

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

Case No : 217/C.O.

and

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

NIHAL SRI AMERESEKERE of
No.167/4, Vipulasena Mawatha,
Colombo 10.

PETITIONER

WHEREAS we on 27.7.2007 tendered to Your Honour's Court 4 separate Counter-Affidavits of the Petitioner all dated 26.7.2007, with copies to the respective parties.

AND WHEREAS one of the said Counter-Affidavits was in respect of the purported Statement of Objections dated 10.5.2007 and Affidavit dated 9.5.2007 of Dr. Punchi Bandara Jayasundera, Secretary, Ministry of Finance & Planning.

AND WHEREAS in the midst of affirming to and declaring the aforesaid 4 separate Counter-Affidavits, the Petitioner had inadvertently missed to directly deal with a materially misleading false averment in the Affidavit of the said Dr. Punchi Bandara Jayasundera, Secretary, Ministry of Finance & Planning.

WHEREFORE in the given circumstances, we tender herewith an additional Affidavit of the Petitioner dated 30.7.2007 and respectfully Move that Your Honour's Court be pleased to accept the same to be read, construed and treated as part and parcel of the aforesaid Counter-Affidavit of the Petitioner dated 26.7.2007 tendered to Your Honour's Court on 27.7.2007.

On this 30th day of July 2007

V. W. Amarasiri Associates

Attorneys-at-Law for the Petitioner

Copies of this Motion and Affidavit having been forwarded by Courier (due to today's postal strike) to the State Attorney representing the said Dr. Punchi Bandara Jayasundera, Secretary, Ministry of Finance & Planning, the Courier Slip is annexed hereto and further copies would be forwarded by Register Post.

V. W. Amarasiri Associates

Attorneys-at-Law for the Petitioner

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PETITIONER

Additional Counter-Affidavit to Purported Statement of Objections & Affidavit of Secretary, Ministry of Finance & Planning, Dr. P.B. Jayasundera

I, NIHAL SRI AMERESEKERE of 167/4, Vipulasena Mawatha, Colombo 10 in the Democratic Socialist Republic of Sri Lanka, being a Buddhist, do hereby solemnly, sincerely and truly affirm and declare as follows:

1. a) I am the Affirmant above-named and the Petitioner in the above Application, and affirm to the facts herein contained from my personal knowledge and belief and from documents available with me.
- b) I had affirmed and declared an Affidavit on 26.7.2007, which was tendered to Your Honour's Court on 27.7.2007, countering the averments in the Affidavit dated 9.5.2007 of Dr. Punchi Bandara Jayasundera, Secretary, Ministry of Finance & Planning (hereinafter referred to as "P.B. Jayasundera") purporting to be an "Intervenient-Party", tendered in support of his purported Statement of Objections dated 10.5.2007 and submitted to Your Honour's Court, together with a Motion also dated 10.5.2007, signed by the State Attorney on his behalf, as an "Intervenient-Party".
2. a) On the said date 26.7.2007, I had to declare and affirm to 4 separate Affidavits to counter the Affidavits of 4 different parties, and in the midst of which, I had inadvertently missed to directly advert to a materially misleading false averment in the said Affidavit dated 9.5.2007 of P.B. Jayasundera.
- b) Therefore, I am affirming to and declaring this Additional Affidavit to specifically deal with the said materially misleading false averment made on Oath by P.B. Jayasundera, and I respectfully move that Your Honour's Court be pleased to accept this Additional Affidavit to be read, construed and treated as a part and parcel of my Affidavit dated 26.7.2007, tendered to Your Honour's Court on 27.7.2007.



3. a) In the Affidavit dated 9.5.2007 of P.B. Jayasundera at paragraph 19 (vi) he had stated on Oath thus:

“19 (vi) The Government had given an undertaking to HDL not to demand repayment until Mitsui and Taisei are paid in full as per the Settlement Agreement No. 1 dated 28th June 1995”

b) The aforesaid averment in paragraph 19 (vi) has been immediately preceded by averments in paragraph 19 (v), wherein P.B. Jayasundera had adverted to a Cabinet Decision of 24.1.2007 (G3) on the basis of a Cabinet Memorandum of 21.1.2007 (G2), pleading therewith Documents marked G2 and G3, copies of which are annexed hereto for easy reference of Your Honour's Court.

c) By stating in paragraph 19 (vi) as aforesaid, that Government had given the aforesaid undertaking to HDL, immediately after paragraph 19 (v), P.B. Jayasundera had knowingly and deliberately attempted to mislead Your Honour's Court that the Cabinet of Ministers had in fact given approval for such an undertaking to have been given by the Government to HDL.

d) In the absence of any such Cabinet Decision, no such undertaking as averred in paragraph 19 (vi) could have been given by the Government to HDL, as so stated on Oath by P.B. Jayasundera to Your Honour's Court.

e) In examining the Cabinet Memorandum dated 21.1.2007 (G2) and the Cabinet Decision dated 24.1.2007 (G3), it is revealed that, neither had Cabinet Approval been sought for any such undertaking from the Cabinet of Ministers, nor had the Cabinet of Ministers given any such approval, whatsoever, for any such undertaking to have been given by the Government to HDL.

4. a) Hence, without any Cabinet Approval, whatsoever, there could not have been any such undertaking given by the Government to HDL, as stated on Oath by P.B. Jayasundera.

b) Thus and thereby, P.B. Jayasundera had knowingly and wilfully made a materially misleading false statement on Oath, with the deliberate intent to mislead Your Honour's Court, for reasons best known to him.

The foregoing Affidavit having been read over and explained by me to the affirmant thereof and he having admitted to have understood the contents thereof affirmed to and signed at Colombo on this 30th day of July 2007



BEFORE ME

[Signature]

JUSTICE OF THE PEACE

True Copy

v/w Anurathne Associates 2

Attorneys at Law Petitioner 2007/7/30



S. NAVARTANAM
Justice of the Peace
No. 25/10, Wipulasena Mawatha,
Colombo - 10.

[Signature]