

IN THE DISTRICT COURT OF COLOMBO.

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

PLAINTIFF

No. 3231/Sp1.

- VS -

HOTEL DEVELOPERS (LANKA) LIMITED, formerly known  
as LANKA JAPAN HOTELS LIMITED, and of No. 16 Alfred  
Place, Colombo 3.

DEFENDANT

Whereas on the Order of Court; Interrogatories dated 27.04.'92 were served on the Defendant abovenamed through its Registered Attorneys, as provided for in Sections 94 and 95 of the Civil Procedure Code,

And Whereas in pursuant thereto the Defendant filed its Answers on 19.11.'93 to such Interrogatories by the Affidavit of its General Manager dated 22.04.'93.

And Whereas, in the Answers to the said Interrogatories, prima-facie, the Defendant has deliberately omitted and/or refused to answer and/or has answered insufficiently the said Interrogatories, and further in some instances the said Defendant has answered vaguely and evasively, as set out hereinbelow, thereby making it difficult for the Court to ascertain upon what material propositions of fact the parties are at variance, to record the issues involved in this Action,

- a). The Answers to the following Interrogatories have been deliberately refused and/or withheld - Nos. 4(iv), 7(iv) (v) (vii) (ix) (x), 8(i) (ii) (iv) (v) (vii), 10(i), 13(i), 16(ii) (iii) (iv), 17(i) (ii) (iii), 18(ix), 19(ii), 20(x) (xi), 24(vii), 25(ii), 26(i), 27(ii), 28(vii) (viii) (x), 30(ii) (iii) (iv) (viii) (ix), 32(v), 47(iv) (v), 48(x), 56(i), 59(iii), 61(ii), 62.
- b). The Answers to the following Interrogatories have been vague and/or evasive - Nos. 5(i) (ii), 9(i), 12(i) (ii) (iii), 18(i), 19(i), 20(iv) (v) (vi) (vii) (viii) (ix) (xii) (xiii) (xiv), 22(ii), 25(i) (iii), 32(i), 33(ii) (iii), 34(i) (vii) (viii) (ix), 35(i) (ii) (iii) (iv), 36(i) (ii) (iii) (iv), 42(i) (ii) (iii) (iv) (v) (vi) (vii), 43(i), 44, 47(ii), 48(i) (ii) (ix), 49(iii), 50(i) (ii) (iii) (iv) (v) (vi) (vii) (viii) (ix) (x) (xi) (xii) (xiii) (xiv), 51(i), 55(ii), 60(v).
- c). The Answers to the following Interrogatories are insufficient - Nos. 2(i) (ii) (iii), 3(i) (ii), 4(ii) (v), 8(viii) (x), 9(ii), 13(ii) (iii) (iv), 15(i) (iii) (iv) (v) (vi), 16(i), 22(i) (iii) 23(i) (ii), 24(x), 27(i) (v), 28(i) (ii) (iii) (iv) (v), 30(i) (vii), 32(vi) (vii) 33(i), 34(ii) (iii) (v), 48(vi) (vii) (viii), 49(iv), 51(ii) (iii), 56(ii), 57(i) (ii).
- d). i) The Answers to the following Interrogatories could have been answered only by the Board of Directors/relevant Director but have been answered by the said General Manager and accordingly are hearsay - Nos. 6(i) (iii), 8(vi), 15(ii) (vii), 24(i) (vii) (ix), 61(ii).

ii) The Answers to the following Interrogatories which could have been answered by the Board of Directors/relevant Director have been deliberately refused and/or withheld - Nos. 11(i) (ii) (iii) (iv) (v) (vi), 19(iii), 21(i) (ii) (iii) (iv), 26(ii) (iii) (iv) (v) (vi), 32(iii) (iv), 34(iv) (v), 36(v) (vi), 37, 38, 39, 40(i) (ii) (iii) (iv) (v) (vi) (viii), 41, 43(ii), 45(iv) (v) (vi) (vii) (viii) (x), 46(i) (ii) (iii) (iv) (v) (vi), 47(iii) (vi) (vii) (viii) (ix) (x), 48(iii) (iv) (v), 51(ii) (iii) (iv), 52(i) (ii) (iii) (iv) (v) (vi), 53(i) (ii) (iii) (iv), 54(i) (ii), 58(i) (ii) 59(i) (ii), 60(i) (ii) (iii) (iv), 61(iii).

e). i) The Answers to the following Interrogatories which relate to the Audited Accounts as at 31.03.'90, being the subject matter of this Action and enjoined by Court, are required to be asked from the Auditors of the Defendant - Nos. 5(ii), 18(iii) (iv) (vi) (vii) (viii), 19(iii), 28(vi) (vii) (viii) (ix), 61(i).

ii) The Answers to the following Interrogatories which relate to the Audited Accounts as at 31.03.'90, being the subject matter of this Action, has however been answered by the said General Manager -Nos. 8(vii), 10(ii), 21(i) (ii) (iii) (iv).

Furthermore, the Plaintiff states, that the Answers, to the aforesaid Interrogatories served on the Defendant, contain hearsay on the relevant matters dealt with in such Interrogatories, inasmuch as the Affirmant S.R. Sudharshan, who originally joined the Defendant only as Financial Controller in or about December 1987 after the said Hotel had opened for operations in July 1987, and was appointed as the General Manager thereafter only in or about December '89, and therefore he was not personally aware of the matters dealt with in the said Interrogatories, and furthermore, the said Interrogatories mainly being matters referred to and/or dealt with at deliberations of the Board of Directors and also being within the own personnel knowledge of such Directors of the Defendant, the Affirmant could not have affirmed to such matters as he is not a Director of the Defendant.

For instance, the Interrogatories 50(i)-50(xiv) relating to payments of Jap. Yen. 340.0 Mn. made by Mitsui & Co. Ltd. to a Bank Account in Hong Kong for special concessions obtained from the Government, could be answered by the representative of the said Mitsui & Co. Ltd., who is a Director of the Defendant.

The Plaintiff states that the Answers to such Interrogatories should have been and could have been afforded by the Affidavit of the Chairman & Managing Director of the Defendant, who is the Principal Officer of the Defendant and by the Affidavit of the other Directors, in relation to the respective Interrogatories, as far as the matters in such Interrogatories are within their knowledge and/or concerning them, and whose conduct and/or actions have been dealt with in the said several Interrogatories, and accordingly, who are the only persons, who are in a position to correctly affirm to the said Interrogatories on behalf of the Defendant.

In the above circumstances, we MOVE that the Court be pleased to reject such several vague and/or evasive and/or insufficient Answers and direct the Defendant to Answer in full by the Affidavit of the respective Directors as aforesaid as provided for in Section 100 of the Civil Procedure Code, to enable the Court to ascertain upon what material propositions of fact, the parties are at variance to record the issues involved in this Action.

We further MOVE that the Court be pleased to permit the Counsel for the Plaintiff to support this MOTION on 16th February 1994.

Colombo, 14th February 1994



Attorneys-at-law for Plaintiff