

# 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 / CO

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**

On this 23<sup>rd</sup> day of May 2012.

The **Statement of Objections of the Petitioner** abovenamed appearing by Yamuna Balasuriya and Wijayalakshmi Deepani Niroshini Wijesekera Attorneys-at-Law, practising under the name, style and firm of V.W. KULARATNE ASSOCIATES their Attorneys-at-Law states as follows:

1. These Objections, as per direction of Your Honour's Court, are to the two Motions submitted on 15.3.2012 by the Senior State Counsel.
2. The said two Motions do not constitute and cannot be recognised, as lawful applications made to obtain an Order from Your Honour's Court and therefore ought be rejected *in-limine*.
3. The said two Motions have suppressed pertinent facts and transgressions stated herein, since the commencement of these Winding-up Proceedings on 17.11.2006.
4. A lawful application has to be by Petition, supported by an Affidavit, in seeking an Order from Your Honour's Court.
5. The Petitioner, as a Shareholder of the Company, subject to these Winding-up Proceedings, filed his Petition on 17.11.2006.
6. Therefore, the rights in these Winding-up Proceedings are attached to the Petitioner's Shareholding.
7. The Petitioner's Shares had not been vested in the Competent Authority, as per Section 3 of Act No. 43 of 2011, as stated in the aforesaid two Motions.
8. In terms of Section 277 of the Companies Act No. 7 of 2007, the winding-up of a Company shall be deemed to have commenced at the time of presentation of the Petition for winding-up, which was on 17.11.2006.
9. The Company continues to be a public Company, which is governed by the provisions of the Companies Act No.7 of 2007.

10. The Capital of the Loans advanced by the Government to the Company had amounted to Rs. 4,435,986,893/-

Date of Loan	Amount Rs.	Int. Rate
01.07.97	288,567,631	12.50%
07.07.99	469,742,070	12.50%
03.07.00	464,427,826	12.50%
03.07.01	360,618,876	18.56%
03.07.02	446,803,874	12.50%
01.07.03	340,024,378	9.40%
01.07.04	395,658,959	8.59%
30.06.05	225,639,338	10.28%
30.06.06	157,555,617	11.61%
30.06.07	344,772,738	18.77%
30.06.08	456,077,609	20.59%
28.12.10	<u>486,097,977</u>	8.39%
Total	<u>4,435,986,893</u>	

11. The Balance Sheet of the Company as at 31.3.2010 had included interest at the aforesaid rates, compounded annually.
12. By Letter dated 3.5.2011 the Government had required the Company to repay the Loans advanced to the Company, claiming an amount to Rs. 12,098,634,769/77.
13. Section 5 of the Civil Law Ordinance mandates that the interest shall not exceed the Capital.
14. In terms of Section 364, read with Section 277 of the Companies Act No. 7 of 2007, no interest is payable by and/or chargeable from the Company, after the Petition for Winding-up of Company had been presented on 17.11.2006.
15. Section 219 of the Companies Act No. 7 of 2007, which came into force on 3.5.2007 mandated the winding-up of the Company, and made the Directors personally liable for the debts of the Company.
16. Cabinet Memorandum of 21.1.2007 of the Ministry of Finance & Planning at paragraph 2 thereof had stated that the Company has not had the resources to make Loan repayments.
17. In addition, Section 375 of the Companies Act No. 7 of 2007 prohibits the fraudulent trading by a Company, making Directors personally liable for its debts.
18. Where 50% of the Share Capital of a Company is eroded, in terms of Section 220 of the Companies Act No. 7 of 2007, the Directors are bounden in duty to call for an Extra-ordinary General Meeting, to *inter-alia* explain the extent of losses, causes therefor, and steps being taken to recoup the losses.
19. In the case of the Company, the entire Share Capital had been eroded, but nevertheless its Directors had failed to comply with the mandatory provisions of Section 220 of the Companies Act No. 7 of 2007.

20. Section 275 of the Companies Act No. 7 of 2007 mandates that in a winding-up by the Court, which is this instance commenced on 17.11.2006, any disposition of property of the Company or transfer of Shares or alteration thereof after the commencement of the winding-up shall be void, unless the Court otherwise orders.
21. Section 187 to 190 of the Companies Act No. 7 of 2007 stipulates the 'Duties of Directors' and Section 188 thereof prohibits a Director from acting or agreeing to act in contravention of any provisions of the said Act.
22. Hence, the Government Directors of the Company, who exercised management control of the Company had acted in blatant violation of the Companies Act No. 7 of 2007 and are personally liable for the debts of the Company, whether to the Government or otherwise. If it is to the Government, then it is to the public.
23. Directors of the Company appointed by the Government, who held Office after the winding-up Petition was filed on 17.11.2006, and who exercised the management control of the Company, with the Government being a 64% Shareholder of the Company have been as follows:
  - T. Nadesan, Chairman, from 12.5.2010
  - N. Rajabdeen, Chairman, resigned on 21.5.2010
  - V. Kanagasabapathy
  - K.V.N. Jayawardene
  - T. Wickramasuriya
  - N. Warusuvitharana
  - K. Wickramanayake
24. It is indeed appalling that the statutory law had been blatantly violated by Government nominated Directors, who controlled the Company.
25. The aforesaid two Motions dated 15.3.2012 had been submitted in a deliberate intent to surreptitiously cover up the foregoing misdemeanours and contraventions of the provisions of the Companies Act No. 7 of 2007 being disclosed in these Winding-up Proceedings.
26. In terms of Rule 11 of the Supreme Court (Conduct of and Etiquette for Attorneys-at-Law) Rules 1988, an Attorney-at-Law is prohibited from accepting any professional matter, which would involve him in the commission or in the furtherance of the commission of an offence.
27. In comparison to the foregoing excessive and/or unlawful Claim made by the Government of Rs. 12,099 Mn., from the Company, the write-off obtained by the Petitioner on Claims on the Company under State Guarantees, through his sole sustained efforts, amidst obstructions and pressures, including from the Secretary, Ministry of Finance and Attorney General, amounted to US \$ 207 Mn., in June 1995, then equivalent to SL Rs. 10,200 Mn., and would have amounted to Rs. 70,703 Mn. as at May 2011, at an interest of 13% p. a., (average charged by the Government as aforesaid).
28. The Affidavit of the Petitioner in support of the averments contained herein is annexed.

**WHEREFORE** the Petitioner respectfully prays that Your Honour's Court be pleased to make order:

- a) rejecting *in-limine* the two Motions submitted on 15.3.2012 by the Senior State Counsel,

- b) declaring that the Winding-up Proceedings of the Company as per Section 277 of the Companies Act No. 7 of 2007 had commenced on 17.11.2006 upon the filing of the Winding-up Petition by the Petitioner,
- c) declaring that the Company was governed and was obligated in law to comply with the provisions of the Companies Act No. 7 of 2007,
- d) declaring in terms of Section 275 of the Companies Act No. 7 of 2007 that any conversion of the Loans of the Company into Share Capital shall be void,
- e) declaring that the Directors of the Company referred to at paragraph 22 of this Statement of Objections had acted in contravention of the provisions of the Companies Act No. 7 of 2007,
- f) declaring that the Directors of the Company are not fit and proper persons to hold Office as Directors of the Company or any other public Company
- g) declaring that the Directors of the Company referred to at paragraph 22 of this Statement of Objections are jointly and severally liable for the debts of the Company, in excess of the assets of the Company as at 17.11.2011 the date of commencement of Winding-up Proceedings,
- h) directing that the debts of the Company, in excess of the assets of the Company as at 17.11.2011 the date of commencement of Winding-up Proceedings be recovered from the Directors of the Company referred to at paragraph 22 of this Statement of Objections,
- i) directing that the interest paid and/or incurred by the Company after the commencement of Winding-up Proceedings on 17.11.2006 be recovered from the Directors of the Company referred to at paragraph 22 of this Statement of Objections,
- j) directing that the monetary amounts referred to at prayers g), h) and i) above be disclosed to Your Honour's Court
- k) granting costs, and
- l) granting such other and further reliefs as Your Honour's Court shall seem meet

*V. W. Kulavathne Arachchige*  
Attorneys-at-Law for the Petitioner.

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

PETITIONER

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 matter, and I affirm to the facts herein from my personal knowledge and belief and from documents available with me and on legal advice.
- b) My Statement of Objections, filed herewith is as per direction of Your Honour's Court, in respect of the two Motions submitted on 15.3.2012 by the Senior State Counsel.
2. I am advised to state that the said two Motions do not constitute and cannot be recognised, as lawful applications made to obtain an Order from Your Honour's Court and therefore ought be rejected *in-limine*.
3. I am advised to state that the said two Motions have suppressed pertinent facts and transgressions stated herein, since the commencement of these Winding-up Proceedings on 17.11.2006.
4. I am advised to state that a lawful application has to be by Petition, supported by an Affidavit, in seeking an Order from Your Honour's Court.
5. I state that I as a Shareholder of the Company, subject to these Winding-up Proceedings, filed my Petition on 17.11.2006.
6. Therefore, the rights in these Winding-up Proceedings are attached to my Shareholding.
7. I state that my Shares had not been vested in the Competent Authority, as per Section 3 of Act No. 43 of 2011, as stated in the aforesaid two Motions.
8. I am advised to state that in terms of Section 277 of the Companies Act No. 7 of 2007, the winding-up of a Company shall be deemed to have commenced at the time of presentation of the Petition for winding-up, which was on 17.11.2006.

9. I am advised to state that the Company continues to be a public Company, which is governed by the provisions of the Companies Act No. 7 of 2007.
10. I state that the Capital of the Loans advanced by the Government to the Company had amounted to Rs. 4,435,986,893/-

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28. I respectfully pray that your Honour's Court be pleased to grant the relief's prayed for in the Statement of Objections annexed hereto

The foregoing Affidavit having been read and understood by the Affirmant within-named and affirmed to and signed at Colombo on this 23<sup>rd</sup> day of May 2012



BEFORE ME

JUSTICE OF THE PEACE /  
COMMISSIONER FOR OATHS/  
NOTARY PUBLIC

G. N. M. M. M. M.  
Justice of the Peace (All Island)  
No 25/10 Mawatha, Mawatha,  
Colombo 10.  
Reg. No. 06/CMP/A/168

23/05/12