



# ICLP ARBITRATION CENTRE

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By Hand

7<sup>th</sup> February 2000

Walter Laduwahetty Esq.

M/s F.J. & G De Saram  
2<sup>nd</sup> Floor, State Bank of India Building  
31 2/1, Mudalige Mawatha  
P.O.Box No.212  
Colombo 1.

Nihal Sri Amarasekara Esq.  
No.167/4, Sri Vipulasena Mwt.  
Colombo 10.

Dear Sirs,

**Matter for Mediation Between**  
**Hotel Developers (Lanka) Ltd. and Mr. Nihal Sri Amerasekara, Director, HDL**

Please find enclosed herewith the proceedings of the above arbitration held on the 26<sup>th</sup> of January 2000.

Yours faithfully,  
ICLP ARBITRATION CENTRE

for Administrative Secretary.

c.c.K.Kanag-Isvaran Esq.

I.S.De Silva Esq.

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Matter for Mediation between  
Hotel Developers (Lanka) Limited  
and  
Mr. Nihal Sri. Ameresekere, Director HDL.

Date of mediation: 26/1/2000 - 4.15 p.m.

Mediator: Hon. Walter Laduwahetty.

Appearances: Mr. K. Kanag-Eswaran, P.C. with Mr. Harsha Cabraal for Claimant instructed by Ms. De Silva & Perera.

Mr. I.S. de Silva, appears for Respondent, instructed by M/s F.J. & G. de Saram..

Mr. Nihal Sri. Ameresekere is present.

Mr. Kanag-Iswaran: I would like to refer to the letter of 17th December 1999 written to you by M/s. F.J. & G. de Saram, representing Hotel Developers (Lanka) Limited. It is being identified as terms of reference Items 1 and 2. The purpose of meeting today is to hold a preliminary discussion as to how we should set about in the matter of this mediation. Speaking for myself, as I see it, perhaps I need to make available to the Mediator the factual circumstance surrounding the dispute between the parties as now coming for mediation, meaning thereby that I would suggest that if it is acceptable by all so that there may be some sanctity to what has been said, I might first prepare an affidavit giving the factual background of the matters that have been put forward for mediation from Mr. Amarasekera with necessary documents in support of what has been said. I believe there is some document circulated with a note which would largely be the basis of the documentation which will work into the affidavit.

Now I might mention that in respect of the first item for mediation arising out of the District Court of Colombo Case No. 15322/MR, Mr. Amarasekera has in that action made a claim in reconvention in a sum of Rs. 50,000,000/-. Plaintiff in that case was HDL. Defendant was Mr. Amarasekera. The cause of action relates to an allegation of professional negligence on the part of Mr. Amarasekera in respect of some tax matter concerning HDL in which it is alleged that the Company was prejudiced to the extent of some Rs. 26,000,000/- in respect of wrong advice given. As to whether it was right or wrong is another matter. We had a claim in reconvention saying that it is not so.

Then in respect of Item 2 in this letter I referred to earlier of 17th December 1999, complaints were made against Mr. Amarasekera to several professional bodies named there under the aegis of the Chairman and Managing Director of HDL and the others including letters sent to the President. That we say was baseless and malicious and of a defamatory nature and that no action has been filed by us in respect of that. Parties have agreed that also will be the subject matter of mediation. In the absence of a

formal claim having been made, Item 2, no quantification has been mentioned. All these matters I thought, I will put down in the form of an affidavit with documents as are necessary to support and place it before you so that you will understand for the purpose of mediation what our case is. Then I believe, on the other side, if need be, file affidavit.

Mr. de Silva: I will hand over my affidavit to my client and if they wish to file a counter affidavit they can do so. It is for them to decide.

Mr. Kanag-Eswaran: Between those two affidavits we will be able to see what the position is. Once you have ascertain that, I would also perhaps indicate in my affidavit what amount I am claiming in view of Item 2 so that you will have an idea of quantification also. We will indicate why we claim so much. Whatever the basis we will indicate that. They will deal with that and the balance will be an examination as to what are the matters the parties are at variance if any and how this could be adjusted to get a common factual basis and the task of assessing what has to be paid in respect of these matters. That seems to be the ambit and scope.

Mediator: I like this on record, the question I asked you earlier. It is common ground that the allegations have been admitted to be baseless and malicious.

Mr. Kanag-Eswaran: Yes, common documentation will support that. Then of course, we will have to indicate as to why it has been baseless and malicious. The documentation will bear that out. We will set out the basis on which we claim. That will involve the standing and reputation of my client. Would that be a sufficient arrangement?

Mediator: Are you satisfied with that?

Mr. de Silva: For a kick off, I think, that should do. This is an unusual type of matter for the reason that I have myself admitted that these allegations are baseless and malicious. This is what I was wondering, whether there is a contest at all on the quantum of damages. I just leave it to you to decide.

Mediator: The role of the Mediator is to get the two of you talking if you want to decide rather than me. I can help the parties to arrive at a concensus. There is no adjudatory arbitral aspect in this. Well, I do not have to decide.

Mr. de Silva: You will have to decide the question. What was agreed was that the quantum of compensation be agreed on, that the parties agree on a figure. My clients will agree on a figure. I don't think they will agree on a figure. That is why we leave the figure entirely to you to decide.

Mr. Kanag-Eswaran: If that be the wish of the parties we can record it and proceed.

Mr. de Silva: I will get further instructions. I am speaking without getting information from my clients.

Mr. Kanag-Eswaran: The word 'Mediator' is perhaps used in the loose sense here.

Mr. de Silva: Actual mediation is, you decide on the quantum.

Mediator: Can that be recorded, because I must know my role. In answer to my question both counsel are now agreed that the role of the Mediator in these proceedings is to eventually come to a decision as to the quantum of compensation that is payable to Mr. Amarasekera.

It is agreed that the affidavit of Mr. Amarasekera will be sent to the ICLP Centre on or before 29th February 2000 with copies to Mr. I.S. de Silva. Thereafter the affidavit of Hotel Developers (Lanka) Limited, it is agreed, will be sent on or before 31st March, 2000. Mr. Kanag-Iswaran states that he will submit supportive documents and if there need be to have any supportive evidence as to the professional standing of his client he will also submit affidavits in that behalf.

Date for meeting: 26/4/2000 at 5.00 p.m.

Walter Laduwahetty

Arbitrator *Hedwan*