

IN THE DISTRICT COURT OF COLOMBO

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

PLAINTIFF

No.3231/Spl.

- VS -

HOTEL DEVELOPERS (LANKA) LIMITED, formerly known as
LANKA JAPAN HOTELS LIMITED, and of No.16, Alfred Place,
Colombo 03, with an Operational Office at 1000, Echelon
Square, Colombo 1.

DEFENDANT

To: The Defendant Company abovenamed

(To be served through its registered Attorney-at-law Mr. T.G. Guneratne, Attorney-General's Department, Colombo 12 under Section 95 of the Civil Procedure Code).

Interrogatories on behalf of the Plaintiff abovenamed for the examination of the Defendant Company abovenamed

In terms of Section 94 of the Civil Procedure Code, you are required to Answer all of the following interrogatories within ten days of the service of same on you:

1.
 - i. Do you not admit that you were incorporated to promote, implement and operate a 5 Star Class International Hotel at Echelon Square, Colombo 1, to be managed by Hilton International of New York?
 - ii. Do you not admit that the aforesaid Hotel was promoted and constructed by you on a turnkey fixed-price basis, in collaboration with Mitsui & Co. Ltd. and Taisei Corporation both of Tokyo, Japan, with Kanko Kikaku Sekkeisha Yozo Shibata & Associates also of Tokyo, Japan (hereinafter sometimes called and referred to as the Japanese Architects) as the Architects of the said Hotel?
 - iii. Do you not admit that the said Mitsui & Co. Ltd. and the said Taisei Corporation (hereinafter sometimes called and referred to as the Japanese Collaborators) played many roles in the said Colombo Hilton Hotel Project, as Promoters named in the Prospectus, Shareholders, Directors with veto power of Board Decision, Signatories to the Prospectus, Sole Contractors, Suppliers and Lenders, with their Representative functioning as the full-time resident Executive Director of yours, managing your day to day administration and affairs ?
2.
 - i. At your Board Meeting, where the Annual Accounts for the Year Ended 31.03.90 were to be considered for the first time i.e. the Board Meeting held on 16.10.90, did not the Plaintiff, a then Director of yours submit a Memorandum dated 11.10.90 to your Board of Directors, requiring your Auditors i.e. M/s Ford, Rhodes & Thornton & Co., Chartered Accountants, (hereinafter sometimes called and referred to as the "Auditors") be requested, to examine the relevant connected matters in the context of D.C. Colombo Case No.3155/Spl. that had already been instituted by him on 13.09.90 and to forward a Report thereon to your Board of Directors?

- ii. Was the aforesaid examination carried out by the said Auditors and such Report forwarded? If not, why not? If yes, what were the findings of such examination and where is such Report?
 - iii. Did not the Plaintiff, similarly by another Memorandum also dated 11.10.90 addressed to your Board of Directors, point out that M/s Cornel L. Perera, K.N. Choksy, K. Ito and K. Koboi, your Directors were disqualified from participating in the deliberations at your Board of Directors, for reasons set out in the said Memorandum? Did they so participate? If so, how and why?
 3.
 - i. Did not the Plaintiff, as a Director of yours, at the next Board Meeting held on 30.10.90, table a Memorandum also dated 30.10.90, in relation to the said Annual Accounts of 31.03.90 and object to the adoption by your Board of Directors of the said Annual Accounts?
 - ii. Did not the Plaintiff, in the aforesaid Memorandum, also state, that he would hold each and every Director personally responsible, should such Director certify the said Annual Accounts of 31.03.90 as correct?
 - iii. Were not the said Auditors also present at your aforesaid Board Meeting held on 31.10.90?
 4.
 - i. Did not the Plaintiff, forward a Letter dated 17.11.90 to you, with a copy to the said Auditors?
 - ii. Did not the Plaintiff, forward a further letter dated 17.11.90 to the said Auditors with copy to you, forwarding to the said Auditors relevant documentations as set out in the said Letter ?
 - iii. Did you not by your Letter dated 19.11.90, require the said Auditors, to examine certain specific matters referred to therein, particularly in relation to the Plaintiff's aforesaid letter dated 17.11.90 submitted as your Director ?
 - iv. Did the said Auditors examine the specific matters contained therein as had been required of them? If not, why not? If yes, what did the said Auditors Report thereon? If not, why not ?
 - v. Did you not further, by your Letter dated 20.11.90, require the said Auditors to examine in more greater detail, the contents of the Plaintiff's aforesaid Letter dated 17.11.90? Did the said Auditors do so? If not, why not? If yes, what were their findings and what did they report ?
 5.
 - i. Did not the Plaintiff in response to Certifications required from him as a Director of yours, by the said Auditors in respect of the said Annual Accounts of 31.03.90, forward a Letter dated 19.11.90 to the said Auditors with copy to you, rejecting the said Annual Accounts of 31.03.90, stating that in the given circumstances that he cannot accept the Balance Sheet as at 31.03.90 as correct ?
 - ii. Did the said Auditors Report to your Shareholders the Plaintiff's aforesaid rejection, in the said Annual Accounts of 31.03.90 ? If not, why not? If yes, what did they Report?
 6.
 - i. Did not the Secretary, Ministry of Finance/Treasury, as your major Shareholder, acting on the opinion given by the Auditor General of Sri Lanka, forward a Letter dated 19.11.90 to you, requiring that the said Annual Accounts of 31.03.90, be certified "only after the inclusion of the Notes to the Accounts indicating the factual position regarding the Case (i.e. D.C. Colombo Case No. 3155/Spl) filed by one of the Directors" i.e. the Plaintiff? If not, what did the said Secretary State?

- ii. Is not the said Secretary Ministry of Finance, also the principal officer representing the Government of Sri Lanka as Guarantor, under the State Guarantees that have been issued on your behalf to the said Japanese Collaborators ?
 - iii. Was such required disclosure of the aforesaid factual position, made in the said Annual Accounts of 31.03.90 ? If not, why not? If yes, what was actually disclosed ?
- 7.
- i. Did not the Plaintiff, as a Director of yours, submit a Memorandum dated 22.11.90 to your Board of Directors, rejecting the said Annual Accounts of 31.03.90, setting out also certain Notes that he required be included to the said Balance Sheet of 31.03.90 and the Directors Report thereon, to make a proper and factual disclosure to your Shareholders? Did the said Balance Sheet of 31.03.90 and the said Directors Report thereon contain such Notes? If not, why not? If yes, what did they contain ?
 - ii. Disregarding the Plaintiff's aforesaid objections, did not your Board of Directors, adopt the said Annual Accounts of 31.03.90 at the Board Meeting held on 22.11.90, only including a Note, as set out in the Letter dated 07.11.90 from the said Auditors ?
 - iii. Was not the Plaintiff a professionally qualified Accountant as a Fellow Member of the Institute of Chartered Accountants of Sri Lanka, having been onetime a Member of the Council thereof and a Fellow Member of the Chartered Institute of Management Accountants of the United Kingdom ?
 - iv. What was the competence in the professional field of Accountancy for the other Directors of your Board to have disregarded Plaintiff's opinions of and objections to the said Annual Accounts of 31.03.90 ? Was not your other Directors incompetent to have done so and further irresponsible and reckless to have disregarded the Plaintiff's opinions of and the objections to the said Annual Accounts of 31.03.90 ?
 - v. Was not the said Annual Accounts of 31.03.90 adopted at the said Board Meeting held on 22.11.90, with your Director K.N. Choksy prompting out Article 129 of the Articles of Association of your Company, which stipulated that no Board Resolution could be passed without the affirmative vote of a Director appointed by the said Japanese Collaborators ? If not, what did he state ?
 - vi. Was not the said Auditors present at the said Board Meeting held on 22.11.90 ?
 - vii. Was not the Plaintiff, a Director, required to leave the Board Meeting by Director K.N. Choksy, whilst your Board of Directors continued to discuss, several matters pertaining to the D.C.Colombo Case No.3155/Spl. together with the presence and participation of the Directors of the said Japanese Collaborators ? If not, what did he state ?
 - viii. Did not the Plaintiff specifically point out the conflicting interests vis-a-vis the said Japanese Collaborators, prior to leaving such Board Meeting as required? If not, what did the Plaintiff state ?
 - ix. Did not such conduct and action by Director K.N. Choksy, inhibit stultify and prevent your Government Nominee Directors from acting properly and correctly? If not, why did they not act otherwise ?
 - x. Were not the said Government Nominee Directors as a result coerced into such improper and wrongful conduct and action ?
- 8.
- i. Thereafter, was not a further Meeting of your Board of Directors, hastily convened on 27.11.90, with just 24-hour Notice ?
 - ii. Was such Board Meeting on 27.11.90 held at such 24-hour notice, at the behest of the Japanese Collaborators ? If not, why was such Board Meeting held ?

- iii. At the said Board Meeting held on 27.11.90, was the Note to the Accounts in relation to D. C. Colombo Case No.3155/Spl. further deliberately amended? If not, why was such Board Meeting held ?
 - iv. Was not such amendment in deliberate contradiction of the full terms and conditions of the Enjoining Orders issued in D.C. Colombo Case No.3155/Spl.? If not, why not ?
 - v. Was not such amendment made to deliberately suppress the full disclosure of the terms and conditions of the said Enjoining Orders from your Shareholders? If not, why was such Amendment made ?
 - vi. Was not such amendment also a violation and/or contravention of the aforesaid direction given by the Secretary, Ministry of Finance, by his letter dated 19.11.90? If not, why not ?
 - vii. Was not such amendment, a further violation and/or contravention of the Note stipulated by the said Auditors as per their letter dated 07.11.90? If not, why not? If yes, then how did the said Auditors certify the said Annual Accounts of 31.03.90 on 28.11.90, in contravention of their own Note as aforesaid?
 - viii. Did not the Plaintiff, by a further Memorandum dated 27.11.90 submitted to the said Board Meeting, reiterate his rejection of the said Annual Accounts of 31.03.90, pointing out further that even the very aforesaid Note of the said Auditors in their letter dated 07.11.90, in itself, does not give a full disclosure to your Shareholders of the totality of the subject matter in dispute? If not, what did the Plaintiff state?
 - ix. Did not the Plaintiff, reiterate by his aforesaid Memorandum dated 27.11.90, inter-alia, that he could not certify the correctness of the Long Term Liabilities and that he had so stated to the said Auditors, by his Letter dated 19.11.90? If not, what did the Plaintiff state?
 - x. In view of the 24-hour Notice, did not the Plaintiff, whilst submitting the aforesaid Memorandum dated 27.11.90, excuse himself and not attend the said Board Meeting held on 27.11.90?
- 9.
- i. Did not the Plaintiff object to and reject the said Annual Accounts of 31.03.90 for several reasons disclosed in his Complaint in D.C. Colombo Case No.3155/Spl. and further in the context of the matters set out in his aforesaid Memoranda and Letters addressed to you and the said Auditors? If not, why did the Plaintiff reject the said Annual Accounts?
 - ii. Were any clarifications and/or explanations given by your Board of Directors and/or the said Auditors to the said several matters raised by the Plaintiff, prior to the certification of the said Annual Accounts of 31.03.90? If not, why not ? If yes, what were the said explanations and/or clarifications?
- 10.
- i. Did not the said Auditors deliberately neglect and fail to examine and report on matters specifically required of them by your aforesaid Letters dated 19.11.90 and 20.11.90 addressed to them? If not, what examinations did they carry out? If so, what did they Report ?
 - ii. Did not the said Auditors also fail to amend and/or expand on their letter dated 07.11.90 in the context of the written directions given to them by your aforesaid Letters dated 19.11.90 and 20.11.90 after the receipt by you of their aforesaid letters dated 07.11.90? If not, why not ?
- 11.
- i. Are you aware that the said Auditors are also the Auditors of Sanken Lanka (Pvt) Ltd. formerly known as Mitsui Construction Company Lanka (Pvt) Ltd.?
 - ii. Are you aware that the aforesaid Company is a company in which your Japanese Collaborators Mitsui & Co. Ltd. has an interest in?

- iii. Is not your Director, K. Ito, the 11th Defendant in the said D.C. Colombo Case No.3155/Spl. filed as a Derivative Action in your right and on your behalf, against Mitsui & Co. Ltd./others, also a Director of the aforesaid Sanken Lanka (Pvt) Ltd. formerly known as Mitsui Construction Company Lanka (Pvt) Ltd.?
 - iv. In view of the aforesaid material disputes and litigation, instituted in your interests against your said Japanese Collaborators Mitsui & Co. Ltd., would the said Auditors, being also the Auditors of the aforesaid Company, have conflicting interests ?
 - v. Did the said Auditors, disclose to your Board of Directors the said conflicting interests, if not, why not? If yes, when did they so disclose and what action did you take in such regard in your interests and that of your Shareholders? If not, why not ?
 - vi. Did the said Mitsui Construction Company Lanka (Pvt) Ltd. now known as Sanken Lanka (Pvt) Ltd., carry out any sub-contract work and/or any services whatsoever, in the construction of the Colombo Hilton Hotel? If so, was this disclosed to your Board of Directors, if yes, When? If not, Why not ?
- 12.
- i. Do you not admit that as a listed Public Company you are bound to conform to the laws, regulations and Rules of the Securities & Exchange Commission and the Colombo Stock Exchange ?
 - ii. Accordingly, do you not admit, that the Rules made under the Securities Council Act No.36 of 1987 as per Gazette Extra-Ordinary No.625/3 dated 27.08.90, particularly Rule 18 therein, required that the said Auditors, certify your Annual Accounts as a listed Public Company, in accordance with the Accounting Standards of the Institute of Chartered Accountants of Sri Lanka ? If not, why not ?
 - iii. Further do you not admit that as per the aforesaid Rules, that the said Directors Report, inter-alia, considers your going concern ability ? If not, why not ?
- 13.
- i. Do you not admit, that the Plaintiff, inter-alia, complained of the aforesaid matters pertaining to the aforesaid Annual Accounts of 31.03.90 to the Securities & Exchange Commission and the Colombo Stock Exchange.
 - ii. Do you not admit, that as a consequence thereof, that by Letter dated 21.10.91 addressed to you by the Colombo Stock Exchange, that the Colombo Stock Exchange required you to issue a Statement to your Shareholders? If not, what did the Colombo Stock Exchange state ?
 - iii. By the said Letter dated 21.10.91 further did not the Colombo Stock Exchange raise clarifications on the non-disclosure of material informations, which affect the decision making of the investing public ? If not, what did the Colombo Stock Exchange state ?
 - iv. By the said Letter dated 21.10.91 did the Colombo Stock Exchange further raise questions in relation to clarifications on certain Liabilities as disclosed in the said Annual Accounts of 31.03.90? If not, what did the Colombo Stock Exchange state ?
- 14.
- In consequence of the aforesaid Letter dated 21.10.91 from the Colombo Stock Exchange, did you not forward an undated Circular Letter to your Shareholders in December 1991, together with the Interim Financial Statement of Accounts for the six-months to 30.09.91 dated 02.12.91?
- 15.
- i. In the said Circular Letter to your Shareholders, did you not admit that Current Liabilities amounting to Rs.1,478.1 Mn had been shown as Long-Term Liabilities on the said Annual Accounts of 31.03.90? If not, what did you state ?

- ii. Did you not thereby, misrepresent to your Shareholders and the investing public, in the said Annual Accounts of 31.03.90, that your Net Current Assets was a Surplus of Rs.171.2 Mn when in actual fact, it was a Deficit of Rs.1,306.9 Mn.? If not, why not ?
 - iii. Did you not thereby, deliberately suppress the going concern ability of your Company, and its insolvency and its state of bankruptcy, from your Shareholders and the investing public? If not, why not ?
 - iv. Do you not admit that such misrepresentations and material non disclosure of your correct Net Current Assets position and of your going concern ability, insolvency and your state of bankruptcy is a clear and deliberate violation and/or contravention of the Standards of the Institute of Chartered Accountants of Sri Lanka? If not, why not ?
 - v. Do you not admit, that accordingly, that your aforesaid Annual Accounts of 31.03.90 have not been certified by the said Auditors, in accordance and in conformity with the Accounting Standards of the Institute of Chartered Accountants of Sri Lanka, as required by the aforesaid Rules, Gazetted under the Securities Council Act No.36 of 1987? If not, why not ?
 - vi. Do you not admit, that the said Auditors had deliberately neglected and failed to correctly certify your Annual Accounts of 31.03.90 as aforesaid, disregarding the rejection of the said Annual Accounts by the Plaintiff, himself is a Fellow Chartered Accountant? If not, why not ?
 - vii. Accordingly do you not admit that the said Annual Accounts of 31.03.90 audited and certified by the said Auditors should be rejected? If not, why not ?
- 16.
- i. In the said Circular Letter to your Shareholders, did you not admit, that the Interim injunctions issued in said D.C. Colombo Case No.3155/Spl. restrained payments, as well as from entertaining any claims under all Agreements/Contracts i.e. Construction Agreement, Supplies Contract, Design & Supervision Contract, Loan Agreements and State Guarantees? If not, what did you admit ?
 - ii. Do you not admit, that in the context of your aforesaid admission, that the Note 19 to the said Annual Accounts of 31.03.90, was deliberately false and misleading? If not, why not ?
 - iii. Do you not admit, that the said Note 19 had deliberately suppressed and not disclosed the total terms and conditions of the Enjoining Orders issued in the said D.C.Colombo Case No.3155/Spl.? If not, why not ?
 - iv. Do you not admit, that in the said Circular Letter to your Shareholders, you have failed to disclose, that you yourself did not and could not file Objections when noticed to do so, in the said D.C.Colombo Case No.3155/Spl. against the issuance of the very Interim Injunction against you? Do you not admit that you further failed to disclose that you yourself had not sought to set aside the said Interim Injunction issued against you by way of an Appeal or otherwise?
- 17.
- i. Do you not admit, that by letter dated 25.03.92 addressed to you the Plaintiff pointed out a number of incorrect and misleading statements and several serious matters suppressed from the Shareholders in your aforesaid Circular Letter to the Shareholders? If not, what did the Plaintiff state?
 - ii. Do you not admit, that you have not been able to deny and/or refute the contents of the aforesaid Letter of the Plaintiff? If not, what did you state after the receipt of the said Letter?

- iii. As a consequence of the aforesaid Letter by the Plaintiff, did you not consider that it was fit and proper and your bounded duty to withdraw and/or amend the said Circular Letter to your Shareholders? If not, why not ?
- 18.
- i. Do you not admit, that in your Answer filed on 11.03.91 in D.C. Colombo Case No.3155/Spl., at Para 54 therein, that you have admitted that there is no account or reconciled inventory of the Furnishings, Fittings & Equipment supplied by the said Japanese Collaborators under the Supplies Contract? If not, what did you plead thereat ?
 - ii. Do you not admit, that Section 143 of the Companies Act No.17 of 1982 requires you, to cause to be kept, proper books of account, inter-alia, with respect to, the Assets of the Company and the purchase of goods by the Company? If not, what does such Section require of you?
 - iii. Do you not admit, that under Section 159 of the said Companies Act No.17 of 1982, the said Auditors are required to make a Report to your Members, on the Accounts examined by them, particularly containing a Statement, as to the matters specified in the 7th Schedule to the said Act? If not, what do the said Auditors have to report on?
 - iv. Do you not admit, that the 7th Schedule to the said Companies Act No.17 of 1982, inter-alia includes, whether in the opinion of the said Auditors, proper books of account have been kept by the Company, as set out by Para 2 in the said 7th Schedule? If not, what does it state ?
 - v. Do you not admit, that the said Auditors in their Report dated 28.11.90 at page 3 of the said Annual Accounts of 31.03.90, inter-alia, state at Para 2 therein, that in their opinion so far as it appears from their examination, that proper books of account have been maintained by the Company? If not, what do they state?
 - vi. Do you not admit, that in the context of your aforesaid admission in your aforesaid Answer filed in the said D.C.Colombo Case No.3155/Spl., that there is no account or a reconciled inventory of the Furnishings, Fittings & Equipment, that the aforesaid certified statement in the aforesaid Report of the said Auditors is deliberately false, incorrect and misleading? If not, why not ?
 - vii. Do you not admit, that the aforesaid certified Report by the said Auditors to your Shareholders was given, notwithstanding your letter dated 19.11.90 addressed to the said Auditors requiring them, inter-alia, to examine specifically matters pertaining to the verification of Furnishings, Fixtures & Equipment? If not, why not?
 - viii. In the aforesaid circumstances do you not admit that the said Auditors have been deliberately negligent and/or reckless in performance of their duties and obligations by the Shareholders as your Auditors? If not, why not?
 - ix. Accordingly, do you not admit that the said Annual Accounts of 31.03.90 audited and certified by the said Auditors should be rejected ? if not, why not ?
- 19.
- i. In the aforesaid circumstances do you not further admit , that the said Auditors deliberately suppressed the non-availability of proper account and reconciled inventory of the Furnishings, Fittings & Equipment i.e. Assets of the Company, from the Shareholders of the Company ? If not, why not ?
 - ii. In the aforesaid circumstances do you not further admit, that this by itself was a violation by you of Section 143 of the Companies Act No.17 of 1982 and has not been accordingly reported upon by the said Auditors to your Shareholders? If not, why not ?
 - iii. In the aforesaid circumstances do you not further admit that Section 159 of the Companies Act No.17 of 1982 has been violated by the said Auditors? If not, why not ?

20. i. Do you not admit that all copies of the Architectural Plans, as approved by the UDA in March '84, bearing the Approval Seal of the UDA and the Signature and Official Seal of the Company, are said to be missing? If not, where are the said copies?
- ii. Do you not admit that copies of such Plans, tabled and approved at the Meeting of your Board of Directors in January '84, whilst the aforesaid copies were with the UDA, (having been lodged with the UDA in October '83 and approved thereafter in March '84), are also said to be missing? If not, where is the said copy ?
- iii. Do you not admit that the Plans/Drawings and Specifications, that formed a part and parcel of the Construction Agreement, bearing the signatures of all the parties to the said Construction Agreement are also said to be missing? If not, where are the said copies ?
- iv. Do you not admit that significantly and very co-incidentally, Exhibit "A", that formed a part and parcel of the Supplies Contract, defining the scope of Supplies of Furnishings, Fixtures & Equipment, bearing the signatures of all parties to the said Supplies Contract, is also said to be missing. If not, where is the said document ?
- v. Do you not admit that you have further admitted in your Answer filed in D.C. Colombo Case No.3155/Spl., that you do not have a properly reconciled and accounted inventory of such Supplies of Furnishings, Fixtures & Equipment? If not, where is such accounting and inventory ?
- vi. Do you not admit that the said Japanese Collaborators and the said Japanese Architects, acting together, had in July '85, introduced a new set of Architectural Plans described as "Amended Plans", midstream during construction, without the approval and/or authority from you? If not, where is such approval ?
- vii. Do you not admit that the aforesaid act, had been carried out deliberately, suppressing the same from your Board of Directors, blatantly in violation of specific Board Decisions made at that very point of time, i.e. in June '85/July '85, requiring that all Reports from the said Japanese Collaborators Mitsui/Taisei and/or the said Japanese Architects, on the progress of the construction, be submitted to your Board of Directors? If not, where are the relevant Board Minutes recording such forwarding ?
- viii. Do you not admit that the aforesaid act of introducing a new set of Architectural Plans, described as "Amended Plans", would have required written approval and/or authority, from you to the said Japanese Architects, as per the specific provisions in such regard in the Design & Supervision Contract? If not, why not ?
- ix. Do you not admit that furthermore, the aforesaid act of introducing a new set of Architectural Plans, described as "Amended Plans", would have required written agreements to be entered into, to effect such amendments, in conformity with specific provisions in such regard, in the Investment Agreement, Construction Agreement, Supplies Contract and the Loan Agreement? If not, why not ?
- x. Do you not admit that you, the Promoters named in the Prospectus and Signatories thereto, which included also the said Japanese Collaborators, were statutorily committed to uphold the truth of the statements in the Prospectus, published for the Public Issue, which set out the material features of the Colombo Hilton Hotel and the said several Agreements/ Contracts therein? If not why not,
- xi. Do you not admit that any variations thereto would have required approval as stipulated in the Companies Act No.17 of 1982 and that any untrue statements therein carried both civil and criminal liabilities under the said Companies Act? If not, why not ?

- xii. Do you not admit that neither the said Japanese Collaborators, nor the Japanese Architects, ever disclosed the fact, that they had surreptitiously executed a new set of Architectural Plans, described as "Amended Plans" and that they did not even do so, even when discrepancies and queries were raised, on certain configurations, no sooner the Colombo Hilton Hotel opened for operations in 1987? If not, when and where did they so disclose ?
 - xiii. Do you not admit that the Japanese Architects' Certificates were mere "Medical Certificate" type letters, without Priced Specified Bills of Quantities and Final Measurements to support them and the said Certificates deliberately did not disclose, that they referred to a new set of Architectural Plans, that had been introduced, described as a "Amended Plans", disregarding both professional and contractual responsibility, the Japanese Architects had towards you? If not, what did the said Certificates state ?
 - xiv. Do you not admit that the Monthly Report for April 1987 signed and forwarded by the Japanese Collaborators and certified by the Japanese Architects had admittedly disclosed as given under their hand that the Colombo Hilton Hotel had only 20 Storeys whilst the Construction Agreement has specifically inter-alia stipulated 22 Storeys ?
- 21.
- i. In the foregoing background do you not admit that said Annual Accounts of 31.03.90 had not been properly examined vouched, verified and accordingly certified by the said Auditors ? If not, why not ?
 - ii. Do you not admit that in the given circumstances, that the said Auditors could not have certified and so reported on the said Annual Accounts of 31.03.90, in conformity with the stipulations, under Section 159 of the Companies Act No.17 of 1982, particularly as set out in the 7th Schedule referred to therein? If not, why not ?
 - iii. Do you not admit, that in the given circumstances, the said Auditors have certified the said Annual Accounts of 31.03.90 recklessly and have failed to disclose the aforesaid several matters to your Shareholders ? If not, why not?
 - iv. In the given circumstances, do you not admit, that the certification and report given by the said Auditors on the Annual Accounts of 31.03.90 should be rejected? If not, why not?
- 22.
- i. Do you not admit that the said Annual General Meeting held on 21.12.90 was adjourned, in the context of the Plaintiff's Letters dated 17.12.90 and 18.12.90 addressed to you? If not, why was the said Annual General Meeting adjourned?
 - ii. Do you not admit, that you have neglected and failed to take proper action on the matters set out in the aforesaid Letters from the Plaintiff? If not, what action did you take?
 - iii. Do you not admit, that such inaction by you, led to the Plaintiff having to file this Action and obtain an Enjoining Order, restraining you from adopting the said Annual Accounts of 31.03.90 at the adjourned Annual General Meeting on 17.01.91 or at any Meeting thereafter? If not, why not?
- 23.
- i. Do you not admit that in his Order, the learned District Judge in issuing the Interim Injunctions in D.C. Colombo Case No.3155/Spl. has, inter-alia, observed that a correct examination of the Colombo Hilton Hotel property had not been carried out? If not, what did the learned District Judge state?
 - ii. Do you not admit that further, in the said Order the learned District Judge has observed that there is no acceptable basis at present for making any payments to the Japanese Collaborators? If not, what did the learned District Judge state ?

24. i. Do you not admit that the Profitability & Cash Flow Forecasts prepared by Hilton International and Japanese Collaborators Mitsui & Co. Ltd. for the Colombo Hilton Hotel had computed Room Revenues originally on the basis of 456 Rooms and later on the basis of 452 Guest Rooms? If not, on what basis were the Room Revenues computed ?
- ii. Was not Revenue on 4 Rooms subsequently excluded, as the same had been allocated for the Managers Apartment? If not, why not ?
- iii. Do you not admit, that the Profitability and Cash Flow Forecasts for the Colombo Hilton Hotel was prepared and submitted by Mitsui & Co. Ltd. originally in 1980 (for the period 1981 - 1999) and subsequently in March '83 and October '83, computing Room Revenues on the basis of 456 Rooms? If not, on what basis were such Room Revenues computed ?
- iv. Do you not admit that the Profitability & Cash Flow Forecasts for the Colombo Hilton Hotel, was prepared and submitted by Mitsui & Co. Ltd. again in Dec.'83 just prior to the implementation of the Colombo Hilton Hotel Project, computing Room Revenue on the basis of 452 Guest Rooms, excluding Room Revenue on 4 Rooms as aforesaid? If not, on what basis was such Room Revenue computed ?
- v. Do you not admit that at the Meeting of your Board of Directors held on 07.01.84, at which the Architectural Plans for the Colombo Hilton Hotel and the aforesaid Profitability & Cash Flow Forecasts of Dec.'83 prepared and forward by Mitsui & Co. Ltd. were tabled, that your Board of Directors noted that the Colombo Hilton Hotel was to comprise of 452 Guest Rooms? If not, what did your Board of Directors note ?
- vi. Do you not admit that, in your Prospectus published in March '84, wherein amongst others, the said Japanese Collaborators, were named therein as Promoters and Signatories thereto, that, inter-alia, it was specified that the Colombo Hilton Hotel was to comprise of 452 Guest Rooms? If not, what did the said Prospectus stipulate ?
- vii. Do you not admit that, even after the Colombo Hilton Hotel opened for operations in July '87, the said Japanese Collaborator Mitsui & Co. Ltd., prepared and forwarded Profitability & Cash Flow Forecasts, computing Room Revenues on the basis of 452 Guest Rooms? If not, on what basis were such Room Revenues computed ?
- viii. Do you not admit that the aforesaid Profitability & Cash Flow Forecasts were submitted to the Meetings of your Board of Directors held on 15.07.87 and 12/18.11.87 by the said Japanese Collaborators Mitsui & Co. Ltd., through their M. Kubota specially sent from Japan to attend the said Board Meetings? If not, why did the said M. Kubota attend such Board Meetings ?
- ix. Do you not admit that the Plaintiff discovered and reported to your Board of Directors in Nov. / Dec'87, that Hilton International in their Monthly Reports in respect of the operations of the Colombo Hilton Hotel had computed Room Revenues on the basis of 387 Guest Rooms? If not, on what basis were such Room Revenues computed and what did the Plaintiff report ?
- x. Do you not admit that thereafter, without any rational explanations whatsoever, that the said Japanese Collaborator Mitsui & Co. Ltd. prepared and submitted through the said M. Kubota and their representative on your Board of Directors, H. Ogami, amended Profitability & Cash Flow Forecasts, computing Room Revenues for the very first time on the basis of 387 Guest Rooms? If not, on what basis were such Room Revenues computed?

25. i. Do you not admit, that in the above background, that the then Government Nominee Director M.T.L. Fernando, Chartered Accountant and Precedent Partner Ernst & Young, called for an independent Engineer to carry out a physical inspection and examination of the Colombo Hilton Hotel, asserting that the Japanese Architects are more or less connected with the Japanese Contractors / Collaborators ? If not, what did M.T.L. Fernando state?
- ii. Do you not admit that the said Japanese Collaborator, Mitsui & Co. Ltd. through their representative on your Board of Directors, H. Ogami objected to such independent physical inspection and examination? If not, what did the said H. Ogami state? Do you not admit that Director K.N. Choksy supported such Objection by his Letter dated 08.08.88? If not, what did K.N. Choksy state ?
- iii. Do you not admit that such physical inspection and examination of the Colombo Hilton Hotel by an independent Engineer was never carried out? If not, when was such carried out?
26. i. Do you not admit that, as a consequence of a probe carried out at the Ministry of Finance, in February '90, whereat the Architectural Plans pertaining to the Colombo Hilton Hotel with the Urban Development Authority was required to be produced, that the Plaintiff discovered that they were not a copy of the originally approved Architectural Plans introduced in October '83 and approved in March '84, but a new set of Architectural Plans submitted midstream during construction in July '85 and approved in April '86 described as "Amended Plans"?
- ii. Do you not admit that, at the Meeting of your Board of Directors held on 07.03.90 that the Plaintiff reported the aforesaid serious matter to your Board of Directors ? What explanations did Cornel L. Perera, Chairman & Managing Director and/or H. Ogami, Executive Director, representative of the said Japanese Collaborator Mitsui & Co. Ltd. and also of Taisei Corporation, give your Board of Directors in this regard ?
- iii. Do you not admit that as a consequence of the aforesaid report at the Meeting of your Board of Directors held on 07.03.90, that the Government Nominee Director, K. Shanmugalingam, Addl. Deputy Secretary Treasury, expressed his total dissatisfaction pointing out, inter-alia, the material shortfall in the number of Guest Rooms from 452 to 387 and covered car parking bays from 400 to 200? If not, what did K. Shanmugalingam state ?
- iv. Do you not admit that, at the aforesaid Board Meeting the said K. Shanmugalingam further pointed out, that as a consequence thereof the Cash Flow would be reduced by 15%? If not, what did K. Shanmugalingam state ?
- v. Do you not admit that at the aforesaid Board Meeting the said K. Shanmugalingam further stated that if any amendments had been made to the Original Plans, that such information should have been correctly reported and that further assistance from the Government could not be expected? If not, what did K. Shanmugalingam state ?
- vi. Do you not admit that, at the aforesaid Board Meeting, the said K. Shanmugalingam in the given circumstances, further required that the services of a local engineer be engaged to carry out a physical inspection and examination and that the Specified Bills of Quantities and Final Measurements be obtained in this regard? If not, what did K. Shanmugalingam state ?
27. i. Do you not admit that in the aforesaid circumstances that the Secretary Ministry of Finance, forwarded Draft Letters dated 12.03.90 and 13.03.90 to you, to be forwarded to the said Japanese Collaborators ?

- ii. Do you not admit, that in the aforesaid draft letters the aforesaid material shortfall in the number of Guest Rooms from 452 to 387 was one of the material issues raised ?
 - iii. Do you not admit that the Ministry of Finance attached Profitability & Cash Flow Forecasts to the aforesaid Letters computing Room Revenue on the basis of 452 Guest Rooms to show the Room Revenues that should have been received, had the correct number of Guest Rooms as originally contracted for, had been built ?
 - iv. Do you not admit that, you forwarded Letter dated 23.03.90 to the Japanese Collaborators on the basis of the aforesaid Draft Letters from the Ministry of Finance, attaching also the aforesaid Profitability & Cash Flow Forecasts ?
 - v. Do you not admit that to the aforesaid Letter you also attached Minutes of discussions, that were had at the Ministry of Finance, with the representatives of the said Japanese Collaborators, which Minutes also documented the material shortfall in the number of Guest Rooms from 452 to 387 and further documented a 30% write off on Capital required of the said Japanese Collaborators, in the circumstances of the material discrepancies as aforesaid?
- 28.
- i. Do you not admit that, the aforesaid discovery of the new set of Architectural Plans introduced as Amended Plans, was reported to your Board of Directors on 07.03.90 i.e. prior to the Balance Sheet date of 31.03.90 of the said Annual Accounts of 31.03.90 in issue ?
 - ii. Do you not admit that the aforesaid material shortfall in the number of Guest Rooms and covered car parking bays was raised at the Meeting of your Board of Directors, by Government Nominee Director K. Shanmugalingam, Addl. Dep. Secretary Treasury on 07.03.90 i.e. also prior to the Balance Sheet date of 31.03.90 of the said Annual Accounts of 31.03.90 in issue ?
 - iii. Do you not admit that, the Plaintiff by his Memorandum dated 13.12.89 tabled at the Meeting of your Board of Directors also on the said 13.12.89, pointing out the several material discrepancies and the total inadequacy of the Certifications forwarded by the Japanese Architects called for clarifications and for the copies of Specified Bills of Quantities & Final Measurements? Do you not admit that the foregoing was also during the currency of the Financial Year 1989/90, covered by the said Annual Accounts of 31.03.90 in issue ?
 - iv. Do you not admit that the requirement called for by the said Director K. Shanmugalingam, Addl. Dep. Secretary Treasury, to appoint an independent local engineer and to call for the Specified Bills of Quantities & Final Measurements was also made at the Meeting of your Board of Directors on 07.03.90 i.e. prior to the said Balance Sheet date of 31.03.90 of the said Annual Accounts of 31.03.90 in issue ?
 - v. Do you not admit that the aforesaid Letter required of you by the Ministry of Finance to be submitted to the said Japanese Collaborators, raising the question of the material shortfall in the number of Guest Rooms and in the given circumstances the requirement for a 30% write off on the Capital, also was effected during March '90, i.e. prior to the Balance Sheet date of 31.03.90 of the said Annual Accounts of 31.03.90 in issue ?
 - vi. Do you not admit that all the aforesaid, amongst others, are events that took place during the currency of the Financial Year 1989/90 covered by the said Annual Accounts of 31.03.90 in issue ?
 - vii. In the light of the foregoing, do you not admit that the said Auditors, could not have afforded the certification and report they did, on the Annual Accounts of 31.03.90 in issue, without proper disclosure of the aforesaid material and serious matters to your Shareholders and/or without a disclaimer in their aforesaid Audit Certification ?

- viii. Accordingly do you not admit that the said Auditors have deliberately suppressed the said several matters from your Shareholders ? If not, why not ?
 - ix. Do you not admit, that the said Auditors have recklessly certified the said Annual Accounts of 31.03.90 without proper examination, vouching and verification, as is required of Auditors in the discharge of their duties and responsibilities to the Shareholders ? If not, why not ?
 - x. Accordingly do you not admit that the said Audited Accounts of 31.03.90 should be rejected?
- 29.
- i. Do you not admit, that you cannot constitute a General Meeting of your Shareholders and/or your Board of Directors, without the presence of Representative and/or Nominee Director of your said Japanese Collaborators? If not, why not ?
 - ii. Do you not admit, that you cannot make any decisions and/or pass any resolutions at Meetings of your Board of Directors under Article 129 of your Articles of Association without the affirmative vote of the said Nominee Director of the said Japanese Collaborators? If not, why not ?
 - iii. Do you not admit, that your Annual Accounts for the year ended 31.03.90 that are in issue was adopted by your Board of Directors, by the invocation of powers under the said Article 129 of your Articles of Association? If not, why not ?
- 30.
- i. Do you not admit that an Action D.C. Colombo Case No.3155/Spl. was instituted, as a Derivative Action in your right and on your behalf, by the Plaintiff against your aforesaid Japanese Collaborators, the said Japanese Architects and your then Directors, in regard to the construction and delivery of the said Colombo Hilton Hotel, in contravention and violation of what had been held out, accordingly contracted upon and also published in the Prospectus ?
 - ii. Do you not admit that the aforesaid Derivative Action was instituted by the Plaintiff on 13.09.90, much prior to the adoption by your Board of Directors on 27.11.90 and the certification by your said Auditors on 28.11.90 of the said Annual Accounts of 31.03.90 in issue ?
 - iii. Do you not admit that, eventhough you are named as a Defendant in the aforesaid Derivative Action, in conformity with the nature and style of such a Derivative Action, that all reliefs prayed for in the said Action are in your interest and for your benefit and that of your Shareholders ?
 - iv. Do you not admit that the Plaintiff had not claimed any relief for himself in the aforesaid Derivative Action ?
 - v. Do you not admit that upon the institution of the aforesaid Derivative Action, Enjoining Orders were issued on 18.09.90 ex-parte, with Notices of Interim Injunction, against your said Japanese Collaborators and the said Japanese Architects on one hand and against you on the other, preventing any claims from and/or any payments to the said Japanese Collaborators and the said Japanese Architects, from you and/or by the Government of Sri Lanka, under the State Guarantees issued on your behalf ?
 - vi. Do you not admit that the Notice Returnable date in the aforesaid Derivative Action was 12.11.90 and the Inquiry into the same was had on 21.11.90, prior to the adoption and certification on 27/28.11.90 as aforesaid of the said Annual Accounts of 31.03.90 in issue ?
 - vii. Do you not admit that after Inquiry in the aforesaid Derivative Action, the learned District Judge, rejecting the Objections and Submissions of your said Japanese Collaborators and the said Japanese Architects, on 28.10.91 issued the Interim Injunctions as aforesaid ?

- viii. Do you not admit that you did not seek to set aside such separate Enjoining Order issued against you, and nor did you Object to the issuance of the separate Interim Injunction against you as aforesaid ?
- ix. Do you not admit that you have further not lodged any Appeal in the Court of Appeal against the said separate Interim Injunction issued against you ?
31. Do you not admit, that at all times material to the aforesaid Derivative Action, that the said Japanese Collaborators had their Representative functioning as the full-time resident Executive Director in your Company, fully in charge of your day to day administration, management and affairs? If not, why not ?
32. i. Do you not admit, that the original Architectural Plans for the said Colombo Hilton Hotel drawn and submitted by the said Japanese Architects was tabled at a Board Meeting and approved by your Board of Directors in or about January '84? If not, why not?
- ii. Do you not admit, that a copy of the original Architectural Plans for the said Colombo Hilton Hotel drawn and submitted by the said Japanese Architects was submitted to the Urban Development Authority in or about October '83 and approval received for the same from the Urban Development Authority in or about March '84? And that construction of the said Colombo Hilton Hotel commenced with a "Ground Breaking Ceremony" in March '84 ?
- iii. Do you not admit, that such Representative of the said Japanese Collaborators, who functioned as your aforesaid Executive Director was directing and instructing the said Japanese Architects, as the Architect of the Colombo Hilton Hotel Project? If not, why not ?
- iv. Do you not admit, that the Representative of the said Japanese Collaborators, who functioned as your aforesaid Executive Director objected to and prevented an independent examination and physical verification of the Colombo Hilton Hotel by an independent Engineer, prior to the said Japanese Architects issuing their Final Certificate ?
- v. Do you not admit, that K.N. Choksy, a Director of your Company, supported the aforesaid objection to an examination by an independent Engineer, by his Letter dated 08.08.88 ? If not, why not ?
- vi. Do you not admit, that such independent examination was called for by Mr. M.T.L. Fernando, Chartered Accountant, Precedent Partner of Ernst & Young in his capacity as a Government Nominee Director? If not, why not ?
- vii. Do you not admit that no such independent examination, as called for as aforesaid, was ever carried out? If not, why not ?
33. i. Do you not admit, that the Plaintiff pointed out discrepancies in the number of Guest Rooms and Floors at the Meetings of your Board of Directors and at the Meetings at the Ministry of Finance at which Meetings, the said Japanese Collaborators were present through their representatives, together with some of your Directors ?
- ii. Do you not admit, that the Construction Agreement to build the said Colombo Hilton Hotel specified, inter-alia, 22 Storeys ?
- iii. Do you not admit, that in the Monthly Reports on the progress of construction of the same, signed and submitted by the said Japanese Collaborators and certified also by the said Japanese Architects, they have admitted, as so certified, that the number of Storeys in the said Colombo Hilton Hotel was only 20 ?

34. i. Did you discuss and deliberate upon at Meetings of your Board of Directors, the several averments of facts and breaches complained of in the Plaintiff in the said Derivative Action, in D.C. Colombo Case No. 3155/Spl, particularly of the conduct and actions of the said Japanese Collaborators and the said Japanese Architects? If not, why not? If yes, what action was taken thereon ?
- ii. Did you consequently, as a listed Public Company, cause proper inquiries and/or investigations to be carried out into the several serious matters of facts and breaches averred of in the aforesaid Plaintiff, particularly of the conduct and actions of the said Japanese Collaborators and the said Japanese Architects? If not, why not ? If Yes, what action was taken thereon ?
- iii. In the context of the above, did you make any inquiries and/or seek any clarifications from the Plaintiff as the principal complainant, who was a Director/Shareholder and as one who was involved in the promotional and formulation work of the Colombo Hilton Hotel Project? If not, why not ?
- iv. If such inquiries and/or investigations were had, did you discuss and deliberate at Meetings of your Board of Directors, the several matters pleaded by you in your Answer in the aforesaid Derivative Action in D.C. Colombo Case No.3155/Spl., before the same was filed in Court? If not, why not ?
- v. Did you refer and/or report the several breaches and acts of wrong doing complained of to the relevant and appropriate law enforcement authorities, as would have been normally and ordinarily done by a listed Public Company? If not, why not ?
- vi. If not, did you plead in your Answer in the aforesaid Derivative Action on the several wrongful conduct and actions of the said Japanese Collaborators and the Japanese Architects and/or their representatives, who at all times material to the aforesaid Derivative Action, had functioned as your Executive Directors, without having conducted such inquiries and/or investigations ?
- vii. Did not the Plaintiff, particularly by his Letters dated 07.09.91 and 08.11.91 further in addition, bring to your attention the wrongful conduct and actions of the aforesaid representatives of the said Japanese Collaborators and urge that action be taken? If no action was taken, then as a listed Public Company, why not ?
- viii. Did you plead in your said Answer in the aforesaid Derivative Action on the several wrongful conduct and actions of Cornel L. Perera and K.N. Choksy averred of in the Plaintiff therein, without having conducted inquiries and/or investigations into the same? If not, why not ?
- ix. Did not the Plaintiff, particularly by his Letters dated 07.09.91, 08.11.91 and 21.02.92 further in addition, bring to your attention the wrongful conduct and actions of the aforesaid Cornel L. Perera and K.N. Choksy and urge that action be taken? If no action was taken, then as a listed Public Company, why not?
35. i. Did not the Plaintiff consistently and specifically point out, both orally and in writing, that the said Japanese Collaborators' interest in the said Derivative Action, is in conflict with your interests and that of your Shareholders?
- ii. If the Plaintiff did point out as above, did you take any action thereon? If not, why not ?
- iii. Did the said Japanese Collaborators' representatives participate at discussions and/or deliberations at Meetings of your Board of Directors, when matters relating to the said Derivative Action and/or this Action were being considered ?

- iv. Did the said Japanese Collaborators' representatives participate at discussions and/or deliberations at Meetings of your Board of Directors, when the several serious matters averred of in the Complaint, particularly pertaining to their wrongful conduct and/or actions and/or those of their representatives were being considered ?
 - v. Should not the said Japanese Collaborators' representatives have not participated at the aforesaid discussions and/or deliberations, in so far as they were party Defendants to the said Derivative Action, and whose interest were in conflict with your interests and that of your Shareholders? If not, why not ?
 - vi. Did not the participation of the said Japanese Collaborators' representatives at discussions and deliberations at Meetings of your Board of Directors as aforesaid, prejudicially influence and/or inhibit independent evaluation of your interests and that of your Shareholders? If not, why not?
- 36.
- i. Did the said Japanese Collaborators' representatives participate at discussions and/or deliberations at Meetings of your Board of Directors, when the matter of your Answers filed in the said Derivative Action and/or in this Action were being considered?
 - ii. Were the said Answers, prior to being filed in Court, given to the said Japanese Collaborators and/or their representatives and/or agents ?
 - iii. Did the Japanese Collaborators and/or their representatives and/or agents in any way comment and/or have discussions and/or otherwise assist in the preparation of your said Answers filed in the said Derivative Action? If Yes, with whom and how ?
 - iv. Did you through any of your Directors and/or Officers and/or any representatives and/or agents in any way whatsoever, have discussions with the said Japanese Collaborators and/or their representatives and/or their agents on matters pertaining to your aforesaid Answers, prior to and/or after filing of the said Answers in Court? If Yes, through whom, and how, and when ?
 - v. Did you plead in Court in any of the aforesaid Answer to the several serious matters averred of in the respective Complaints, in accordance with proper deliberations and decisions at Meetings of your Board of Directors, after proper inquiries and/or investigations, in conformity with the proper and professional conduct of a listed Public Company? If not, why not ?
37. Did not the Plaintiff by his Letter dated 22.07.91 bring to your attention irregularities in the award of your Reflections Casino Contract? If Yes, what action did you take thereon? If not, why not ?
38. Did the Plaintiff inter-alia, by his Letters dated 11.04.91, 06.07.91, 10.10.91, 20.01.92, 21.01.92 and 28.01.92 bring to your attention matters pertaining to your Answer in the said Derivative Action and/or submissions made on your behalf in Court? If Yes, what action did you take thereon? If not, why not ?
39. Did the said Japanese Collaborators' representatives and/or Agents have negotiations with you and your Officials/Representatives and/or with Officials/Representatives of the Government of Sri Lanka, and offer rebates and/or write-offs on their alleged claims, during the currency of the Enjoining Orders and/or Interim Injunctions issued and pending in the said Derivative Action? If yes, with whom ?
- 40.
- i. Do you admit, that in or about February '90, that the Ministry of Finance required of the said Japanese Collaborators a 30% write-off on the original loan principal/capital?

- ii. Did not the Ministry of Finance, at the very same time raise queries on the shortfall in the number of Hotel Guest Rooms, as per the Prospectus and the Profitability Forecasts and Cash Flow Projections prepared and submitted by the said Japanese Collaborator, on the basis of 452 Hotel Guest Rooms ?
 - iii. Were not the State Guarantees referred to in the Plaint in the said Derivative Action given, inter-alia on the basis of the aforesaid Profitability Forecasts and Cash Flow Projections? If not, on what basis ?
 - iv. Do you not admit, that the aforesaid requirement of a 30% write-off, in such context, on the original loan principal/capital was conveyed to the Japanese Collaborators' representatives and/or agents at the Ministry of Finance in February '90, in the presence of your Board of Directors ?
 - v. Do you not admit, that the said requirement to write-off of 30% on the original loan principal/capital was further confirmed at the subsequent discussions had at the Ministry of Finance in or about March '90, at which the said Japanese Collaborators' representatives were present together with some of your Directors ?
 - vi. Do you not admit, that the queries on the material shortfall in the number of Hotel Guest Rooms i.e. from 452 to 387 Hotel Guest Rooms and the shortfall in the number of covered car parking bays from 400 to under 200 was further confirmed at the Ministry of Finance in or about March '90 to the representatives of the said Japanese Collaborators in the presence of some of your Directors raising also the query on the number of 22 Floors ?
 - vii. Do you not admit, that the said Japanese Collaborators' representatives were informed by the Ministry of Finance at the said discussions at the Ministry of Finance in or about March '90, where some of your Directors were present, that the said State Guarantees had been given on the basis of Profitability Forecasts & Cash Flow Projections computed on the basis of 452 Hotel Guest Rooms ?
 - viii. Do you not admit, that the said Japanese Collaborators' representatives were informed by the Ministry of Finance at the aforesaid discussions that any deviation from the aforesaid original position would affect the Government's position ?
41. Are you aware that at the time of the aforesaid discussions at the Ministry of Finance, that Cornel L. Perera, your Chairman and Managing Director, when confronted in the presence of your Director, Mr. K. Shanmugalingam, Addl. Deputy Secretary to the Treasury, and Mrs. V.M.Y. Casie Chitty, Director Economic Affairs, admitted to the reduction of two Guest Room Floors in the new set of Architectural Plans, described as Amended Plans, introduced by the said Japanese Collaborators and the said Japanese Architects, and that it was the same said Cornel L. Perera, who pointed out the compromise in the basement, resulting in the shortfall in the number of covered car parking bays ?
- 42.
- i. Do you not admit that in the said Japanese Architects' Architectural Plans dated July '80 marked of record in the said Derivative Action, that there are 456 standard size Guest Room Bays/Room Modules in 2 Towers? If not, why not?
 - ii. Do you not admit that the standard size of a Guest Room Bay/Room Module in the aforesaid Architectural Plans was 33 sq. mtrs. in conformity with standards for International 5-Star Class Hotels? If not, why not ?
 - iii. Do you not admit that such standard size Guest Room Bays/Room Modules are normally sold as standard double occupancy Hotel Guest Rooms? And that two or more such standard size Guest Room Bays/Room Modules are combined to form Suites? If not, why not ?

- iv. Do you not admit that in the aforesaid Architectural Plans that, each Guest Room Floor in each Tower had 12 such standard size Guest Room Bays/Room Modules, thereby having 24 such standard size Guest Room Bays/Room Modules on each Guest Room Floor level in both Towers taken as a total? If not, why not ?
 - v. Do you not admit, that accordingly, the total number of the aforesaid 456 standard size Guest Room Bays/Room Modules, in the aforesaid Architectural Plans occupied 19 such Guest Room Floors in each Tower? If not, why not ?
 - vi. Accordingly, do you not admit that 12 such standard size Guest Room Bays/Room Modules per Guest Room Floor in each Tower X 19 Guest Room Floors X 2 Towers as above = 456 standard size Guest Room Bays/Modules, contained in 2 Towers of the aforesaid Architectural Plans? If not, why not ?
 - vii. Do you not admit that the new set of Architectural Plans introduced by the said Japanese Collaborators and the said Japanese Architects described as "Amended Plans" in July '85 has only 17 Guest Room Floors in each Tower? If not, why not ?
 - viii. Therefore do you not admit that 456 such standard size Guest Room Bays/Room Modules, as aforesaid, cannot be there in such lesser number of 17 Guest Room Floors? If not, why not ?
- 43.
- i. Do you not admit that Hilton International by their letter dated 31.03.83 with copy to the said Japanese Collaborator confirmed their Profitability Forecasts prepared on the basis of the aforesaid Architectural Plans of July '80 ? If not on what basis?
 - ii. Do you not admit that the Letter of Award for Construction was issued by you to the said Japanese Collaborators on the very previous date i.e. 30.03.83? If not when?
44. Do you not admit that the Profitability Forecasts and Cash Flow Projection consistently submitted to you thereafter by the said Japanese Collaborator, was strictly in conformity with the aforesaid Profitability Forecasts of Hilton International, which was based on the aforesaid Architectural Plans of July '80?
- 45.
- i. Did not the Plaintiff raise objections to the payment of any monies to the said Japanese Collaborator at the Meetings of your Board of Directors in November '89 & December '89, until certain categorical clarifications were received from the said Japanese Architects? If not, what did the Plaintiff state ?
 - ii. Was not such stand taken by the Plaintiff unopposed at such aforesaid Board Meetings? If not, who opposed ?
 - iii. Did not the Plaintiff at the same time suggest that the Public Shareholders be refunded their Share Capital? If not, what did the Plaintiff state ?
 - iv. In or about January' 90, did not the said Japanese Collaborators' representatives meet the Officials of the Ministry of Finance, together with the said Cornel L. Perera and K.N. Choksy, to obtain the release of US \$ 2.0 mn to the said Japanese Collaborators? If not, why was such Meeting had ?
 - v. Was not the aforesaid Meeting held to avoid and in disregard of the aforesaid views expressed by the Plaintiff at the immediately preceding Meetings of your Board of Directors in November '89 and December '89 as aforesaid ? If not, why was such Meeting held ?
 - vi. Was not the concurrence of the Ministry of Finance for the release of the aforesaid US \$ 2.0 Mn. obtained, without the full disclosure of the aforesaid position at your Board of Directors ? If not, what was disclosed ?

- vii. Did not the said Japanese Collaborators' representative subsequently on or about 21.02.90 write to the said K.N. Choksy, when the Plaintiff had objected to making any payments to them and had called for certain categorical clarifications from the said Japanese Architects? If not, what did he write ?
 - viii. Consequently, did not the said K.N. Choksy abovenamed write and state that such clarifications from the said Japanese Architects, were not necessary and that payments could be made to them ? If not what did he state ?
 - ix. Consequently was the aforesaid payment of US \$ 2.0 Mn. paid to the said Japanese Collaborators ?
 - x. What was the competence and/or experience the said K.N. Choksy have, in the Hotel Construction and/or Engineering Industry, to have intervened in the said matter as aforesaid, and to have given such written opinion on such matter, obstructing the Plaintiff in the discharge of his professional duties and responsibilities ?
- 46.
- i. Are you aware whether, after the Plaintiff had raised the aforesaid material queries/ discrepancies and had called for, from the said Japanese Architects certain categorical clarifications, that the said Japanese Collaborators proposed to transfer a part of their Shareholdings to the Secretary Treasury, to afford the Secretary Treasury a 75% controlling interest? If not, what did they propose ?
 - ii. Are you aware whether, the aforesaid proposal was in writing, and if so what was the date of such writing ?
 - iii. Was such aforesaid proposal made to enable the amendment of your Articles of Association by the Secretary Treasury, without the said Japanese Collaborators being a party to such amendments ? If Yes, Why ?
 - iv. Are you aware, whether, the said Japanese Collaborators' representatives in regard to, inter alia, the aforesaid proposals, had any discussions and/or negotiations with Officials/ Representatives of the Government of Sri Lanka? If Yes, with whom ?
 - v. Are you aware whether, the said Japanese Collaborators' representatives in regard to, inter alia, the aforesaid proposals, had any discussions and/or negotiations with Officials/ Representatives of the Attorney-General's Department ? If Yes, with whom ?
 - vi. Are you aware whether, the said Japanese Collaborators' representatives in relation to any matters whatsoever pertaining to the said Derivative Action and/or this Action have had any discussions and/or negotiations with Officials/Representatives of the Attorney-General's Department ? If Yes, with whom ?
- 47.
- i. As set out in your Investment Agreement, is not the land, on which your Colombo Hilton Hotel stands, under-leased from Cornel & Co. Ltd., a party to the said Investment Agreement, which Company had leased the same said land under a principal Lease, from the Urban Development Authority, on the basis of making lease payments in instalments to the Urban Development Authority ?
 - ii. Had the said Cornel & Co. Ltd. been prompt and regular in their aforesaid instalment payments to the Urban Development Authority on the said principal Lease, under the terms of such principal Lease ?
 - iii. Would not the non-payment of the aforesaid instalment payments under the principal Lease, affect your right, title, interest, possession and continuity to the said land under the said underlease ?

- iv. Was not the full consideration for the underlease, for a 99-year period, fully paid for by you, by the allotment of a major shareholding to Cornel & Co. Ltd. ?
 - v. Was not such shareholding, as presently held by the Government of Sri Lanka, transferred to the Government of Sri Lanka by Cornel & Co. Ltd. in terms of a written Agreement entered into, in the context of the aforesaid State Guarantees that were issued to the said Japanese Collaborators ?
 - vi. Are you aware, that the Urban Development Authority appearing by the Attorney-General's Department had instituted legal action against the said Cornel & Co. Ltd., for default of instalment payments under the principal Lease ?
 - vii. Was the aforesaid principal Lease with the Urban Development Authority cancelled and/or taken over by the Government of Sri Lanka and/or the Ministry of Finance, due to the default in the payment of the said instalments by the said Cornel & Co. Ltd. to the Urban Development Authority, under the terms of the said principal Lease ?
 - viii. If so, should not the cancellation of the aforesaid principal Lease have resulted in the cancellation of the aforesaid written Agreement with the said Cornel & Co. Ltd.? If not, why not ?
 - ix. If so, should you not become the principal Lessee from the Urban Development Authority ? If not, why not ?
 - x. Should not the said Auditors have examined, the aforesaid matter pertaining to your Leasehold Land capitalised and stated in the Balance Sheet as at 31.03.90 in the Annual Accounts of 31.03.90 in issue and have reported thereon? If not, why not? If yes, what did they Report ?
- 48.
- i. Was not the original State Guarantees issued against Loans, that at that time amounted to about US \$ 55.0 Mn. ?
 - ii. Did not the alleged claims by the said Japanese Collaborators in September '90 at the time of institution of the said Derivative Action amount to about US\$ 155.0 Mn. ?
 - iii. Was not agreement reached to return part of the aforesaid Government Shareholding to Cornel & Co. Ltd. ?
 - iv. If so, on what basis was agreement reached to return part of the aforesaid Government Shareholding to Cornel & Co. Ltd. when the value of the said Guarantees had so enhanced ?
 - v. Being a listed Public Company, would not your share transfers, could only be effected through the trading floor of the Colombo Stock Exchange ?
 - vi. Further, did Cornel & Co. Ltd. underwrite the Public Issue as provided for in Article 3.03 of your Investment Agreement ?
 - vii. What was the shortfall not taken up by the Public Issue ?
 - viii. Was Cornel & Co. Ltd. accordingly, called upon to pay and make good the shortfall on the Public Issue ? If not, why not ?
 - ix. Was the Government of Sri Lanka/Secretary Treasury caused to invest Rs.40.0 Mn. to make good part of this shortfall, to enable the aforesaid payment of US \$ 2.0 Mn. to the said Japanese Collaborators, consequent to the meeting had by the said Cornel L. Perera and K.N. Choksy, together with the representatives of the said Japanese Collaborators at the Ministry of Finance in January '90 ?

- x. Should not the said Auditors have examined the aforesaid matters pertaining to your Share Capital and have reported thereon to your Shareholders? If not, why not, If yes, what did they so report?
- 49.
- i. Did the Secretary to the Treasury, as a main Shareholder, give notice of resolutions in or about August '90, inter-alia, to remove Cornel L. Perera, F.G.N. Mendis, and the Plaintiff as Directors of your Company ?
 - ii. Did the Secretary to the Treasury after the institution of the aforesaid Derivative Action on 13.09.90, subsequently in or about October '90, withdraw the said resolutions ? If Yes, why ?
 - iii. Were the negotiations in relation to the aforesaid matters pertaining to Cornel & Co. Ltd. had by Cornel L. Perera and/or representatives of Cornel & Co. Ltd. with the Attorney-General's Department ? If Yes, with whom ?
 - iv. As a result of such aforesaid negotiations, were your Articles of Association changed in December 1990, resulting in the removal of the Plaintiff from your Board of Directors ? If yes, why ?
- 50.
- i. Are you aware that, the said Japanese Collaborators, Mitsui & Co. Ltd., had entered into an Agreement called the Basic Agreement on the 8th day of April 1983, executed on its behalf by M. Yoshiuchi, a General Manager of its Overseas Development and Construction Division, with a Company registered in the United Kingdom, in connection with the promotional services and assistance to be rendered to the said Japanese Collaborators, for the promotion and realisation of the Hilton Hotel Project in Colombo, Sri Lanka, upon certain given conditionalities for a compensation of 2.5 (two point five) percent in Japanese Yen on the total contract prices of your Construction Contract and the Supply Contract stipulated in Articles 3 & 4 of your Preliminary Agreement ?
 - ii. Are you aware that, the said Japanese Collaborators, entered into a further Agreement on the 1st day of April 1984, superseding the above Agreement executed on its behalf by the said M. Yoshiuchi, a General Manager of its Overseas Development & Construction Division, with a Company registered in the United Kingdom, in connection with the promotional services and assistance to be rendered to the said Japanese Collaborator, for the promotion and realisation of the Hilton Hotel Project in Colombo, Sri Lanka, upon certain given conditionalities and for the specified compensation of Japanese Yen 340,000,000 (Three Hundred Forty Million Japanese Yen) ?
 - iii. Are you aware that the aforesaid conditionalities in the aforesaid Agreements, inter alia, included obtaining and receiving by the said Japanese Collaborators, Mitsui & Co. Ltd. of the following ?
 - "(A) The Letter of Guarantee by the Government of Sri Lanka in the form attached as an appendix "D" of the Loan Agreement entered into by and between Mitsui and Taisei as a lender and Hotel Developers (Lanka) Ltd. as a borrower as of 31st of January, 1984 (hereinafter called the "Loan Agreement")
 - (B) The opinion of Attorney General of Sri Lanka in the satisfactory form by Mitsui as set forth in Article 6 of the Loan Agreement.
 - (C) The total exemption of corporate income tax for Hotel Developers (Lanka) Limited for 10 (ten) years after it started operation as set forth in the agreement for the investment in Hotel Developers (Lanka) Ltd. made and entered into by and between Mitsui, Taisei, Cornel & Co. Ltd. and the Government of Sri Lanka as of 31st day of January, 1984 (hereinafter called the "Investment Agreement")

- (D) The total exemption of all taxes on interest to be paid or other payment to be made by Hotel Developers (Lanka) Ltd. under the Loan Agreement as set forth in Article 17 of the Investment Agreement.
- (E) The total exemption of import duty on all materials and equipment stipulated in Article 17 of the Investment Agreement. "
- iv. Are you aware that the said Japanese Collaborators Mitsui & Co. Ltd. as per the aforesaid Agreement had agreed to remit the aforesaid compensation amounting to Japanese Yen 340,000,000 (Three Hundred Forty Million Japanese Yen) for, inter alia, the aforesaid services to Account No.10022558/06, Mr.S.C.S. Cloppenburg at European Asian Bank, Hong Kong at No.16-18, Queens Road, Central, Hong Kong ?
- v. Are you aware that the said Japanese Collaborators Mitsui & Co. Ltd., had remitted the aforesaid compensation under the aforesaid Agreement, in two instalments through the Bank of Tokyo, after such aforesaid conditionalities had been fulfilled, to the aforesaid Bank Account at the European Asian Bank, Hong-Kong, in April '84 and December '84 respectively?
- vi. Do you not admit, that the conditionalities aforesaid, are the very same conditionalities as inter-alia, those set out in Article 17 of your Investment Agreement dated 31.01.84, more particularly those conditionalities stipulated in Article 17.02 caused to be fulfilled by Cornel & Co. Ltd., a party to the said Investment Agreement ?
- vii. Outside the said Investment Agreement, which, inter-alia, provided for the fulfillment of the aforesaid conditionalities, why did the said Japanese Collaborators have, in addition such additional Agreements, referred to above for payments to be made outside Sri Lanka in Hong Kong ? And why were such payments made ? And would not such payments ultimately be at your own cost ? If not, why not ?
- viii. Being the majority Shareholder and party to the said Investment Agreement was the Government of Sri Lanka made aware of such additional Agreements? And was the Government of Sri Lanka's prior approval obtained for such additional Agreements and the aforesaid payments to be made outside Sri Lanka in Hong Kong for the fulfillment of the aforesaid conditionalities? If not, why not ? And would not such payments ultimately be at your own cost, covered also by the said State Guarantees given by the Government of Sri Lanka ? If not, why not ?
- ix. Do you not admit, that the aforesaid conditionalities, inter-alia, pertaining to the Letters of Guarantee from the Government of Sri Lanka, the opinion of the Attorney General of Sri Lanka, total exemption of corporate income tax & exemption of taxes on interest in Sri Lanka and the total exemption of Import Duties in Sri Lanka, were conditionalities that could only be afforded by the Government of Sri Lanka ? If not, why not ?
- x. If so, how could and why should such payments have been made outside Sri Lanka in Hong Kong for concessions/exemptions that could have been granted only by the Government of Sri Lanka ?
- xi. Do you not admit, that the Hon. Minister of Finance and Planning by his Letter dated 02 March '84, acting on the legal opinion also dated 02.03.84 given by the Hon. Attorney General, recommended that no waiver of Customs Duties be granted to the Colombo Hilton Hotel Project ? If not, what did the said Hon. Minister state and what was the opinion of the Hon. Attorney-General?

- xii. Do you not admit, that thereafter, the said K.N. Choksy, gave a written opinion dated 06.03.84 countermanding the aforesaid opinion of the Hon. Attorney General? Did not such opinion cause the Government of Sri Lanka to grant the waiver of Customs Duties to the said Colombo Hilton Hotel Project? Was not subsequently such waiver of Customs Duties granted to the Colombo Hilton Hotel Project ?
 - xiii. Should not, the said Japanese Collaborators, as Promoters and Directors of your Company, have fully disclosed the aforesaid matters in the Prospectus and/or at your Board of Directors? If not, why not ?
 - xiv. Were the said Auditors informed and/or aware of the aforesaid matters and/or of any conflicting interests, if any, arising therefrom? If not, why not?
- 51
- i. Do you not admit, that the learned District Judge, in issuing the Interim Injunctions, on the aforesaid Derivative Action, had in his Order, inter-alia, observed that, the significance that is shown is that, generally the Company which has to pay money, would be raising questions in respect of such situation and would not allow other parties to act arbitrarily and that there is no acceptable basis, at present, for making payments to the said Japanese Collaborators ?
 - ii. Have you not, inter-alia, accepted the said findings by Court, having not challenged the said findings ? If so, what action have you even now taken on the said findings of Court? If not, why not ?
 - iii. Since after the Plaintiff instituted the aforesaid Action, your Board of Directors was restructured to have a majority of six Government Nominee Directors on your Board, what action has your Board of Directors taken in the context of the observations, made by the learned District Judge in the aforesaid Derivative Action in issuing the Interim Injunctions after Inquiry ? If not, why not ?
 - iv. Did your Board of Directors consider and deliberate upon the contents of the Report of Mr. Shelton Wijayarathne, Chartered Architect, filed of record in the aforesaid Derivative Action, obtained as decided at your Board of Directors ? If Yes, what action has been taken thereon ? If not, why not ?
- 52.
- i. Do you not admit, that the said Japanese Collaborators acting in collusion with the said Japanese Architects had introduced a new set of Architectural Plans described as "Amended Plans" in July '85 ? If not, why not ?
 - ii. Do you not admit, that this had been carried out without the knowledge and/or express approval and/or authority of your Board of Directors ? If Yes, what action did you take in such regard ? If not, why not ?
 - iii. Do you not admit, that at the Meetings of your Board of Directors in June '85 and July '85 at the instance of the Plaintiff, decision was made requiring Reports from the said Japanese Collaborators and Japanese Architects on the progress of the construction of Colombo Hilton Hotel to be submitted to the Board of Directors ? If not, what decision did the Board of Directors make ?
 - iv. Do you not admit, that the aforesaid introduction of a new set of Architectural Plans has been in deliberate contravention and violation of the aforesaid Board Decision ? If not, why not ? If Yes, what action did you take in such regard ? If not, why not ?
 - v. Do you not admit, that the Japanese Architects did not have your authority and/or approval to redraw a new set of Architectural Plans, described as "Amended Plans" or otherwise ? If Yes, what action did you take in such regard ? If not, why not ?

- vi. Do you not admit, that as the Owner of the said Colombo Hilton Hotel, you have not placed your official signature and seal on the said new set of Architectural Plans so introduced, described as "Amended Plans", as is normally stipulated and required ? If so, why ? Ought you not have placed such official signature and seal of yours on such Architectural Plans ? If not, why not ?
53. i. Do you not admit, that the aforesaid introduction of a new set of Architectural Plans, described as "Amended Plans" , in July '85 has contravened and violated the specific provisions in such regard in your several Agreements/Contracts ? If not, why not ? If Yes, what action did you take in such regard ? If not, why not ?
- ii. Do you not admit, that the aforesaid introduction of a new set of Architectural Plans, described as "Amended Plans" in July '85, also materially affects your Supplies Contract ? If not, why not ?
- iii. Do you not admit, that the aforesaid act of introduction of a new set of Architectural Plans described as "Amended Plans" has contravened and has violated the specific provisions in such regard in the Investment Agreement which required that any such Amendment had to be entered into in writing by all parties to the said Investment Agreement, including also the Government of Sri Lanka ? If not, why not ? If Yes, what action did you take in such regard ? If not, why not ?
- iv. If such written agreement as required as aforesaid was entered into, when was it ? If not, why not ?
54. i. Do you not admit that the aforesaid State Guarantees were issued by the Government of Sri Lanka, as parties to the said Investment Agreement, to the said Japanese Collaborators, inter-alia, on the basis of the said Investment Agreement ? If not, on what basis ?
- ii. Do you not admit that such contravention and violation, as aforesaid, of the said Investment Agreement, by the said Japanese Collaborators as parties thereto, thereby renders void the aforesaid State Guarantees ? If not, why not ?
55. i. Do you not admit, that all copies of the original Architectural Plans approved by your Board of Directors and by the Urban Development Authority in January '84 and March '84 respectively, could not have been destroyed by the Fire at the Construction Site Office of the Japanese Collaborators? If not, why not ?
- ii. Do you not admit, that your Owner's copy of the said Architectural Plans, which was in the custody of your own Office, is questionably missing and/or deliberately suppressed ? If not, why not ? If Yes, what action did you take in such regard ? If not, why not ?
56. i. Do you not admit, that the Japanese Architects's Completion & Final Certificates are mere simple "Medical Certificate" type letters ? And further that they have failed to disclose and/or have deliberately suppressed the fact that they related to a new set of Architectural Plans that had been subsequently introduced described as "Amended Plans" ? If not, what was disclosed ? If Yes, what action did you take in such regard ? If not, why not ?
- ii. Do you not admit, that you do not have Specified Bills of Quantities and Final Measurements to support the said Certificates of the said Japanese Architects and/or to verify the correctness of the Colombo Hilton Hotel construction ? If not, how could the correctness be verified ? If Yes, what action did you take in such regard ? If not, why not ?
57. i. Do you not admit, that Exhibit "A" to the Supplies Contract that defined the scope of supplies of Furnishings, Fixtures and Equipment to the said Colombo Hilton Hotel is also questionably missing and/or deliberately suppressed from your Office ? If not, why not ? If

Yes, what action did you take in such regard ? If not, why not ?

- ii. Do you not admit, that in the absence of the aforesaid Exhibit "A" that you are unable to verify the correctness of the Quality, Specifications and Quantities of such Supplies of Furnishings, Fixtures and Equipment to the said Colombo Hilton Hotel ? If not, how could the correctness be verified? If Yes, what action did you take in such regard ? If not, why not ?
- 58.
- i. Do you not admit, that payments were drawn by the said Japanese Collaborators from Loans provided for by they themselves, under the said Loan Agreements, merely on the basis of the effluxion of time ? If not, on what basis were such payments drawn ?
 - ii. Do you not admit, that there were no interim work certificates issued by the said Japanese Architects, as conventionally issued, for the said Japanese Collaborators to draw such payments ? If not, where are such certificates certifying such payments?
- 59.
- i. Do you not admit that, in the absence of the aforesaid several material documentations, that you are unable to verify the correctness of the construction and delivery, as per the agreed qualities, specification, quantities and values of the furnished and equipped Colombo Hilton Hotel ? If not, how could such correctness be verified ?
 - ii. Do you not admit that, in the context of the aforesaid, that you have no valid, satisfactory and acceptable basis to make payments to the said Japanese Collaborators ? If not, why not ?
 - iii. Do you not admit that the learned District Judge, in issuing the Interim Injunctions after Inquiry in the said Derivative Action, in his Order, inter-alia, observed that, there is no acceptable basis, at present, for making payments to the said Japanese Collaborators?
- 60.
- i. Do you not admit, that Profitability Forecasts and Cash Flow Projections for the said Colombo Hilton Hotel was prepared and submitted by the said Japanese Collaborator on the basis of computing Room Revenues on 452 Hotel Guest Rooms ? If not, on what basis were they computed ?
 - ii. Do you not admit, that the said Profitability Forecasts and Cash Flow Projections were prepared and submitted by the said Japanese Collaborator consistently both before and after the said Colombo Hilton Hotel opened for operations? If not, why not ?
 - iii. Do you not admit that subsequently, after the Plaintiff raised queries in regard to the number of Guest Rooms that the said Japanese Collaborator prepared and submitted revised Profitability & Cash Flow Projections to you/your Board of Directors, computing Room Revenue on the basis of 387 Hotel Guest Rooms ? If not, on what basis were they computed ?
 - iv. Did you not, acting together with the said Japanese Collaborators, make representations to the Government of Sri Lanka and/or its officials and/or its representatives, on the basis of such Profitability Forecasts & Cash Flow Projections, computed as aforesaid on 452 Hotel Guest Rooms, showing the repayment ability on the said Loans, and negotiate, obtain and receive the aforesaid State Guarantees, on the said Loans provided by the said Japanese Collaborators, to construct and deliver the furnished and equipped said Colombo Hilton Hotel ? If not, why not, and on what basis ?
 - v. Did you not, in your Prospectus, represent and hold out, to the investing public of Sri Lanka and to the relevant statutory authorities, that the said Colombo Hilton Hotel was to comprise, inter-alia, of 452 Rooms (i.e. 452 Hotel Guest Rooms excluding the 4 Rooms as Manager's Apartment), going up 22 Floors and having covered (i.e. basement) car parking for 400 Vehicles ? If not, why not ?

61. i. Do you not admit, that the said Auditors should have taken serious cognisance of the said several serious and material matters referred to hereinabove, including particularly those referred to in the Interrogatories at Numbers 30 to 46 and 51 to 60 hereinabove and they should have examined the said several matters referred to therein and reported thereon to your Shareholders ? If not, why not ? If yes, why did they not carry out such examination and report thereon, moreso particularly, when they were specifically so required to do by you, as per your letters dated 19.11.90 and 20.11.90 addressed to them in such regard ?
- ii. In the aforesaid circumstances do you not now admit, that the Annual Accounts of 31.03.90 in issue, certified by the said Auditors should be rejected with the said Auditors being held accountable and responsible for their conduct and actions ? If not, why not ?
- iii. Do you not now admit, that a proper examination and investigation should be carried out by another firm of Auditors ? If not, why not ?
62. Was not and is not the presence and participation of the said K.N. Choksy, an influential Government Member of Parliament, as a Member of your Board of Directors, an inhibiting influence on the Government Nominee Directors, who are mainly senior Public Servants, inhibiting and preventing them from dutifully taking proper and requisite action as is warranted, in your own interests and that of your Shareholders ?

This 27th day of April 1992.

A handwritten signature in cursive script, appearing to read "Desai", written in black ink on a white background.

Attorneys-at-law for Plaintiff