

කොළඹ දිසා අධිකරණයේදීය.

කොළඹ ලෝටස් පාරේ, අංක.55,කොළඹ හිල්ටන් ක්‍රීඩා සංකීර්ණය බාරේ, හොටෙල් ඩෙවලපරස් (ලංකා)ලිමිටඩ් සමාගම පිළිබඳව වන කාරණය සම්බන්ධයෙන්

නඩු අංකය:217/සි.මි.

සහ

1982 අංක 18 දරන සමාගම් පනතේ IX කොටස යටතේ අධිකරණය විසින් ඇවර කිරීම සඳහා කරනු ලබන ඉල්ලීමක් පිළිබඳව වන කාරණය සම්බන්ධයෙන්

නිහාල් ශ්‍රී අමරසේකර,
අංක.167/4, විපුලසේන මාවත
කොළඹ 10.

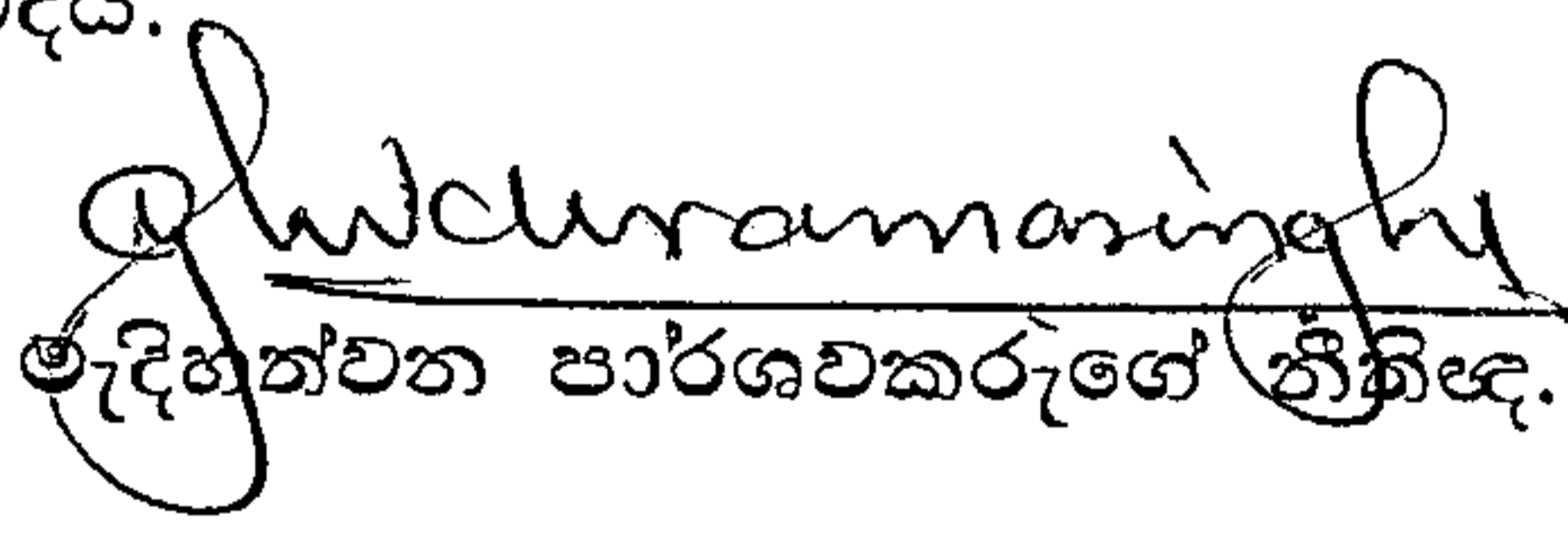
පෙත්සම් කරු

මේ සමග මුදල් අමාත්‍යාංශයේ ලේකම් පී.බී. ජයසුන්දර මහතාගේ දිවුරුම් පෙත්සම පි.1-පි.4 දක්වා ලකුණු කරනලද ලේඛණ (,දිවුරුම් පෙත්සමේ සිංහල පරිවර්තනයක් ද සමග) හා ඔහුගේ විරෝධතා ප්‍රකාශය ඉදිරිපත් කරන අතර ඒවා භාරගන්නා මෙන් ගරු අධිකරණයෙන් ගෞරවයෙන් ඉල්ලා සිටිමි.

තවද මා විසින් ගරු අධිකරණය වෙත දන්වා සිටින්නේ මෙම දිවුරුම් පෙත්සම ගොනු කිරීමට යම්කිසි ප්‍රමාදවීමක් සිදුවූණි නම් , ඊට හේතුවූයේ, හොටෙල් ඩෙවලපරස් සමාගමට අදාළ බොහෝ ලේඛන සහ ලිපිගොනු මේ වනවිට සොයා ගැනීමට නොහැකිවීම හේතුකොට ගෙන පෙත්සමෙහි සඳහන් කරුණු සහ සංඛ්‍යා පිළිබඳව වෙනත් මාර්ග වලින් සොයා ගැනීමට සිදුවීමය.

මෙම මෝසමෙහි සහ ඉහත සඳහන් ලියවිලිවල පිටපත් පෙත්සම්කරුගේ නීතිඥ වෙත ලියාපදිංචි කැපෑලෙන් යවා එකී අංක. හා දිනැති කුචිතාන්සිය මෙයට අමුණා වඇත.

වර්ෂ 2007 ක්වු මැයි මස 10 වන දින,
කොළඹදීය.


මැදිහත්වන පාර්ශවකරුගේ නීතිඥ.

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.

And

CASE No: 217/CO

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 AMARASEKERE of
No: 167/4, Vipulasena Mawatha,
Colombo 10.

PETITIONER

I, Dr. Punchi Bandara Jayasundera , Secretary, Ministry of Finance and Planning, being a Buddhist do hereby solemnly, sincerely and truly declare and affirm as follows:

1. I am the affirmant above named and file this affidavit for and on behalf of the government of Sri Lanka. I affirm to the following facts from my personal knowledge and from documents made available for my perusal and on instructions and advice received by me.
2. I have perused the petition and affidavit filed by the petitioner and deny all and singular the several averments contained in the Petition of the Petitioner and the corresponding paragraphs of the affidavit save and except those averments that are specifically admitted to hereinafter.
3. I admit the averments contained in paragraphs **1, 2, 3(a), and 5** of the Petition and corresponding averments in the affidavit.
4. Answering the averments contained in paragraph **3(b)** of the Petition and the corresponding paragraphs of the affidavit, I admit the issued share capital, the issuing of the shares and the nominal value stated therein and am advised to state that the rest of the averments contained therein requires legal interpretation /determination, thus deny the said averments and put the Petitioner to the strict proof thereof.

5. (i) I admit the averments contained in paragraph **4(a)** and documents marked therein and corresponding paragraphs of the affidavit.
- (ii) Answering the averments contained in paragraphs **4(b), 15(b), 21(b)** and **24(C)** of the Petition and the corresponding paragraphs of the affidavit, I admit documents marked **P2 (a)** and **P2 (b)** the Special Grant Instruments No 673 and 674 and state that the rest of the averments contained therein requires legal interpretation /determination, thus deny the said averments and put the Petitioner on strict proof thereof.
- (iii) Answering the averments contained in paragraph **4 (c)**, I am advised to state that the averments contained therein requires legal interpretation/ determination thus deny the said averments.
6. Answering the averments contained in paragraph **6** of the Petition and the corresponding paragraphs of the affidavit, I admit the filing of D.C. Colombo case No. 3155/ Spl. and document marked P4 and deny the remaining averments contained therein.
7. Answering the averments contained in paragraph **7** of the Petition and the corresponding paragraph of the affidavit, I admit the execution of the settlement agreement on 28th June 1995 and the writing-off of Japanese Yen 17,586 Million but state that the said write-off was in relation to the amounts due to the Japanese from HDL and not only on claims against the government on government guarantee as appearing in the Petition. I also admit documents marked P5 (a) and P5 (b) and state that the balance payment was to be paid in fifteen years up to year 2010 as per the settlement agreement and, deny the rest of the averments contained therein.
8. Answering the averments contained in paragraphs **8** and **10** of the Petition and the corresponding paragraphs of the affidavit, I admit DC Colombo Case Nos. 4392/Spl, 4447/Spl , 4413/Spl, 4414/Spl , 4785/Spl , 4791/Spl, and 5095/Spl and HC (civil) 1/98 (2) including the interim injunctions mentioned therein, and the averments contained in paragraph **10 (d)** thereof and deny the remaining averments contained therein as I have no personal knowledge of them.
9. Answering the averments contained in paragraph **9** of the petition and the corresponding paragraph of the affidavit I admit that the audited Annual Accounts have not been circulated since March 1990 and that HDL shares are currently trading in the "Default Board" and state that I am unaware of the remaining averments stated therein and put the Petitioner on strict proof thereof. I further state that the reason for shares being traded in the "Default Board" is primarily due to the non submission of accounts which was an impediment caused as a result of litigation and not due to the hopelessly bankrupt position of the HDL as alleged by the Petitioner.

10. I am unaware of the averments contained in paragraph **11** of the Petition and the corresponding paragraph of the affidavit.
11. Answering the averments contained in paragraphs **12 and 13** of the Petition and the corresponding paragraphs of the affidavit, I admit the filing of DC Colombo Case Nos. 4414/Spl and 5095/Spl and the averments contained in Paragraphs **13 (b) to (g)** and documents **P 10 (a), P 10 (b) P10(c)** attached thereof and deny the remaining averments contained therein. I also state that the committee appointed in August 2004 did not submit a final report and the work of the committee ceased in view of the Hon Chief Justices direction to explore a settlement between the parties. I further state that the document marked **P 9** does not contain a signature.
12. Answering the averments contained in paragraph **14, 15(a) 18, 19, 20, 22 and 23 (a)** of the Petition and the corresponding paragraphs of the affidavit, I admit documents marked **P 11, P 13 (a) to (g)** stated therein. I further state that document marked **P11** is only a proposal submitted to facilitate restructuring. Subsequently, the said proposal was modified both to restructure and to reach a finality in the existing cases filed by various parties, which was approved by the Cabinet on 5th October 2005. A copy of the said Cabinet decision is attached hereto marked **G1** and is pleaded as part and parcel hereof. I deny all facts stated in the remaining averments contained in the aforesaid paragraphs, which are stated contrary to the admissions herein. I also state that the debts stated in P11 are not “defaulted” debts as alleged by the Petitioner.
13. I deny the averments contained in paragraph **16** of the Petition and the corresponding paragraph of the affidavit.
14. Answering paragraph **17** of the Petition and the corresponding paragraph of the affidavit, I state that I am unaware of the veracity of the statement contained therein.
15. Answering the averments contained in paragraph **21(a)** of the Petition and the corresponding paragraph of the affidavit I admit document marked **P14** and deny the remaining averments contained therein which are contradictory to the said document.
16. I deny the averments contained in paragraphs **23 (b), (c), (d) and (e)** of the Petition and the corresponding paragraph of the affidavit and I state that the steps that have been taken in order to restructure HDL were not a futile exercise as alleged by the Petitioner and as such there is no justification for winding up.
17. I categorically deny the averments contained in paragraph **24** of the Petition and the corresponding paragraph of the affidavit and put the Petitioner to strict proof thereof.

18. I specifically submit that in the absence of availability of annual audited accounts of HDL, it is detrimental to the interest of the shareholders, in particular the Government of Sri Lanka as the major shareholder and the public at large if any wind up order is made without the auditing of the Statement of Accounts and Your Honors Court perusing the said accounts.
19. Without prejudice to the foregoing, I state that;
- (i) the shareholding of the HDL company is approximately;

i. Secretary to the Treasury	65 %
ii. Japanese shareholders	27.5 %
iii. Public	7.5 %
 - (ii) Out of the 11 members of the Board of Directors of HDL 6 represent the government, 2 represent the Japanese shareholders, 2 represent Cornel and Company and 1 Board member is to be appointed at the AGM.
 - (iii) The government also has majority voting rights in the HDL Board of Directors thus decisions taken by the HDL Board are compatible with the government policy and *inter alia* in the interest of the government and public.
 - (iv) The shares were transferred to the government in order to comply with the Foreign Loans Act in providing the Guarantee to the Japanese creditors.
 - (v) As the major shareholder of HDL the present government policy is to oppose the winding up of HDL. The Cabinet of Ministers at its meeting held on 24th January 2007 approved the decision to oppose the winding up and to inform court that they approved the restructuring of HDL. A copy of the said Cabinet Memorandum dated 21st January 2007 and the cabinet decision thereon are attached hereto marked **G2** and **G3** respectively and pleaded as part and parcel hereof.
 - (vi) The Government has 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. A true copy of the said agreement is annexed hereto marked **G4** and is pleaded part and parcel hereof.
 - (vii) In view of the agreement marked **G4**, at present, HDL has no obligation to make payments to the government save as the provisions in paragraph 5 (e).

- (viii) The Government has not demanded from HDL the money due to it and thus at present there is no such sum of money in default or payable immediately to the Government of Sri Lanka by HDL. Therefore, the debt stated by the petitioner is merely a running debt.
- (ix) In the absence of published annual audited accounts of HDL, it would not be possible for court to determine whether it is just and equitable to wind up HDL.
- (x) I further state that winding up of HDL would be neither in the interest of justice nor of public interest.
- (xi) In the circumstances, I am advised to state that there does not exist just and equitable grounds for the winding up of HDL.

20. Without prejudice to the above position, I also state that;

- (i) The government has alternative remedies such as selling its shares in the market, restructuring HDL in accordance with the Cabinet decision marked G 3 or attracting new investors, than winding up HDL.
- (ii) The substratum of HDL still exists.

21. I am further advised to state that;

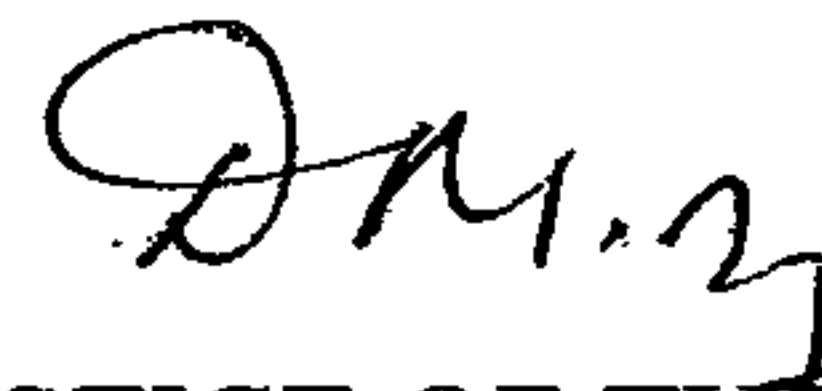
- i. The application to wind up is *mala fide* and/or, is made abusing the process of court and /or has been made for collateral purpose.
- ii. The Petitioner does not have locus standi to have and maintain this application in law.
- iii. the Petitioner has no basis whatsoever to maintain this action on the averments contained in the Petition and the corresponding averments of the affidavit
- iv. Court has no jurisdiction to grant the relief prayed for by the Petitioner.
- v. The Petitioner has not complied with the mandatory provisions of the law.
- vi. Since the filing of this application, HDL has suffered loss and damage, which affects the government as the major shareholder which in turn affects the confidence of the investors in the hospitality sector of Sri Lanka.
- vii. The Management agreement with Hilton International will expire on the 31st of December 2007 and the parties are currently negotiating favorable terms for its renewal. This winding up action has an adverse effect on the said negotiations which affects HDL and the Government.

22. In the circumstances I strongly oppose the winding up of HDL and further state that the Petitioner is unreasonable in seeking to windup HDL and there exists alternative remedies to the winding up of HDL.
23. Without prejudice to the above, I also state that the Petitioner currently holds 70,000 shares, which only amounts to 0.15 % of the total issued share capital of HDL. As an alternative I state that the government could consider the purchasing of the said shares of the petitioner at the existing market price.
24. I also state that Hilton Hotel is managed by an Internationally reputed Hotel Chain and is a flagship hotel of Sri Lanka. It promotes corporate tourism, and it is the present policy of the government to ensure the continuance of The Hilton Hotel in Sri Lanka. I also state that, at present, the government is encouraging Foreign Direct Investment to the country for its economic development and winding up of HDL would affect the economy, foreign investments and the image of the country.
25. I state that most of the files and documents maintained relating to HDL are not currently traceable; hence I was compelled to find other means of ascertaining the veracity of the facts and figures contained in the Petition thus the delay, if any, in filing this affidavit in Your Honors court.

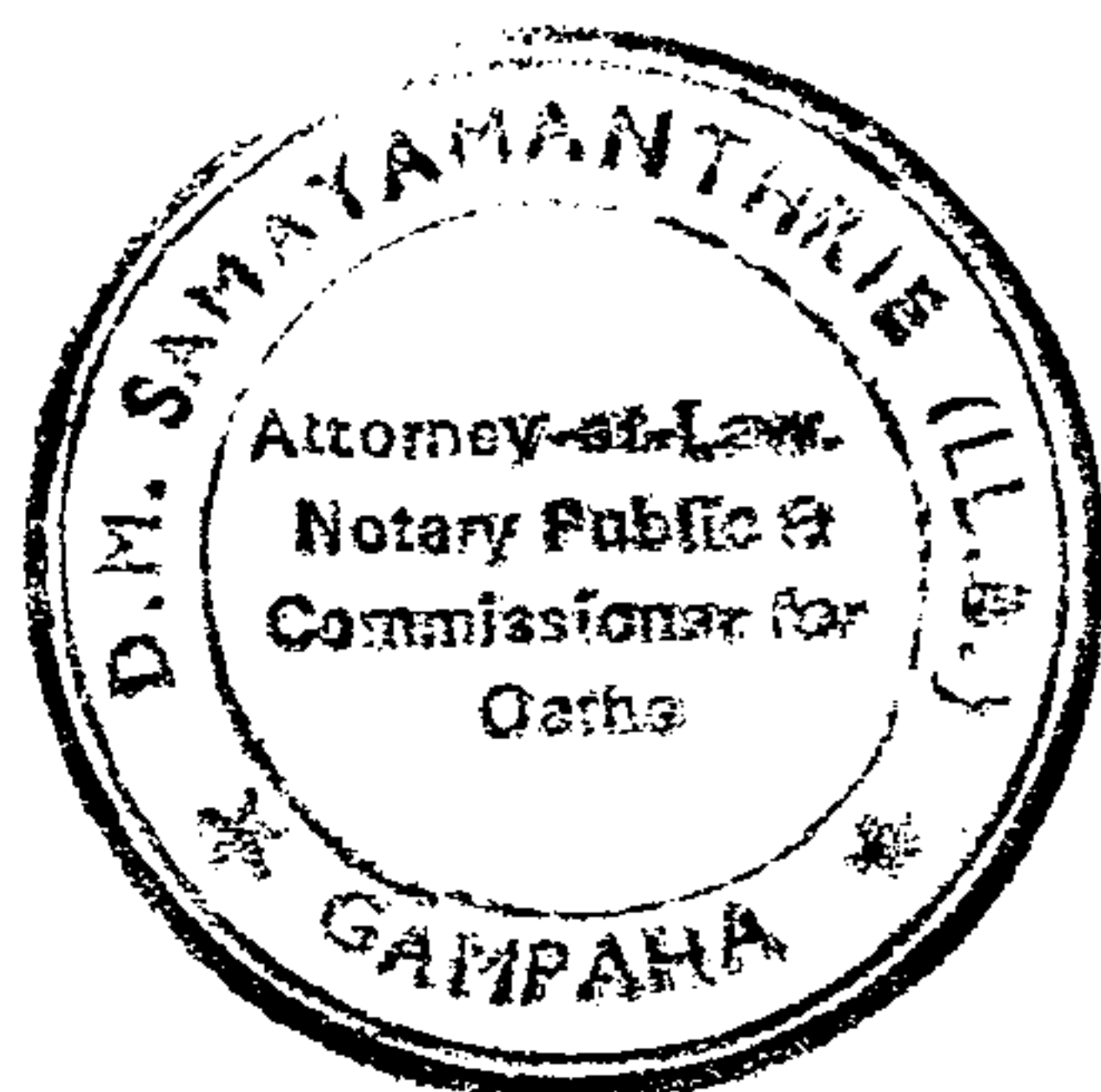
Read over and explained and understood)
 By the affirmant above named and)
 Affirmed to and signed at Colombo)
 on this 09th day of May 2007)



BEFORE ME,



JUSTICE OF THE PEACE/
 COMMISSIONER FOR OATHS.



TRUE COPY