hands.
47. The Petitioner has deliberately and fraudulently suppressed and misrepresented material facts from Court with the object of misleading Court.
48. The Petitioner has no status and has no standing and/or locus standi to have and maintain this application in law.
49. I further state that the purported application of the Petitioner to wind up HDL one of the best hotels in Sri Lanka is not only a mala fide attempt but is a fraudulent attempt to advance his personal objectives.
50. I further state that no benefit will accrue by a winding up order being made.
51. In any event, I state that winding up is not the most appropriate remedy in respect of the matters stated in the Petition and there are alternate remedies available to the Petitioner.

52. (a) I further state that the Petitioner had been a Director from October, 1994 to November, 2005.
- (b) I further state that although the Interim Injunction was issued preventing any payment being made to Mitsui & Taisei, the Petitioner was instrumental in moving for payment being made.
- (c) Consequent to such steps taken among others by the Petitioner or by the Petitioner's Lawyer who was then in the Board of Directors, an application was made for violation of the Interim Injunction and contempt proceedings are pending.
- (d) If the Petitioner supported Cornel and Co., Ltd., with regard to non-payment of monies to Mitsui & Taisei, there would not have been the present outstanding to the Government of Sri Lanka.
53. I specifically plead that the present position of HDL had created an occasion in view of the wrongful, improper, mala fide and fraudulent conduct of the Petitioner.
54. I further state that there exists no reasons whatsoever to wind-up the Company, HDL.
55. It is not just and equitable to wind-up the Company, HDL.
56. I pray that the Petition of the Petitioner be rejected and dismissed with costs.

Read over, sworn to and signed by the)  
Deponent abovenamed at Colombo on)  
this 17<sup>th</sup> day of May, 2007. )

Sca

BEFORE ME

Sy.

JUSTICE OF THE PEACE

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TRUE COPY

