

IN THE MATTER OF A MEDIATION

BETWEEN

HOTEL DEVELOPERS (LANKA) LTD.

AND

MR. NIHAL SRI AMERESEKERE, DIRECTOR, HDL

BY HAND

ICLP Arbitration Centre,
North Wing, Hotel Taj Samudra,
25, Galle Face Center Road,
Colombo 3.

Before:

Mediator: Hon. Walter Laduwahetty

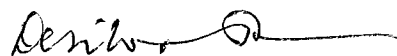
WHEREAS in reply to the Affidavit of Mr. Nihal Sri Ameresekere dated 9th March 2000, which was tendered as agreed in this matter, an Affidavit dated 19th June 2000 of Mr. Bandulasiri Wijyaratne, Chairman of Hotel Developers (Lanka) Ltd. [hereinafter referred to as "HDL"] has been tendered to Your Honour

WHEREFORE in response thereto, we tender herewith the Affidavit dated 7th July 2000 of Mr. Nihal Sri Ameresekere, together with Documents annexed thereto marked "X1" to "X18", and respectfully MOVE that Your Honour be pleased to accept the same and file of record and fix this matter for Hearing on a date suitable to Your Honour, to enable Counsel to make Oral Submissions in this matter.

A copy of the aforesaid Affidavit and the said Documents annexed thereto have been delivered by hand to M/s F.J. & G. De Saram, Attorneys-at-Law for HDL, with additional copies thereof to be served on;

- a) the Government Nominee Directors of HDL, namely Mr. Bandula Wijyaratne, Mr. W.J.S. Karunaratne, Mr. M.D. Bandusena, Mr. S.S. Sahabandu and Ms. Padma Maharaja, so that they may take notice of the facts pertaining to this matter, as disclosed by the said Affidavit dated 7th July 2000 of Mr. Nihal Sri Ameresekere, and
- b) Corporate Services Ltd., Company Secretaries of HDL, so that they could confirm the extracts of the Board Minutes of HDL that have been quoted in extenso by Mr. Nihal Sri Ameresekere in his said Affidavit dated 7th July 2000.

Colombo, 7th day of July 2000



Attorneys-at-Law for
Mr. Nihal Sri Ameresekere

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HOTEL DEVELOPERS (LANKA) LTD.

AND

MR. NIHAL SRI AMERESEKERE, DIRECTOR, HDL

ICLP Arbitration Centre,
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Colombo 3.

Before:

Mediator: Hon. Walter Laduwahetty

I, NIHAL SRI AMERESEKERE of 167/4, Sri Vipulasena Mawatha, Colombo 10, being a Buddhist, do hereby solemnly, sincerely and truly declare and affirm as follows:

1. a) I am the affirmant abovenamed and affirm to the facts herein contained from my own personal knowledge and belief and from documents marked and annexed herewith and documents that would be produced before Your Honour.
b) As agreed, vide proceedings of 26th January 2000, my Affidavit dated 9th March 2000 was tendered to Your Honour.
2. The Affidavit in response thereto dated 19th June 2000 of Mr. Bandulasiri Wijyaratne, Chairman, Hotel Developers (Lanka) Ltd. (hereinafter referred to as "HDL"), tendered to Your Honour, inter alia, declared and affirmed that,
 - a) the said Affirmant was authorised by HDL to affirm the said Affidavit
 - b) the matters therein, in addition to being from his personal knowledge are from information "*gathered from books and documents available at his disposal*"
3. a) The said Mr. Bandulasiri Wijyaratne, a Government Nominee Director, was appointed a Director of HDL only on 28th February 2000 and assumed Office as Chairman thereof at the HDL Board Meeting held on 24th March 2000.
b) Three other Government Nominee Directors, namely, Mr. W.J.S. Karunaratne, Addl. Secretary, Presidential Secretariat, Mr. M.D. Bandusena, Secretary, Ministry of Public Administration and Mr. S.S. Sahabandu, P.C., also a Director of Peoples Bank, were appointed as Directors of HDL only on 8th June 1999.
c) The nominee Directors of Cornel & Co. Ltd. and the nominee Directors of Mitsui & Taisei on the Board of Directors of HDL, in the facts and circumstances of my aforesaid Affidavit dated 9th March 2000 are affected parties.
d) The only other two Directors of HDL are myself and Ms. Padma Maharaja appointed as Government Nominee Directors on 6th October 1994.

4. a) In the foregoing circumstances, I verily believe, that Mr. Bandulasiri Wijyaratne, as the Chairman of HDL appointed on 24th March 2000 is not a person apprised of the totality of the facts and circumstances pertaining to the matters of this Mediation and has not been fully and correctly advised, *by whoever who had so advised*, in the preparation of his aforesaid Affidavit tendered to Your Honour.
- b) In addition, Mr. Bandulasiri Wijyaratne is also the Commissioner-General, Exercise Department and also functions, as the Director-General, Department of Management Services, General Treasury.
5. As set out hereinbelow, extracts of the relevant Minutes of the Board of Directors of HDL, would reveal, that there had been due consideration given, deliberation and decisions made by the Board of Directors of HDL pertaining to the subject matters of this Mediation, at several HDL Board Meetings had since June 1995.
- 5.1 Minute No. 9 of the HDL Board Meeting held on 28th June 1995 chaired by the then HDL Chairman, Mr. Suren Wickremasinghe, reads thus:

"9. Item 7 of the agenda which is the settlement of D.C. Colombo Case No. 15322/MR was then taken up. Mr. Amarasekera declared his interest in the matter and tabled a letter dated 23rd June 1995 from the Institute of Chartered Accountants of Sri Lanka and the Board noted the same. The Board having noted and approved the settlement authorised the affixing of the seal of the Company on the Agreement tabled at this meeting and on any other documents pertaining to the settlement and the Chairman and any director signing the same."

The said Letter dated 23rd June 1995 from the Institute of Chartered Accountants of Sri Lanka tabled and noted at the aforesaid HDL Board Meeting, inter-alia, had stated –
"The Council having considered the complaints against you and the evidence before it decided not to pursue the said Complaints further." [emphasis added]

Condition 1. vi of the aforesaid Settlement Agreement signed on 28th June 1995 in pursuant to the aforesaid HDL Board decision stated as follows:

"1. Hotel Developers (Lanka) Ltd., **shall and will**

- vi. Consider the Claim in Reconvention made by Mr. Ameresekere in the said D.C. Colombo action No. 15322/MR **and further** damages that accrued to him, arising from the said baseless and malicious complaints made to the aforesaid professional Institutions of which Mr. Ameresekere is a fellow member **and also** arising from the said letters that have been forwarded by the Chairman & Managing Director of Hotel Developers (Lanka) Ltd. to Excellency the President, Hon. Ministers and other Officials." [emphasis added]

Conditions 1 i. and 1. vii of the aforesaid Settlement Agreement signed on 28th June 1995 in pursuant to the aforesaid HDL Board decision stated as follows:

"1. Hotel Developers (Lanka) Ltd., **shall and will**

- i. revoke the proxy given to Mr. Hussain Ahamed, Attorney-at-Law, to act as the Registered Attorney representing the Company in D.C. Colombo Action No. 15322/MR instituted against Mr. Nihal Sri Ameresekere and have the said Action promptly withdrawn."

"1. Hotel Developers (Lanka) Ltd., **shall and will**

- vii. consider taking appropriate action against Mr. Cornel L. Perera, Chairman & Managing Director of Hotel Developers (Lanka) Ltd. and any other Director/s, who was/were responsible for the aforesaid baseless and malicious actions against Mr. Ameresekere."

5.2 The Minutes of the HDL Board Meeting held on 28th June 1995 were confirmed at the HDL Board Meeting held on 23rd February 1996.

5.3 Minute No. 8 of the **HDL Board Meeting held on 25th October 1996** chaired by the then HDL Chairman, Dr. P.B. Jayasundera, reads thus:

"8. D.C. COLOMBO CASE NO. 15322/MR"

"Mr. Ameresekera brought to the notice of the Board that proxy of the company had been given to Mr. Hussain Ahamed, Attorney-at-Law to institute this Action without a Board Decision. **He referred to the letter sent to him by Mr. J R. De Silva P.C. who had denied that he had caused this Action to be instituted and to the letters sent by former Directors, Mr. Asoka Gunasekera, Attorney-at-Law and Mrs. Monica Fernando confirming that there was no Board Decision to institute this Action.**" *(emphasis added)*

"Mr. Ameresekere also brought to the attention of the Board that he had made a Claim in Reconvention by his Answer dated 18th November 1994 and that Mr. Hussain Ahamed, Attorney-at-Law had filed the Replication of the company on 15th December 1994, without the Board of Directors of the company having considered the matter or authorising Mr. Hussain Ahamed to file the said Replication of the company." *(emphasis added)*

"Mr. N.S. Ameresekere further briefing the Board, tabled and circulated a Note on the Case No. 15322/MR that had been caused to be instituted in the name of the Company. Mr. Ameresekere also tabled copies of the following documents referred to in such Note.

1. Certified Extracts of the relevant minutes of the meeting of the Board of Directors held on 28th June 1995.
2. Certified Extracts of the relevant minutes of the meeting of the Board of Directors held on 23rd February 1996.
3. Letter dated 3rd July 1995 written by Mr. J.R. de Silva P.C., addressed to M/s De Silva & Perera, Attorneys-at-Law.
4. Letter dated 28th June 1995 written by Mr. A. De Z. Gunasekera addressed to M/s De Silva & Perera, Attorneys-at-Law.
5. Letter date 6th July 1995 written by Mrs. Monica Fernando to M/s De Silva & Perera, Attorneys-at-Law.
6. 2 Letters both dated 7th July 1995 written by Corporate Advisory Services (Pvt) Limited to M/s De Silva & Perera, Attorneys-at-Law.
7. Letter dated 19th June 1995 written by Mr. Hussain Ahamed, Attorney-at-Law to M/s. De Silva & Perera, Attorney-at-Law.
8. Letter dated 7th June 1995 written by M/s De Silva & Perera, Attorneys-at-Law to Mr. Hussain Ahamed, Attorney-at-Law.
9. Letter dated 13th February 1996 written by Corporate Services Ltd. to Mr. Nihal Sri Ameresekera, setting out extracts of relevant Board Minutes pertaining to this matter.
10. The Replication of the Company dated 15th December 1994 filed in Case No. 15322/MR by Mr. Hussain Ahamed, Attorney-at-Law.
11. Letter dated 30th May 1994 written by Mr. H.M. Abeysinghe, Senior Assessor, Unit 2, Inland Revenue Department to Hotel Developers (Lanka) Limited.
12. Letter dated 22nd October 1996 written by the Commissioner General of Inland Revenue to Hotel Developers (Lanka) Limited.

"The Board noted that a Settlement Agreement had been entered into by the Company with Mr. N.S. Ameresekere and that the company had, inter-alia, agreed to withdraw this Action. Mr. J.R.De Silva intimated that he had not seen the Settlement Agreement and wished to disassociate himself. In this connection Mr. Ameresekera pointed out the Board Minute No. 9 of 28th June 1995." *(emphasis added)*

"The Board decided to get confirmation from the Secretaries as to whether there had been a Board Decision to grant a Proxy to Mr. Hussain Ahamed to institute this Action No. 15322/MR on behalf of the Company."

"The Board confirmed that a Proxy that had been granted to Mr. Hussain Ahamed had been revoked by the Board on 28th June 1995. Letter dated 24th July 1996 forwarded to Mr. Hussain Ahamed by Dr.P.B. Jayasundera and Mr. T. Ishibashi confirming this Decision of the Board was tabled."

"The Board ratified the Proxy that had been subsequently granted to the Attorney General to handle this Action No.15322/MR." *(emphasis added)*

Letters to the Institute of Chartered Accountants of Sri Lanka, the Chartered Institute of Management Accountants of U.K., the Secretary Ministry of Finance & Planning and 2 Letters to Mr. N.S. Ameresekere dated 21st October 1996, signed by Dr. P. B. Jayasundera and Mr. T. Ishibashi issued by the Company as per the said Settlement Agreement were tabled." *(emphasis added)*

"Letter from Mr. Hussain Ahamed, Attorney-at-Law."

"The Secretaries tabled and circulated a Letter dated 14th October 1996 forwarded to the Company by Mr. Hussain Ahamed."

"Copies of the following letters were tabled in this connection.

- Letter dated 16th October 1996 from the Attorney General to the Secretaries.
- Letter dated 7th October 1996 from Mr. Hussain Ahamed to the Company
- Letters dated 4th and 11th October 1996 from the Secretaries to Mr. Hussain Ahamed."

"The Board noted that Mr. Cornel Perera had no authority, whatsoever, to send a letter dated 10th October 1996 (copy not available) to Mr. Hussain Ahamed countermanding and in contravention of the Board Decision to revoke Mr. Hussain Ahamed's Proxy. Mr. J.R. de Silva suggested that Mr. Cornel L. Perere be permitted to explain this matter." *(emphasis added)*

"The Board authorised the Secretaries and/or Mr. T. Ishibashi to sign the necessary Affidavit prepared by the Attorney General in this connection and to confirm to Mr. Hussain Ahamed, Attorney-at-Law the Board Decisions." *(emphasis added)*

True copies of the said Letters of Apology and Explanation issued by HDL in terms of the aforesaid Settlement Agreement Conditions 1. ii, 1. iii, 1. Iv and 1. v, signed by Government Nominee Director, Dr. P.B. Jayasundera and Mitsui/Taisei Nominee Director, Mr. T. Ishibashi, referred to and tabled at the aforesaid HDL Board Meeting are annexed hereto marked "X1(a), X1(b), X1(c), X1(d) and X1(e).

5.4 Minute No. 8 of the HDL Board Meeting held on 27th November 1996 chaired by the then HDL Chairman, Dr. P.B. Jayasundera, reads thus:

"8. D.C. COLOMBO CASE NO. 15322/MR"

"The Secretaries tabled a Letter dated 27th November 1996, re. grant of Proxy to Mr. Hussain Ahamed."

"Mr. Cornel Perera said the Company had received a Letter from the Inland Revenue in 1994, and that the revocation of Mr. Hussain Ahamed in the Courts have been resisted by the Company."

"Mr. Cornel Perera tabled the Minutes of 10th June 1994, 5th July 1994 and 8th August 1994 with regard to Case No. 15322/MR and stated that there was unanimity in the Board."

"He also stated that this is the first opportunity he had since the change of government and that on the advice of his lawyers he still consider the holding of these meetings to be a purported meetings. He informed the Board that he is refrained from saying anything further as this is the subject matter of the Courts."

"Mr. Ameresekere said that the letter written by Mr. Cornel Perera to Mr. Hussain Ahamed has not been made available to the Company. He also said that he has tabled letters written by Mr. Romesh de Silva, Mr. Asoka Gunasekera and Mrs. Monica Fernando where they have stated their position contrary to what Mr. Cornel Perera has stated. Mr. Ameresekere informed the Board that the original letter sent by the Inland Revenue, has gone to the Auditors. This matter has been considered by the Institute of Chartered Accountants and have decided not to pursue the matter any further, and the letter sent by the Institute of Chartered Accountants has been tabled at the last Board Meeting." *(emphasis added)*

"Mr. Ameresekere intimated to the Board that although as a director of Hotel Developers (Lanka) Limited he has written to the Income Tax Department on this issue, the tax matters were entirely dealt by Ford Rhodes Thornton & Company from the inception."

5.5 Minute No. 8 of the HDL Board Meeting held on 3rd February 1997 chaired by the then HDL Chairman, Mr. D.Y. Liyanage, reads thus:

"8. D.C. COLOMBO CASE NO. 15322/MR"

"Mr. Ameresekere tabled the following documents:

1. Note: Case No.15322/MR caused to be Instituted in the name of the Company.
2. Affidavit dated 6.12.96 given by Mr. T. Ishibashi in the above case.
3. Affidavit given by U.L. Kadurugamuwa, Director, Corporate Services Limited.
4. Letters dated 15th November 1996 and 20th November 1996 sent by Corporate Services Limited to Mr. Hussain Ahamed informing him of the decisions of the Board taken on 25th October 1996."

"Mr. Ameresekere informed the Board that in spite of Mr. Hussain Ahamed being informed of the revocation he has not withdrawn from the Case. Mr. Ameresekere said that a Letter dated 10th October 1996 sent by Mr. Cornel Perera to Mr. Hussain Ahamed has not been tabled."

"Mr. Kanag-Isvaran said that action should be taken against Mr. Hussain Ahamed for refusing to accept the revocation of the proxy by the Client namely Hotel Developers (Lanka) Ltd. He suggested therefore that this matter be reported to the Supreme Court."

"The Board decided the Chairman to take appropriate action in this regard."
(emphasis added)

The aforesaid Affidavit of Mr. T. Ishibashi representative of the Japanese Collaborators, Mitsui & Taisei, and the aforesaid Affidavit of Mr. U.L. Kadurugamuwa, Attorney-at-Law, Director, Corporate Services Ltd., HDL Company Secretaries, confirm that there was no HDL Board Decision to institute the said D.C. Colombo Case No. 15322/MR against me.

True copies of the said Affidavit dated 6th December 1996 of Mr. T. Ishibashi and the said Affidavit dated 8th January 1997 of Mr. U.L. Kadurugamuwa, Director, Corporate Services Ltd., and their said Letters dated 15th and 20th November 1996 are annexed hereto marked "X2(a)", "X2(b)", "X2(c)" and "X2(d)".

5.6 Vide Minute No. 2 of the HDL Board Meeting held on 17th February 1997 chaired by the then HDL Chairman, Mr. D.Y. Liyanage, it was resolved

"That the Chairman be empowered and authorised to attend to the implementation of all outstanding matters under the Settlement Agreements entered into by the Company and to take all necessary action and steps arising therefrom and in connection therewith" *emphasis added*

5.7 Minute No. 8 of the HDL Board Meeting held on 17th February 1997 chaired by the then HDL Chairman, Mr. D.Y. Liyanage, reads thus:

"8. D.C. COLOMBO CASE NO. 15322/MR"

"Mr. Cornel Perera tabled Letter dated 10th October 1996 and a Memorandum to the Board Re. Colombo Case No. 15322."

"Mr. N. Ameresekere tabled the Affidavit dated 1st February 1997 by Mr. Cornel Perera and the Affidavit dated 2nd February 1997 filed by Mr. Hussain Ahamed **countermanding the decision taken by the Board of Directors on 25th October 1996 by the Board of Directors of HDL.**" *emphasis added*

"The Board decided to refer this matter to the Attorney General and for the Chairman to take appropriate action." *emphasis added*

5.8 Minute No. 8 of the HDL Board Meeting held on 26th March 1997 chaired by the then HDL Chairman, Mr. D.Y. Liyanage, reads thus:

"8. D.C. COLOMBO CASE NO. 15322/MR"

"Mr. Ameresekere said that Mr. Cornel Perera though having attended the Board Meeting of 3rd February 1997 where this subject was discussed had suppressed that he countermanding board decisions had filed affidavit dated 1st February 1997, which Mr. Ameresekere tabled at the last meeting."

5.9 Minute No. 8 of the HDL Board Meeting held on 7th May 1997 chaired by the then HDL Chairman, Mr. D.Y. Liyanage, reads thus:

"8. D.C. COLOMBO CASE NO. 15322/MR"

"The Chairman informed that he had referred to the Attorney General the matter of reporting Attorney-at-Law Mr. Hussain Ahamed to the Supreme Court for professional misconduct and Mr. C.L. Perera's affidavit filed contrary to Board decisions." *emphasis added*

"Mr. Cornel Perera said that at some stage the tax office may make a demand."

"Mr. Ameresekere pointed out that Mr. Cornel Perera had acted in violation of Board decisions and that there was a claim in reconvention in this Case that the company had agreed to consider and to take action for having instituted this Case without a Board decision to have done so." *emphasis added*

5.10 Minute No. 8 of the HDL Board Meeting held on 17th July 1997 chaired by the then HDL Chairman, Mr. D.Y. Liyanage, reads thus:

"8. D.C. COLOMBO CASE NO. 15322/MR"

"The Case is still proceeding. Mr. Ameresekere pointed out that the **Chairman was to take up this matter with the AG's department.**" *emphasis added*

5.11 Minute No. 8 of the HDL Board Meeting held on 9th September 1997 chaired by the then HDL Chairman, Mr. D.Y. Liyanage, reads thus:

"8. D.C. COLOMBO CASE NO. 15322/MR"

"The case is still proceeding."

"Chairman has discussed this matter with A.G. and A.G. will appear on behalf of HDL." *emphasis added*

5.12 Minute No. 8 of the HDL Board Meeting held on 9th October 1997 chaired by the then HDL Chairman, Mr. D.Y. Liyanage, reads thus:

"8. D.C. COLOMBO CASE NO. 15322/MR"

"Still pending."

"Chairman has to take appropriate action in this regard." *emphasis added*

5.13 Minute No. 8 of the HDL Board Meeting held on 2nd December 1997 chaired by the then HDL Chairman, Mr. D.Y. Liyanage, reads thus:

"8. D.C. COLOMBO CASE NO. 15322/MR"

"Still pending."

"Chairman to take this matter up with the Chief Justice." *emphasis added*

"Mr. C.L. Perera stated that the Order is due on 23.01.1998."

5.14 Minute No. 8 of the HDL Board Meeting held on 3rd March 1998 chaired by the then HDL Chairman, Mr. D.Y. Liyanage, reads thus:

"8. D.C. COLOMBO CASE NO. 15322/MR"

"The Chairman was requested to take necessary action as he had been empowered to do so as far back as February 1997." *emphasis added*

"Mr. Ameresekere queried as to how the previous Secretaries of HDL had executed a proxy of HDL without a Board Resolution and that they should be written to in this regard."

"The Chairman was requested to write to Mr. Hussein Ahmed pointing out that Mr.C.L. Perera stood removed as Managing Director from 28th June 1995 and that his letter to Mr. Hussein Ahmed in October 1996 contrary to Board decisions is of no avail. Mr. C.L. Perera objected to this and stated that the court order is due on the 24th April 1998." *emphasis added*

5.15 Minute No. 8 of the HDL Board Meeting held on 21st April 1998 chaired by the then HDL Chairman, Mr. D.Y. Liyanage, reads thus:

"8. D.C. COLOMBO CASE NO. 15322/MR"

"Chairman stated that the Company Lawyers will be instructed to take appropriate action in this regard." *[emphasis added]*

5.16 Minute No. 8 of the HDL Board Meeting held on 4th June 1998 chaired by the then HDL Chairman, Mr. D.Y. Liyanage, reads thus:

"8. D.C. COLOMBO CASE NO. 15322/MR"

"Mr. N.S. Amaresekera stated that a letter dated 30th March 98 sent by his lawyers to Corporate Services Limited regarding the above was tabled and circulated at the previous meeting."

5.17 Minute No. 98.08.08 of the HDL Board Meeting held on 22nd July 1998 chaired by the then HDL Chairman, Mr. D.Y. Liyanage, reads thus:

"98.08.08 MATTERS ARISING OUT OF MINUTES

"(a) Tabling of documents

Chairman tabled the following documents for the information of the Board.

(2) **Letter dated 1st July 1998 sent by F.J & G De Saram to Mr. D.Y Liyanage re (1) D.C. Colombo Case No. 15322/MR (2) Casino Contract. Mr. C. L Perera stated that the letter was addressed to Mr. Liyanage and was not circulated among the Board Members. The Chairman read out the contents of the letter in full and requested the Secretaries to circulate the same among Board Members."** *[emphasis added]*

The aforesaid Letter dated 1st July 1998 from the HDL Company Lawyers, M/s F.J. & G. De Saram **tabled, read and circulated** as aforesaid, inter-alia, stated thus:

Daya Liyanage Esq.,
Chairman,
Hotel Developers (Lanka) Ltd.
Lotus Road
Colombo 1.

Dear Sir,

Re: (1) D.C. Colombo Case No. 15322/MR
(2) Casino Contract

We are in receipt of extract of the minutes of the Board Meeting of Hotel Developers (Lanka) Ltd., [HDL] held on 21.4.98 forwarded to us by the Secretaries to the Company instructing us to take appropriate action in respect of the above two matters. *[emphasis added]*

RE: D.C. Colombo Case No. 15322/MR

In this connection we wish to note as follows-

1. The above action was instituted by HDL against Mr. N.S. Amarasekera claiming a sum of Rs.26,628,613/= being loss and damage caused to HDL:

2. Mr. N.S. Amarasekera filed Answer claiming a sum of Rs.50 Million on account of damages sustained by him. He also sought an order directing HDL to recover the said damages of Rs.50 Million from Mr. C.L. Perera and the other Directors who were responsible for the institution of the said Action.
3. In the said Case proxy on behalf of HDL had been filed by Mr. Hussein Ahamed, Attorney-at-Law;
4. It would appear that by the Settlement Agreement HDL had undertaken to have the said action withdrawn. [emphasis added]Consequently HDL had revoked the Proxy of Mr. Ahamed.
5. Having originally consented in writing to such revocation Mr. Ahamed had subsequently withdrawn such revocation on the basis of a letter dated 10.10.96 written to him by Mr. C.L. Perera. This matter was canvassed in Court and Order in respect of the same was reserved and has still not being delivered.
6. **Mr. Ahamed has disregarded the subsequent HDL Board decisions that had been communicated to him by the Company Secretaries by their letters dated 15th November and 20th November 1996 and accordingly it appears that the HDL Board had decided to report Mr. Ahamed to the Supreme Court for professional misconduct;** [emphasis added]

In this connection we are of the view that the Judicial Service Commission be written to informing the Commission that the Order reserved by the then District Judge has not been delivered for the present District Judge to be directed to deliver the Order immediately. [emphasis added]

We are further of the view that Mr. Ahamed should be written to and informed that he had no authority to countermand the instruction of HDL and that he has no right to act on the instruction of Mr. C.L. Perera whose removal as Chairman of the Company on 28.6.95 has been upheld by the District Court, Court of Appeal and the Supreme Court. Mr. Ahamed should be further informed that in the event of his continuing to act for HDL he would be reported to the Supreme Court that he would be personally liable for damages for countermanding the instruction of HDL. [emphasis added]

7. We further find that by the Settlement Agreement, HDL has expressly admitted that the said action filed against Mr. Ameresekere on baseless grounds and also the complaints made by HDL against Mr. Ameresekere to Professional Institutions of which he was a member as being baseless and malicious. [emphasis added]

In addition we find that by the Settlement Agreement HDL has undertaken to take appropriate action against Mr. C.L. Perera and the other Directors responsible for the institution of the above action. We await the instruction of HDL on this mater. [emphasis added]

8. In the event of HDL withdrawing the above Action there yet remains the claim in reconvention for Rs. 50 Million of Mr. Ameresekere.

While there is provision in the Settlement Agreement to consider the said Claim in Reconvention we are of the view that to avoid further litigation it would be prudent to negotiate with Mr. Ameresekere and arrive at a mutually agreeable settlement. The avenues open for settlement include arbitration or referring same to a mutually acceptable person. [emphasis added]

RE: CASINO CONTRACT

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Yours faithfully,

True copy of the said Letter dated 1st July 1999 from HDL Company Lawyers, M/s F.J. & G. De Saram is annexed hereto marked "X3"

5.18 Thereafter at the aforesaid HDL Board Meeting on 22nd July 1998 the Board made the following decision as recorded in the Board Minutes thus;

"(b) 15322/MR, Casino Contract Cases No. 10949/MR & 12978/MR

"The Board decided that the Company Lawyers be authorised and empowered to take actions as per their said Letter dated 1st July 1998."
emphasis added

"Mr. C.L. Perera objected stating as per the Order in D. C Colombo Case No. 5095/Spl everything pertaining to Settlement Agreements have been restrained on the basis of the interim injunctions. A copy of the same was tabled by Mr. C.L Perera."

"Mr. N.S. Ameresekere stated that the Court Order does not pertain to the Settlement Agreement re - D.C. Colombo Case No. 15322/MR. He suggested that the Company Lawyers examine the correct legal position and take appropriate action. Chairman agreed." *emphasis added*

"Mr. N.S. Ameresekere suggested that a certified copy of the Board Decisions be forwarded to the Company Lawyers, F.J. & G. De Saram, by the Secretaries. Mr. C.L. Perera questioned as to how F.J. & G. De Saram became the Company lawyers."

.....
.....

"Chairman stated that F.J. & G. De Saram are the duly appointed Company Lawyers and by virtue of that the legal matters of the Company should be referred to them." *emphasis added*

"Mr. C.L. Perera stated that he does not dispute the fact that F.J. & G. De Saram are the Company Lawyers."

5.19 Minute No. 98.09.02 of the HDL Board Meeting held on 4th September 1998 chaired by then HDL Chairman, Mr. D.Y. Liyanage, reads thus:

"98.09.02 MATTERS ARISING OUT OF THE MINUTES

"The Chairman stated that outstanding matters had been dealt with. He further added that as decided matters had been referred to the Company lawyers to be acted upon. The Chairman was empowered to follow up the outstanding matters with the Company Lawyers and report progress to the Board." *emphasis added*

6.1 In accordance with the aforesaid HDL Board Decision, the Company Secretaries, Corporate Services Ltd. by their Letter dated 4th August 1998 had informed HDL Company Lawyers, M/s F.J. & G. De Saram that their aforesaid Letter dated 1st July 1998 had been tabled and read at the HDL Board Meeting held on 22nd July 1998 and that the HDL Board had accepted their recommendations and had decided to authorise them to take all necessary steps and actions in accordance therewith.

- 6.2 Accordingly, HDL Company Lawyers, M/s F.J. & G. De Saram addressed their Letter dated 8th October 1998 to Mr. Hussain Ahamed, inter-alia, putting him on notice that he had no authority to countermand instructions of HDL and that all necessary legal steps will be taken against him to protect the interest of HDL including a claim for damages against him.

True copy of the said Letter dated 8th October 1998 addressed by the HDL Company Lawyers, M/s F.J. & G. De Saram to Mr. Hussain Ahamed, Attorney-at-Law is annexed hereto marked "X4(a)"

- 6.3 **Furthermore**, accordingly, HDL Company Lawyers, M/s F.J. & G. De Saram also addressed their Letter dated 27th October 1998 to His Lordship the Hon. Chief Justice reporting the facts pertaining to the revocation of proxy in D.C. Colombo Case No. 15322/MR that had been given to Mr. Hussain Ahamed and the filing of the proxy granted to the State Attorney.

In the said Letter of HDL Company Lawyers, M/s F.J. & G. De Saram, addressed to the Hon. Chief Justice, inter-alia, the following had been stated:

"At a Meeting of the Board of Directors of HDL held on 28th June 1995, Mr. C.L. Perera was removed as Chairman/Managing Director."

"In the meantime, the District Court on 3rd October 1997, Court of Appeal on 3rd April 1998 and the Supreme Court on 11th June 1998 have held that the meeting of 28th June 1995, whereas Mr. C.L. Perera was removed from the post of Chairman & Managing Director of Company was validly constituted Meeting and therefore in the circumstances, Mr. C.L. Perera has no right to function as the Chairman and/or Managing Director of HDL after 28th June 1995."

"We must also mention that at the said Board Meeting of HDL on 28th June 1995 HDL had entered into a Settlement Agreement with Defendant (reference being to me) in the aforesaid case admitting that the said case filed by Mr. Hussain Ahamed is baseless and malicious, and that HDL had tendered a written apology to the Defendant in that regard and that furthermore, HDL had agreed to consider as a consequence the Claim in Reconvention of Rs. 50 Million made against HDL by the Defendant in the said case and taking action against Mr. C.L. Perera for having caused this case to be instituted." [emphasis added]

True copy of the said Letter dated 27th October 1998 addressed by the HDL Company Lawyers, M/s F.J. & G. De Saram to the Hon. Chief Justice is annexed hereto marked "X4(b)".

- 6.4 Copies of the aforesaid Letters dated 8th October 1998 to Mr. Hussain Ahamed, Attorney-at-Law and dated 27th October 1998 to the His Lordship Chief Justice had been forwarded by HDL Company Lawyers, M/s F.J. & G. De Saram, by their Letter dated 29th October 1998 to Mr. Daya Liyanage, Chairman HDL, with copy to me.

True copy of the said Letter dated 29th October 1998 addressed by HDL Company Lawyers, M/s F.J. & G. De Saram to Mr. Daya Liyanage is annexed hereto marked "X4(c)".

- 6.5 a) HDL Company Lawyers, M/s F.J. & G. De Saram, having been authorised and empowered by the HDL Board as aforesaid to take actions as per their Letter dated 1st July 1998, and as a consequence thereof;

HDL's Counsel, Mr. I.S. de Silva by Letter dated 25th November 1998 addressed to HDL Company Lawyers, M/s F.J. & G. De Saram on the subject matter of "Reference to a Mediator/Arbitrator to consider the Claim in Reconvention filed in D.C. Colombo Case No. 15322/MR in pursuance of the undertaking in the Settlement Agreement entered into with regard to the said Case, to consider damages that may have accrued to Mr. Nihal Sri Ameresekere by the said Action having been instituted and Complaints made to Professional Institutes", had suggested the following.

- "1. To determine the question as to quantum of compensation payable to Mr. Nihal Sri Ameresekere by Hotel Developers (Lanka) Ltd., on account of the baseless and malicious action bearing D.C. Colombo Case No. 15322/MR being instituted against Mr. Ameresekere by HDL." *emphasis added*
- "2. To determine the question as to quantum of further damages that have accrued to Mr. Nihal Sri Ameresekere in view of the baseless and malicious complaints made to the Institute of Chartered Accountants, Sri Lanka and the Chartered Institute of Management Accountants U.K. by Mr. John Wilson, Attorney-at-Law acting for and on behalf of HDL and the Letters forwarded by then Chairman and Managing Director of HDL Mr. C.L. Perera to Her Excellency the President, Hon. Ministers and other Officials." *emphasis added*

The aforesaid Terms of Reference comprised of 2 separate Items to be determined upon.

- b) HDL's Counsel, Mr. I.S. de Silva by his further Letter dated 16th December 1998, addressed to HDL Company Lawyers, M/s F.J. & G. De Saram also stated as follows:

" I write to advise that an action could be instituted against Mr. C.L. Perera, to recover damages for any loss and damage that may result or has been caused to HDL, by him having caused the institution of D.C. Colombo Case No. 15322/MR against Mr. Nihal Sri Ameresekere without an express Board Resolution to do so, and the several baseless complaints made to professional institutes and letters to Her Excellency the President, Hon. Ministers and other Officials." *emphasis added*

" The action for damages, would be based on the costs incurred by HDL by reason of the institution of the said D.C. Colombo Case No. 15322/MR, and the amount awarded to Mr. Ameresekere by the Arbitrator/Mediator in terms of the Settlement Agreement dated 28th June 1995." *emphasis added*

True copies of the said Letters dated 25th November 1998 and 16th December 1998 addressed by HDL's Counsel Mr. I.S. de Silva to HDL Company Lawyers, M/s F.J. & G. De Saram are annexed hereto marked "X5(a)" and "X5(b)".

- 6.6 Thereafter, the selection of a mutually agreeable Mediator took some time, and consequently by Letter dated 27th July 1999, addressed to me, HDL Company Lawyers, M/s F.J. & G De Saram, referring to the correspondence they have had with HDL regarding the appointment of a Mediator for the aforesaid purpose, communicated that they have been instructed by HDL give the names of the following persons, who may be selected as a Mediator.

1. Sidath Sri Nandalochana,
Attorney-at-Law,
No. 9, Asoka Gardens,
Colombo 4. (Phone 588383)
2. Dr. Jayatissa De Costa,
Attorney-at-Law,
496/3, Havelock Road,
Colombo 6. (Phone 501125)
3. Mr. D.P. Mendis,
Attorney-at-Law
7, Old Quarry Road,
Mount Lavinia. (Phone 736193)

I verily believe that the aforesaid names for the selection of a Mediator had been forwarded by the then Chairman HDL, Mr. Daya Liyanage, in consultation with Mr. S.S. Sahabandu, Director HDL.

True copy of the said Letter dated 27th July 1999 addressed to me by HDL Company Lawyers, M/s F.J. & G. De Saram is annexed hereto marked "X6(a)".

6.7 In response to the aforesaid Letter, I addressed my reply dated 18th August 1999 to HDL Company Lawyers, M/s F.J. & G. De Saram, inter-alia, stating as follows;

"As you are aware, in view of the professional and/or commercial nature of the aforesaid matters, it was agreed that a suitable person from the business/professional sectors be selected for such process of mediation. I believe you had submitted several names from such sectors in this regard, but that the Chairman of HDL, Mr. D.Y. Liyanage had not selected any one of such names submitted. Accordingly, it was suggested that he submits the names of few persons to be nominated as a Mediator, so that we may mutually decide upon an acceptable person for this process, as referred to in paragraph 2 of your Letter under reference." *emphasis added*

"However, as per your Letter dated 27th July 1999, the 3 persons, who have been suggested by him are all Attorneys-at-Law. I am advised that they are all known to be closely associated politically with the Peoples' Alliance. You are aware, that I have instituted two Cases in the District Court of Colombo against the Peoples' Alliance Minister, Mr. G.L. Peiris, one in my own right and the other, a derivative action in the right and on behalf of HDL, in its interest and for its benefit." *emphasis added*

"In the said derivative action, Mr. D.Y. Liyanage, acting on behalf of HDL, together with the Lawyers representing HDL, appear to be sailing together with the Defendant, Mr. G.L. Peiris and acting in the said Defendant's interest, rather than in the interest of HDL." *emphasis added*

"In these circumstances, you would appreciate, that I apprehend that I may not receive a free, unbiased and independent hearing from the Lawyers suggested by Mr. D.Y. Liyanage." *emphasis added*

"Since this matter is long overdue, notwithstanding the Board Decisions that had been taken in this regard, with a view to making progress without any further delay, I am advised to suggest the following course of action:" *emphasis added*

"One of the 3 Lawyers suggested by Mr. D.Y. Liyanage, namely Mr. Sidath Sri Nandalochana, Attorney-at-Law be requested to have discussions with Mr. K. Kanag-isvaran P.C., to explore as to whether, a mutually acceptable out of Court settlement could be agreed upon by them to have this matter finally disposed of in terms of the said Settlement Agreement. As had been agreed, I shall make available copies of all relevant documents through you and afford all requisite clarifications and explanations in your presence."

"It is of relevance to point out, that the aforesaid mala-fide, baseless and malicious actions against me had been out of spite to injure and harm me, with intent to stifle, stultify and thwart my efforts in the derivative actions, D.C. Colombo Cases Nos. 3155/Spl and 3231/Spl, which I had instituted in the right and on behalf of HDL, in its interest and for its benefit, in the circumstances of wrong-doings by the then Directors of HDL, who controlled it, one of which derivative actions being upheld by the Supreme Court on such premise." *emphasis added*

"Nevertheless, as you are aware, as a consequence of my said actions amidst, inter-alia, such pressures and obstructions, HDL immensely benefited by a write-off of Rs. 10,200 million on claims made against it and the balance debt being further re-scheduled over a period of 15-years up to the year 2010 at a reduced rate of interest. I, however, had not claimed any compensation for my time and efforts over several years, which so immensely has benefited HDL." *emphasis added*

True copy of the said Letter dated 18th August 1999 addressed by me to the HDL Company Lawyers, M/s F.J. & G. De Saram is annexed hereto marked "X6(b)".

- 6.8 a) In response to my aforesaid Letter to HDL Company Lawyers, M/s F.J. & G. De Saram, they addressed their Letter dated 19th October 1999 to me stating:

"The Chairman, Hotel Developers (Lanka) Ltd., has informed us that he agrees to the nomination made by you to appoint Mr. Sidath Sri Nandalochana, Attorney-at-Law, as the Mediator. Mr. Liyanage further states in the letter that the Mediator should be notified to determine on the items referred to him by letter dated 25th November 1998 of Mr. I.S. De Silva, Attorney-at-Law, which letter was forwarded by us to Mr. Liyanage with our letter dated 4th December 1998." *emphasis added*

"We are in communication with Mr. I.S. De Silva, Attorney-at-Law on this matter and further steps will be taken upon his advice." *emphasis added*

"kindly note that this matter will be attended to by our Partner, Mr. M.I.M. Jaffer during the period Mr. G.S. Herat Gunaratne will be away from office on leave." *emphasis added*

- b) A copy of the aforesaid Letter dated 19th October 1999 from HDL Company Lawyers, M/s F.J. & G. De Saram, was forwarded by my instructing Attorneys-at-Law M/s De Silva & Perera by their Letter dated 25th October 1999 to the Hon. Attorney General appearing for HDL in D.C. Colombo Case No. 15322/MR, so that the Court may be informed that a Mediator has been appointed to resolve this matter and that the Case be called on a further date giving reasonable time for the Mediation process. The said Letter was also copied to HDL Company Lawyers, M/s F.J. & G. De Saram.
- c) In conformity with the aforesaid, when the D.C. Colombo Case No. 15322/MR subsequently was called in Court, the State Attorney appearing for HDL, had handed over to my Counsel, a copy of a draft suggested Consent Motion to be tendered to Court, inter-alia, confirming that HDL having agreed to have this Case promptly withdrawn in terms of the Settlement Agreement entered into 28th June 1995, had agreed to appoint a Mediator to determine, the damages to be paid to me by HDL in the context of the Claim in Reconvention that had been made by me in this Case.

True copies of the said Letter dated 19th October 1999 addressed by HDL Company Lawyers, M/s F.J. & G. De Saram to me, and the Letter dated 25th October 1999 addressed to the Hon. Attorney General by my instructing Attorneys-at-Law, M/s De Silva & Perera, and a copy of the said draft Consent Motion are annexed hereto marked "X7(a)", "X7(b)" and "X7(c)".

- 7.1 As agreed as aforesaid, HDL Company Lawyers, M/s F.J. & G. De Saram addressed their Letter dated 28th October 1999 to Mr. Sidath Sri Nandalochana, Attorney-at-Law intimating that he had been nominated by HDL, in concurrence with me, to act as Mediator on the 2 separate matters agreed upon, *as referred to at paragraphs 6.5 a) and 6.8 a) above.*
- 7.2 In response thereto, by Letter dated 12th November 1999, Mr. Sidath Sri Nandalochana, Attorney-at-Law stated, that he did not consider it appropriate to undertake this assignment, as he continues to appear on behalf of HDL in certain legal matters.
- 7.3 The said Letter dated 12th November 1999 of Mr. Sidath Sri Nandalochana was forwarded by HDL Company Lawyers, M/s F.J. & G. De Saram by their Letter dated 15th November 1999 to Mr. Daya Liyanage, HDL Chairman, inter-alia, stating that in view of the above, HDL will have to in concurrence with me, nominate another Mediator. HDL Company Lawyers, M/s F.J. & G. De Saram's said Letter dated 15th November 1999 was copied to me and HDL's Counsel, Mr. I.S. De Silva.
- 7.4 In the given circumstances, HDL, in concurrence with me, nominated Your Honour and Your Honour was intimated of such nomination by HDL Company Lawyers, M/s F.J. & G. De Saram by their Letter dated 17th December 1999 addressed to Your Honour, setting out the terms of reference referred to hereinbefore, which had been agreed upon, *as referred to at paragraphs 6.5 a) and 6.8 a) above.*

- 7.5 Your Honour by Letter dated 20th December 1999 addressed to HDL Company Lawyers, M/s F.J. & G. De Saram informed, that Your Honour agreed to the above nomination to act as Mediator on the Terms of Reference set out in the aforesaid Letter dated 17th December 1999 to Your Honour by HDL Company Lawyers, M/s F.J. & G. De Saram.
- 7.6 Consequently, HDL Company Lawyers, M/s F.J. & G. De Saram addressed their Letter dated 4th January 2000 to Mr. Daya Liyanage, Chairman HDL, forwarding copies of Your Honour's Letter dated 20th December 1999 and a copy of their Letter **also** dated 4th January 2000 addressed to Your Honour confirming 18th January 2000 for a preliminary discussion in this regard to be had at the ICLP Arbitration Centre. HDL Company Lawyers, M/s F.J. & G. Desaram's said Letter dated 4th January 2000 was copied to me and HDL's Counsel, Mr. I.S. De Silva.
- 7.7 HDL Company Lawyers, M/s F.J. & G. De Saram, by their subsequent Letter dated 10th January 2000 addressed to Your Honour confirmed that the said preliminary discussion with Your Honour's agreement was now fixed for 26th January 2000 at the ICLP Arbitration Centre. HDL Company Lawyers M/s F.J. & G. De Saram's said Letter dated 10th January 2000 was copied to HDL's Counsel, Mr. I.S. De Silva, my Senior Counsel, Mr. K. Kanag-Isvaran P. C., Mr. Daya Liyanage and to me.
- 7.8 Consequently, the ICLP Arbitration Center by their Letter dated 11th January 2000 addressed to HDL Company Lawyers, M/s F.J. & G. De Saram confirmed that the preliminary hearing would be held on 26th January 2000. The said Letter was copied to Your Honour, my Senior Counsel, Mr. K. Kanag-Isvaran P.C., HDL's Counsel Mr. I.S. De Silva, Attorney-at-Law and to me.
- 7.9 **Accordingly**, the preliminary hearing into the matter before Your Honour was held on 26th January 2000 at the ICLP Arbitration Center. Mr. K. Kanag-Isvaran P.C. with Mr. Harsha Cabral, Attorney-at-Law, instructed by M/s De Silva & Perera, Attorneys-at-Law appeared for me. Mr. I.S. De Silva instructed by M/s F.J. & G. De Saram, whose partner Mr. M.I.M. Jaafer, Attorney-at-Law was present, appeared for HDL.
- 7.10 Consequently, by Letter dated 7th February 2000 addressed to Your Honour, HDL Company Lawyers, M/s F.J. & G. De Saram and to me, and copied to my Senior Counsel, Mr. K. Kanag-Isvaran P.C. and HDL's Counsel Mr. I.S. De Silva, the **ICLP Arbitration Centre** forwarded the **proceedings of 26th January 2000**, whereat it had been agreed, that I would forward an **Affidavit** setting out the relevant facts, which **Affidavit**, I tendered to Your Honour as aforesaid on **9th March 2000**.

True copies of the said Letters dated;

- 28th October 1999 of HDL Company Lawyers, M/s F.J. & G. De Saram addressed to Mr. Sidath Sri Nandalochana, Attorney-at-Law [X8(a)],
- 12th November 1999 from Mr. Sidath Sri Nandalochana, Attorney-at-Law [X8(b)],
- 15th November 1999 of HDL Company Lawyers M/s F.J. & G. De Saram's to Mr. Daya Liyanage, HDL Chairman [X8(c)],
- 17th December 1999 of HDL Company Lawyers, M/s F.J. & G. De Saram's addressed to Your Honour [X8(d)],
- 20th December 1999 addressed by Your Honour's to HDL Company Lawyers, M/s F.J. & G. De Saram, [X8(e)],
- 4th January 2000 of HDL Company Lawyers, M/s F.J. & G. De Saram, to Mr. Daya Liyanage, Chairman HDL [X8(f)],
- 4th January 2000 addressed to Your Honour by HDL's Company Lawyers, M/s F.J. & G. De Saram [X8(g)],

- 10th January 2000 addressed to Your Honour by HDL Company Lawyers, M/s F.J. & G. De Saram [X8(h)],
- 11th January 2000 from ICLP Arbitration Center to HDL Company Lawyers, M/s F.J. & G. De Saram [X8(i)] and
- 7th February 2000 of the ICLP Arbitration Center forwarding the proceedings of 26th January 2000 [X8(j)]

are annexed hereto marked "X8(a)", "X8(b)", X8(c)", X8(d)", X8(e)", X8(f)", X8(g)", X8(h)", "X8(I)" and "X8(j)".

8. **IN ADDITION** to the aforesaid HDL Board Minutes and the aforesaid actions taken in accordance therewith, **the following extracts of the further HDL Board Minutes would reveal**, that HDL Board of Directors;

- a) was giving due consideration to matters relevant to the subject matter in the D.C. Colombo Case No. 15322/MR and the Complaints made to Professional Institutions as aforesaid,
- b) had caused due inquiries to be made into the said matters calling for explanations in that regard, from the persons concerned and responsible therefor, and
- c) had put on notice the Lawyers, who had formulated the said baseless, mala-fide and malicious Complaints to Professional Institutions as aforesaid.

8.1 Minute No. 98.08.08 (c) of the HDL Board Meeting held on **22nd July 1998** chaired by the then HDL Chairman, **Mr. D.Y. Liyanage**, reads thus:

(c) Re- payment to Ford, Rhodes Thornton & Co.

"Mr. Ameresekere referred to the Memorandum dated 2nd December 1997 tabled by him and circulated to the Board Members and explained the contents to the Board. He stated that according to the Memorandum dated 26th June 1997 from the General Manager of the Company and letters attached thereto, by several letters dated 22nd April 1994, 29th April 1994, 19th May 1994, 19th July 1994, 23rd September 1994 and 1st April 1996, **Ford, Rhodes, Thornton & Co. had incorrectly represented to the Tax Department, that the Rs. 79.8 Million, which had been stated as a Current Asset of the Company in its Balance Sheet as at 31st March 1990 certified by Ford, Rhodes, Thornton & Co. themselves, had been an interest payment. Mr. N.S. Ameresekere pointed out that even in April 1996, that such representation had not been changed by Ford, Rhodes, Thornton & Co. even after all accrued interests had been written-off. Mr. Amerasekera suggested that the Company should write to Ford, Rhodes, Thornton & Co. and the General Manager of the Company calling for their explanations.**" *emphasis added*

"Mr. C.L. Perera objected stating that this matter was discussed earlier and that the same came up before District Court of Colombo in Case No. 15322/MR. Mr. C.L. Perera stated that Mr. Sudharshan and Ford, Rhodes, Thornton & Co. had acted professionally."

"Chairman was empowered to call for explanations from Ford, Rhodes, Thornton & Co. and the General Manager HDL". *emphasis added*

8.2 Minute No. 98.11.03(7) of the HDL Board Meeting held on 14th January 1999 chaired by the then HDL Chairman, Mr. D.Y. Liyanage, reads thus:

98.11.03(7) Matters re: Tax on Interest

"Mr. Amerasekera referred to letters dated 01.09.98 written by the Secretaries to General - Manager HDL and KPMG Ford Rhodes, Thornton & Company, calling for their explanations, as had been decided by the Board. KPMG Ford Rhodes, Thornton & Company had failed to respond. It was decided to request the Secretaries to write to KPMG Ford Rhodes, Thornton & Company drawing attention to their failure to respond."

"General Manager HDL had responded by letter dated 09.10.98, wherein he had inter-alia stated "it is in this regard that Ford Rhodes having realised that the payment made in March 1990 could be interpreted as an interest payment, submitted an appeal to the Inland Revenue requesting that this payment be set off against the interest income."
(emphasis added)

"He pointed out that it was Ford Rhodes, Thornton & Company who ought to have been faulted, whereas, in this very regard, wrongful actions had been taken against him, for which the Company had subsequently tendered letters of unconditional apologies. He required that copies of these letters of apologies be forwarded by the Secretaries to Attorneys-at-Law M/s John Wilson, J.E.P. Deraniyagala, F. Mustapha and K. Abeysinghe who had been paid fees by the Company in this regard."
(emphasis added)

8.3 Minute No. 98.11.03 (7) of the HDL Board Meeting held on 18th March 1999 chaired by the then HDL Chairman, Mr. D.Y. Liyanage, reads thus:

"98.11.03 (7) Matters re: Tax on Interest

"Mr. C.L. Perera objected to 3rd paragraph of the above and stated that he and his wife were not in any way associated with the contents of the said paragraph."

8.4 Minute No. 99.04.02 (A) of the HDL Board Meeting held on 20th July 1999 chaired by the then HDL Chairman, Mr. D.Y. Liyanage, reads thus:

"99.04.02 (A) 18th March 1999 Meeting

Matters re: Tax on Interest

"Mr. C.L. Perera stated that he did not have copies of all the relevant papers before him. **Mr. S. S. Sahabandu suggested that this matter be taken up at the next meeting and requested copies of the relevant papers be also circulated to the new Directors.** Mr. Ameresekere undertook to do so." *(emphasis added)*

"Mr. Ameresekere stated that the Chairman should write a suitable reply regarding the above matter to the Auditors - Ford, Rhodes & Thornton and also to their Lawyers Nithya Partners." *(emphasis added)*

8.5 Minute No. 99.04.02 of the HDL Board Meeting held on 8th September 1999 chaired by the then HDL Chairman, Mr. D.Y. Liyanage, reads thus:

"99.04.02 Matters re: Tax on Interest

"Secretaries have circulated the relevant papers pertaining to the above matter. It was decided to take up this matter at the next Board Meeting." *(emphasis added)*

8.6 Minute No. 99.04.02 of the HDL Board Meeting held on 26th October 1999 chaired by the then HDL Chairman, Mr. D.Y. Liyanage, reads thus:

"99.04.02 Matters re: Tax on Interest

"Mr. Ameresekere briefed the Board on this matter, as disclosed by the replies that had been received from Ford, Rhodes, Thornton & Company, who had acted as Tax Consultants and from Mr. S.R. Sudharshan, General Manager HDL to the letters that had been addressed to them by the Secretaries as instructed by the Board calling for their explanations. It was decided to take this matter up at the next Board Meeting." *emphasis added*

8.7 Minute No. 00.01.02 of the HDL Board Meeting held on 24th March 2000 chaired by the new HDL Chairman, Mr. Bandula Wijyaratne, reads thus:

"00.01.02 Matters arising from the previous Minutes

" Mr. Ameresekere stated that matters arising from the previous Minutes be taken up at the next Board Meeting once the Chairman has time to go through the Minutes." *emphasis added*

8.8 Accordingly, the aforesaid matters are currently pending before HDL Board of Directors for due consideration and appropriate actions to be taken thereon.

9. In accordance with the aforesaid HDL Board Decisions referred to at paragraph 8 above, the following actions had been taken.

9.1 As decided by HDL Board of Directors, HDL Company Secretaries, Corporate Services Ltd., by their Letters dated 1st September 1998 called for explanations from,

- a) M/s KPMG Ford, Rhodes Thornton & Co. Chartered Accountants, then HDL Auditors, who had handled the HDL Tax matters and in the absence of a reply, addressed their further Letter dated 9th March 1999, and
- b) Mr. S. R. Sudharshan, HDL General Manager, who had assisted the aforesaid Auditors

True copies of the said Letters dated 1st September 1998 and 9th March 1999 addressed by HDL Company Secretaries, Corporate Services Ltd., to M/s KPMG Ford, Rhodes Thornton & Co. Chartered Accountants and Letter dated 1st September 1998 addressed by the HDL Company Secretaries, Corporate Services Ltd., to Mr. S. R. Sudharshan, HDL General Manager are annexed hereto marked "X9(a)", "X9(b)" and "X9(c)".

9.2 In response to the aforesaid, the following Letters of explanation were received from M/s KPMG Ford, Rhodes Thornton & Co. Chartered Accountants and Mr. S. R. Sudharshan, HDL General Manager.

- a) Letter dated 17th March 1999, together with copy of Letter dated 8th September 1998, from Nithya Partners, Attorneys-at-Law, replying on behalf of M/s KPMG Ford, Rhodes Thornton & Co. Chartered Accountants, and
- b) Letter dated 9th October 1998 from Mr. S. R. Sudharshan, HDL General Manager

True copies of the said Letter dated 17th March 1999, together with the said Letter dated 8th September 1998, from Nithya Partners, Attorney-at-Law and the said Letter dated 9th October 1998 from Mr. S. R. Sudharshan, HDL General Manager are annexed hereto marked "X10(a)", "X10(b)" and "X10(c)".

9.3 On the instructions of then HDL Chairman, Mr. Daya Liyanage, HDL Company Secretaries, Corporate Services Ltd., by their Letter dated 20th August 1999 forwarded copies of the aforesaid Letters to all Directors of HDL, which included Government Nominee Directors, Mr. W.J.S. Karunaratne, Mr. M.D. Bandusena and Mr. S.S. Sahabandu, who had been appointed HDL Directors from June 1999.

True copy of the said Letter dated 20th August 1999 of HDL Company Secretaries, Corporate Services Ltd. is annexed hereto marked "X10(d)".

9.4 The aforesaid written explanation confirmed that;

- a) a Current Asset of HDL amounting to Rs. 79.9 Mn., shown in the HDL Audited Balance Sheet as at 31st March 1990, that had been so certified by M/s KPMG Ford, Rhodes Thornton & Co. Chartered Accountants, themselves, had been subsequently deliberately and wrongfully misrepresented by them to the Inland Revenue Department, as an Interest Payment on the Long-term Loans to Mitsui/Taisei, for the purpose of deducting the same from the Interest Income, that had been received by HDL for the years 1990/91, 1991/92 and 1992/93. This had attracted the incidence of Tax on such misrepresented "Interest Payment".
- b) whilst one hand, HDL General Manager, Mr. S.R. Sudharshan had stated that M/s KPMG Ford, Rhodes Thornton & Co. Chartered Accountants had interpreted the aforesaid Current Asset of HDL as an "Interest Payment", on the other hand M/s KPMG Ford, Rhodes Thornton & Co. Chartered Accountants had endeavoured to avoid responsibility therefor, blaming HDL General Manager, Mr. S.R. Sudharshan for the same.
- c) HDL earned valuable Interest Income on considerable funds that had been accumulated by HDL consequent to the restraining Orders that had been obtained by me from September 1990, preventing any payments to Mitsui/Taisei, consequent to which restraining Orders, upon my insistence, the aforesaid payment of Rs. 79.9 million was confirmed as a Current Asset of HDL in the HDL Balance Sheet as at 31st March 1990.
- d) by the Settlement Agreements, signed in June 1995, as a consequence of my efforts, Mitsui/Taisei wrote off 10-years' accrued interests from April 1984 and in terms of the said Settlement Agreement, the Government in October 1996 exempted Tax on Interest Payments on the balance unwritten-off Loan payable to Mitsui/Taisei for the future years.
- e) without having taken action against M/s KPMG Ford, Rhodes Thornton & Co. Chartered Accountants and HDL General Manager, Mr. S.R. Sudharshan, baseless, mala-fide and malicious actions were spitefully caused to be taken against me in July/August 1994, baselessly and wrongfully alleging professional negligence, with willfull intent to intimidate and pressurise me into withdrawing D.C. Colombo Cases No. 3155/Spl and 3231/Spl, which were then pending, and had been instituted by me in the interest of HDL, in circumstances of wrong-doing by the then Directors of HDL.
- f) I was not even a Director of HDL at the time, the aforesaid willfull and deliberate wrongful misrepresentations had been made to the Inland Revenue Department by M/s KPMG Ford, Rhodes Thornton & Co. Chartered Accountants and HDL General Manager, Mr. S.R. Sudharshan acting in concert.

9.5 Prior to the HDL Board Meeting held on 13th June 2000, having intimated to Chairman HDL, Mr. Bandula Wijayaratne, *that I do not wish to and should not participate in the said HDL Board Meeting, since it had been summoned specifically in relation to this Mediation*, but that I wished to make a statement thereat, and accordingly, *prior to leaving the said HDL Board Meeting, I briefly apprised the HDL Directors of the aforesaid facts referred to at paragraph 9.4 above, tabling and circulating copies of the aforesaid correspondence referred to at paragraphs 9.1, 9.2 and 9.3 above.*

9.6 Inasmuch as actions had been deliberately and willfully caused to be taken against me as aforesaid, with the intent to cause me injury in the circumstances of the said D.C. Colombo Cases Nos. 3155/Spl and 3231/Spl that had been instituted by me in circumstances of *wrongdoings* by the then HDL Directors, for *alleged professional negligence*, the said admitted baseless, mala-fide and malicious actions and the damages arising therefrom having been as a consequence of the aforesaid wrongful and unlawful actions of M/s Ford, Rhodes, Thornton & Co., Chartered Accountants and HDL General Manager, Mr. S.R. Sudharshan, they ought to be held accountable and responsible therefor and dealt with as warranted.

10. In accordance with the aforesaid HDL Board Decisions referred to at paragraph 8 above, the following further actions had been taken.

10.1 As decided by HDL Board of Directors, HDL Company Secretaries, Corporate Services Ltd., by their Letters dated 15th October 1999 had notified the Lawyers, who had rendered professional services in formulating the aforesaid Complaints in July 1994, *baselessly and wrongfully alleging professional negligence*, which also had been the basis of instituting D.C. Colombo Case No. 15322/MR in August 1994, that the HDL had admitted the above actions have been baseless, mala-fide and malicious and that HDL, as a consequence, had tendered Letters of Apology and Explanations dated 21st October 1996 in that regard;

The Lawyers notified as aforesaid were;

- a) Mr. J.E.P. Deraniyagala P.C.
- b) Mr. Kavinda Dias Abeysinghe, Attorney-at-Law
- c) Mr. Faisser Musthapha, Attorney-at-Law
- d) Mr. John Wilson, Attorney-at-Law

To the aforesaid Letters of notification had been attached, copies of the aforesaid 5 Letters of Apology and Explanation ("X1(a), X1(b), X1(c), X1(d) and X1(e)) that had been given by HDL, as referred to at paragraph 5.2 above.

True copies of the said Letters dated 15th October 1999 from HDL Company Secretaries, Corporate Services Ltd. addressed to the aforesaid Lawyers are annexed hereto marked "X11(a)", "X11(b)", "X11(c)" and "X11(d)".

10.2 There has been no response, whatsoever, to the aforesaid Letters from Mr. J.E.P. Deraniyagala P.C., Mr. Kavinda Dias Abeysinghe, Attorney-at-Law and Mr. Faisser Musthapha, Attorney-at-Law.

10.3 a) Mr. John Wilson, Attorney-at-Law, however, had forwarded his undated response to the aforesaid Letter, to HDL Company Secretaries, Corporate Services Ltd., received by them on 26th November 1999, inter-alia, stating that he was not the author of the aforesaid Complaints in question that had been made to the Professional Institutions.

b) Mr. John Wilson, Attorney-at-Law had further requested, that therefore it would be appreciated, if necessary steps are taken to clear his name of any wrong-doing by forwarding copies of his Letter to parties, to whom HDL had forwarded the aforesaid Letters of Apology and Explanation dated 21st October 1996.

10.4 a) To the aforesaid Letter of reply by Mr. John Wilson, Attorney-at-Law, had been attached a Letter dated 29th July 1994 that had been addressed to him by HDL General Manager, Mr. S.R. Sudharshan, with copy to the then HDL Chairman & Managing Director, Mr. C.L. Perera, based upon which Letter Mr. John Wilson asserts that he had acted.

- b) Significantly, the baseless and wrongful Complaint made against me to the Institute of Chartered Accountants of Sri Lanka under the hand of Mr. John Wilson, Attorney-at-Law is also dated 29th July 1994.

True copies of the said undated Letter of Mr. John Wilson, Attorney-at-Law forwarded to HDL Company Secretaries, Corporate Services Ltd., Letter dated 29th July 1994 of HDL General Manager Mr. S.R. Sudharshan and copy of the said Complaint also dated 29th July 1994 under the hand of Mr. John Wilson, Attorney-at-Law are annexed hereto marked "X12(a), X12(b) and X12(c)".

- 11.1 HDL General Manager, Mr. S.R. Sudharshan, *though a Professional Accountant*, colluded with the wrong-doer Directors of HDL to finalise in November 1990 the HDL Annual Accounts to 31st March 1990, disregarding my objections thereto and rejection thereof, and further notwithstanding the facts that had been disclosed in D.C. Colombo Case No. 3155/Spl, that had been previously instituted by me in September 1990 and Enjoining Orders issued therein.
- 11.2 Consequently, upon my instituting D.C. Colombo Case No. 3231/Spl in January 1991, the aforesaid Annual Accounts of HDL to 31st March 1990 were enjoined by Court.
- 11.3 HDL General Manager, Mr. S.R. Sudharshan in his Affidavit in the aforesaid D.C. Colombo Case No. 3231/Spl did not disclose, that HDL had not filed Objections against the issuance of Interim Injunction against HDL in D.C. Colombo Case No. 3155/Spl.
- 11.4 In terms of the Decree entered by Court in D.C. Colombo Case No. 3231/Spl, the then Auditors of HDL, M/s KPMG Ford, Rhodes, Thornton & Co., Chartered Accountants, responsible for the said HDL Annual Accounts to 31st March 1990 were removed at the Extra Ordinary General Meeting of the Shareholders of HDL held on 21st January 1998, the present Chairman of HDL, Mr. Bandulasiri Wijayaratne having moved the Resolution therefor on behalf of the Secretary to the Treasury.
- 11.5 In the Show Cause Notices issued, *after the conduct of preliminary inquiries and investigations*, by the Special Presidential Commission, in December 1995 against Mr. C.L. Perera, Mr. K.N. Choksy and Mr. F.G.N. Mendis, as Directors of HDL, inter-alia, the following was one of the charges that had been made against them.

"disregard the discrepancies, shortcomings and irregularities which were brought to the notice of the Board of Directors, and wrongfully attempt to approve as authentic the Annual Accounts of HDL for the year ended 31st March 1990 and endeavour to take action to adopt the Accounts with the object of suppressing the aforesaid fraudulent acts and omissions".

- 11.6 In the context of the foregoing, HDL General Manager, Mr. S.R. Sudharshan ought not to have been involved in any matter, whatsoever, pertaining to this Mediation, whereas on the contrary he ought to be held accountable and responsible for the aforesaid wrong-doings.
- 12.1 Mr. John Wilson, Attorney-at-Law, stating by his aforesaid Letter, that he was not the author of the aforesaid Complaints to the Professional Institutions, though the same has been made under his own hand as aforesaid, the conclusion therefore that could be drawn, is that the said Complaints had been formulated by the aforesaid Counsel, Mr. J.E.P. Deraniyagala P.C., Mr. Kavinda Dias Abeysinghe and Mr. Faisser Musthapha, Attorneys-at-Law.
- 12.2 HDL has subsequently admitted in a written Agreement that the aforesaid Complaints are baseless, mala-fide and malicious, as aforesaid. Mr. John Wilson, Attorney-at-Law by his aforesaid Letter has required, that necessary steps be taken to clear his name of any such wrong-doing.

- 12.3 Whilst Mr. John Wilson, Attorney-at-Law has responded as aforesaid, *on the other hand*, none of the Counsel, Mr. J.E.P. Deraniyagala P.C., Mr. Kavinda Dias Abeysinghe and Mr. Faisser Musthapha, Attorneys-at-Law have responded in any manner, whatsoever; they have not denied that they had rendered the said professional services for the formulation of such baseless, mala-fide and malicious Complaints to Professional Institutions.
- 12.4 In the foregoing circumstances, upon coming to understand that Mr. J.E.P. Deraniyagala P.C had been retained to appear for HDL in this Mediation, in addition to Mr. I.S. De Silva, Attorney-at-Law, regular Counsel for HDL, I forwarded my Memo dated 15th May 2000 to Mr. Bandula Wijayarathne, Chairman HDL, apprising him of the aforesaid facts and circumstances and intimating, that I was advised, that there is a serious conflict of interest and contradiction for Mr. J.E.P. Deraniyagala P.C. to appear on behalf of HDL in this very matter of Mediation.
- 12.5 In response thereto, in my absence from the island, my Office had received Memo dated 25th May 2000 from Mr. Bandula Wijayarathne, Chairman HDL, intimating that the impression given does not warrant the assumption, that Mr. J.E.P. Deraniyagala P.C. has any conflicting interest with that of HDL and confirming that he had been retained through HDL Company Lawyers, M/s F. J. & G. De Saram.
- 12.6 The said Memo having been referred to my Attorneys-at-Law, M/s De Silva & Perera, as advised by Counsel, my Attorneys-at-Law had addressed their Letter dated 27th May 2000 to HDL Company Lawyers, M/s F.J. & G. De Saram, reiterating that there is a serious conflict of interest and that Mr. J.E.P. Deraniyagala P.C had failed and neglected to reply in any manner, whatsoever, to HDL Company Secretaries, Corporate Services Ltd.'s aforesaid Letter dated 15th October 1999 addressed to him, notifying him of the plight that his aforesaid actions had put HDL in.
- 12.7 In the foregoing circumstances, Mr. J.E.P. Deraniyagala P.C., ought not to have rendered any advice and/or assistance and/or services in this matter of Mediation, where Claims for Damages arising by reason of the aforesaid baseless, mala-fide and malicious actions as so admitted by HDL as aforesaid, are the subject matters of this Mediation.
- 12.8 Having not been advised otherwise and *more particularly in the context of the said Memo dated 25th May 2000* [X13(b)] from Mr. Bandula Wijayarathne, Chairman HDL and *the Draft HDL Board Minutes* [marked "H" to the Affidavit of Mr. Bandulasiri Wijayarathne], I am led to believe, that the Affidavit of Mr. Bandulasiri Wijayarathne on behalf of HDL has been prepared by Mr. J.E.P. Deraniyagala P.C., stating that HDL is compelled to withdraw from this Mediation, which had been initiated by HDL, itself, to determine the quantum of damages payable by HDL to me, arising from the aforesaid baseless, mala-fide and malicious actions, in respect of which Mr. J.E.P. Deraniyagala P.C., himself, had rendered professional services as aforesaid.
- 12.9 Inasmuch as actions had been deliberately and willfully caused to be taken against me as aforesaid, with the intent to cause me injury in the circumstances of the said D.C. Colombo Cases Nos. 3155/Spl and 3231/Spl that had been instituted by me in circumstances of *wrongdoings* by the then HDL Directors, for *alleged professional negligence*, the said admitted baseless, mala-fide and malicious actions and the damages arising therefrom having been as a consequence of the aforesaid professional services and/or advice of Mr. J.E.P. Deraniyagala P.C., and others as aforesaid, they ought to be held accountable and responsible therefor and dealt with as warranted.
- 12.10 I also wish to disclose to Your Honour, that in December 1999, upon consultations had with me, certain Clients of mine, recalled the brief from Mr. J.E.P. Deraniyagala P.C. and another President's Counsel, in a matter with socio-political ramifications, before His Lordship the Chief Justice in the Supreme Court, for reluctance or unwillingness on their part to follow the said Clients' instructions.

True copies of my Memo dated 15th May 2000 to Mr. Bandula Wijayarathne, Chairman HDL, the reply thereto to me dated 25th May 2000 from Mr. Bandula Wijayarathne, Chairman HDL and Letter dated 27th May 2000 addressed by my Attorneys-at-Law, M/s De Silva & Perera addressed to HDL Company Lawyers, M/s F.J. & G. De Saram are annexed hereto marked "X13(a)", "X13(b)", and "X13(c)".

13.1 I refer to paragraphs 2 and 3 of the Affidavit dated 19th June 2000 of HDL Chairman, Mr. Bandulasiri Wijayaratne, moreso particularly in relation to the denial of all and singular the averments contained in my Affidavit dated 9th March 2000, save and except those that had been specifically admitted, whilst also reserving the right to respond at a future date, if necessary. In this context, *moreso particularly in the interest of HDL*, I set out the following;

- i. Minute No. 98.09.02 of the **HDL Board Meeting held on 4th September 1998** chaired by then HDL Chairman, **Mr. D.Y. Liyanage**, reads thus:

"98.09.02 MATTERS ARISING OUT OF THE MINUTES

"The Chairman stated that outstanding matters had been dealt with. He further added that as decided matters had been referred to the Company lawyers to be acted upon. The Chairman was empowered to follow up the outstanding matters with the Company Lawyers and report progress to the Board."

(1) Tabling of documents

"The Chairman tabled the letter dated 30th July 1998 from the Company lawyers F.J. & G. de Saram's to Mr. C.L. Perera in reply to his letter dated 14th July 1998 addressed to Her Excellency the President." *emphasis added*

True copy of the said Letter dated 30th July 1998 of HDL Company Lawyers, M/s F.J. & G. De Saram addressed to Mr. C.L. Perera is annexed hereto marked "X14"

- ii. **HDL Counsel, Mr. I.S. De Silva, Attorney-at-Law's Letter dated 16th December 1998 [X5(b)]** addressed to HDL Company Lawyers, M/s F.J. & G. De Saram, inter-alia, stated as follows;

"In respect of the action to be taken against Mr. C. L. Perera in the context of the said letter dated 30th July 1998, I advise that on the matters stated in paragraphs 3(i) and 3(ii) therein, i.e. the arrangement to receive Jap.Yen 340 Million and the misappropriation of the alleged deposit of Rs. 3 Million received from the Casino operator, complaints be made to the Commission to Investigate Allegations of Bribery or Corruption, Exchange Control and the Fraud Bureau/CID (the relevant authority) for necessary action to be taken." *emphasis added*

- iii. Minute No. 98.4.2 (c) of the **HDL Board Meeting held on 21st April 1998** chaired by then HDL Chairman, **Mr. D.Y. Liyanage**, reads thus:

"(c) Cases Filed by Mr. C.L. Perera

"Chairman informed that Mr. C.L. Perera has filed two cases against Mitsui and Taisei, the Government, Mr. N.S. Amarasekera, HDL and including the Government Nominee Directors in one case."

"The Chairman requested Mr. C.L. Perera and Mrs. T.P. Pererea to withdraw from the meeting in view of conflict of interest. Accordingly, they withdrew.

- (1) D.C. Colombo Case No. 5095/Spl
(2) H.C. (Civil) Commercial 1/98"

"Chairman stated that the enjoining orders have been issued in this regard. The Board discussed the relevant matters."

"The Board ratified the proxies of HDL signed by the Chairman and Dr. P.B. Jayasundera in both cases and ratified and confirmed the Chairman's affidavit filed on a preliminary objection and empowered him to resist both Cases."

"Board authorised and empowered Mr. N.S. Amarasekera to swear the affidavit on behalf of HDL and the Government Nominee Directors to support the statement of objections to the Interim Injunction application since he was conversant with the relevant facts." *(emphasis added)*

iv. Minute No. 98.09.03(9) of the HDL Board Meeting held on 4th September 1998 chaired by then HDL Chairman, **Mr. D.Y. Liyanage**, reads thus:

"98.09.03(9) D.C. Colombo Case Nos. 5095/Spl and 1/98 (2)

"Chairman requested that Mr. C.L. Perera and Mrs. T.P. Perera to withdraw from the meeting. Mr. C.L. Perera stated that they are legally not obliged to withdraw from the meeting, but to avoid unpleasantness they would withdraw."

"It was reported that the High Court (Civil) Case No. 1/98(2) which was filed by Cornel & Co., was dismissed. Cornel & Co. has appealed. The Board authorised Mr. D.Y. Liyanage and Dr. P.B. Jayasundera to sign the proxy on behalf of the Company to resist the appeal."

"The following documents were tabled:

- 1) **Order of the Commercial High Court Case No. 1/98(2)**
- 2) **Statement of Objections and Answer filed in Case No. H.C. 1/98(2)**
- 3) **Statement of Objections and Answer filed in Case No. D.C. Colombo 5095/Spl together with Claims in Reconvention "**

"Further Mr. Ameresekere tabled a memorandum dated 4.9.1998 on the losses and damages caused to the Company and that the matter be considered for action to be taken at the next Board Meeting." *(emphasis added)*

True copy of the said Statement of Objections dated 27th May 1998 filed by HDL Company Lawyers, M/s F.J. & G. De Saram in H.C. (Civil) Case No. 1/98(2) on behalf of HDL and its Government Nominee Directors is annexed hereto marked "X15". The Plaintiff is D.C. Colombo Case No. 5095/Spl filed at the very same time being the same, the identical Objections were filed by HDL Company Lawyers, M/s F.J. & G. De Saram also in D.C. Colombo Case No. 5095/Spl.

13.2 The contents of the aforesaid documents, more particularly the extensive contents of the aforesaid **Statement of Objections ["X15"]** filed by HDL Company Lawyers, M/s F.J. & G. De Saram *on behalf of HDL and its Government Nominee Directors* in H.C. (Civil) Case No. 1/98(2) **confirms and/or corroborates several averments contained in my Affidavit dated 9th March 2000 tendered to Your Honour .**

14.1 I refer to paragraphs 11 and 12 of the Affidavit dated 19th June 2000 of HDL Chairman, Mr. Bandulasiri Wijyaratne, particularly in relation to the **Plaint** [marked "F" with the said Affidavit] filed in D.C. Colombo Case No. 5095/Spl and the **Order of the Court of Appeal** [Marked "G" with the said Affidavit] in the connected Revision Application No. 721/98, and I state as follows;

- i. The Plaintiff is D.C. Colombo Case No. 5095/Spl filed at the very same time being the same, the identical **Objections** as those contained in the aforesaid Statement of Objections [X15] filed in H.C. (Civil) Case No. 1/98(2) were filed by HDL Company Lawyers, M/s F.J. & G. De Saram, *also against the said Plaintiff in D.C. Colombo Case No. 5095/Spl.*
- ii. **The Supreme Court consequently in SC (Spl) L.A. Applications Nos. 120/99 and 121/99 has granted Special Leave to Appeal against the said Court of Appeal Order** and the Hearing into the said Appeals is pending before the Supreme Court.

- iii. The said Order of the Court of Appeal is a perverse Order, in that, *it had not dealt with any of the Objections, whatsoever, extensively contained in the aforesaid Objections, nor is there any reference, whatsoever, to any of the said Objections in the said Order.* In fact by the said Order, the Leave to Appeal Applications were wrongfully dismissed, *without any hearing there into, at the stage of conclusion of the hearings into the Stay Order Application.*
- iv. The said Order of the Court of Appeal had been gravely prejudiced, as quoted therein, by the false and misleading statements knowingly made by Mr. G.L. Peiris, *[a party affected by the Settlement Agreement marked "C" to the aforesaid Affidavit]* whereas Mr. G.L. Peiris in his Affidavit dated 29th August 1998 in C.A. Revision Application No. 775/98 had, inter-alia, affirmed that – "documents in files maintained or kept in the Ministry of Finance/Treasury are not documents in his possession or power, as no power or duty pertaining to the subject of finance had been delegated to him under Article 46(2) of the Constitution by Notification published in the Gazette". *[emphasis added]*

True copy of a "Note to Counsel" setting out the grave errors and misdirections in the aforesaid Order of the Court of Appeal, that was sent to HDL's Counsel and its Government Nominee Directors, is annexed hereto marked "XI6".

14.2 HDL and I in the Answer filed in the aforesaid D.C. Colombo Case No. 5095/Spl and HDL and the Government Nominee Directors in the Answer filed in H.C. (Civil) 1/98(2) have by way of Claims in Reconvention, inter-alia, claimed damages from the Plaintiff in the said Actions, namely Cornel & Co. Ltd., and also sought declarations that Cornel & Co. Ltd. stands disqualified from nominating Directors to the Board of Directors of HDL and that Mr. C.L. Perera and Mrs. T.P. Perera stand disqualified from being Directors of HDL.

15.1 I refer to paragraphs 4, 7, 8, 9, 10, 13, 14, 15 and 16 of the Affidavit dated 19th June 2000 of HDL Chairman, Mr. Bandulasiri Wijayaratne, more particularly to the reasons and/or circumstances stated therein, which are stated to be compelling HDL to withdraw from this Mediation process, which was initiated by HDL itself, and I state as follows:

- i. The separate Settlement Agreement, [marked "E" to the aforesaid Affidavit], was not put in issue in D.C. Colombo Case No. 5095/Spl referred to at paragraph 14 above. In fact, the said Settlement Agreement had been deliberately suppressed, without the disclosure thereof in the aforesaid Complaint and the said separate Settlement Agreement was filed with the aforesaid Statements of Objections, as a matter of material suppression.
- ii. Accordingly, I am advised that, the implementation and/or giving effect to the aforesaid separate Settlement Agreement [marked "E" to the aforesaid Affidavit], in terms of which, this Mediation process had been initiated by HDL, has not been and could not have been enjoined by the aforesaid Order of Court referred to at paragraph 14 above.
- iii. Condition 1. vi of the aforesaid Settlement Agreement [marked "E" to the aforesaid Affidavit] states as follows:

"1. Hotel Developers (Lanka) Ltd., shall and will

- vi. **Consider the Claim in Reconvention made by Mr. Ameresekere in the said D.C. Colombo action No. 15322/MR and further damages that accrued to him, arising from the said baseless and malicious complaints made to the aforesaid professional institutions of which Mr. Ameresekere is a fellow member and also arising from the said letters that have been forwarded by the Chairman & Managing Director of Hotel Developers (Lanka) Ltd. to Excellency the President, Hon. Ministers and other Officials."** *[emphasis added]*

- iv. Paragraph 8 of the aforesaid Affidavit refers to Clauses in Agreements Nos. 2, 3 and 4 referred to in paragraph 7 of the aforesaid Affidavit marked "B", "C" and "D" thereto. The said Clauses only refer to the withdrawal and settlement of D.C. Colombo Case No. 15322/MR and not to the aforesaid Complaints that had been made to Professional Institutions and the other correspondence referred to in the aforesaid Condition 1 vi. of the aforesaid separate Settlement Agreement, [marked "E" to the aforesaid Affidavit] [which is not injunctioned by the aforesaid Order of Court], in terms of which this Mediation process had been initiated by HDL itself.
- v. The matter of the aforesaid Complaints to Professional Institutions and other correspondence were separate matters from the said D.C. Colombo Case No. 15322/MR and thus my Claim in Reconvention in the said Case, accordingly had not taken the said matters into reckoning and had been confined only to the matter of the said baseless, mala-fide and malicious Case.

15.2 In the aforesaid given circumstances, HDL stands bound for the due performance, observance and fulfilment of its obligations under and in terms of the said separate Settlement Agreement [marked "E" to the aforesaid Affidavit]; which separate Settlement Agreement had not been injunctioned by the aforesaid Order of Court.

15.3 If at all, it is only the matter of the withdrawal and the settlement of the said D.C. Colombo Case No. 15322/MR, that may be deemed to be affected by the aforesaid Order of Court referred to in paragraph 14 above and not any of the other conditions and obligations set out in the said separate Settlement Agreement [marked "E" to the aforesaid Affidavit], on the part of HDL to be duly observed and performed.

15.4 Thus and thereby, HDL has not been and cannot be compelled to withdraw from the Mediation process that HDL itself had initiated in terms of the separate Settlement Agreement [marked "E" to the aforesaid Affidavit], in respect of the other matters, namely, the Complaints made to Professional Institutions and other correspondence as per Condition 1. vi referred to at paragraph 15.1 above.

15.5 It is because of the aforesaid Settlement Agreement signed on 28th June 1995 [marked "E" to the aforesaid Affidavit], that I did not institute legal action against HDL and others responsible for damages, arising from the baseless, mala-fide and malicious Complaints deliberately and willfully caused to be made to Professional Institutions of which I am a Fellow Member of repute and other correspondence referred to, with intent to cause me injury.

16.1 I refer to paragraph 17 of the Affidavit dated 19th June 2000 of HDL Chairman, Mr. Bandulasiri Wijyaratne, wherein it is stated that the Mediation process was intended to resolve the matters arising in D.C. Colombo Case No. 15322/MR and that the amount claimed in the Mediation process is Rs. 100 million, whereas the Claim in Reconvention in D.C. Colombo Case No. 15322/MR was only Rs. 50 million, and I state as follows;

- i The Mediation process had been initiated by HDL in terms of Condition 1 vi. of the separate Settlement Agreement, marked "E" to the aforesaid Affidavit.
- ii. The aforesaid Condition 1.vi, quoted at paragraph 15.1 above, has dealt with three matters, one of which is only the matter of the Claim in Reconvention in the said D.C. Colombo Case No. 15322/MR.
- iii. The aforesaid Condition 1.vi, quoted at paragraph 15.1 above, has dealt with two other matters, namely the damages arising from Complaints to Professional Institutions and other correspondence referred to therein.

- iv. It is in accordance with the aforesaid, that the Terms of Reference of Mediation were determined by HDL's Counsel, Mr. I.S. De Silva referred to at paragraph 6.5 a) above and *confirmed by the then Chairman of HDL, Mr. Daya Liyanage and communicated to me by HDL Company Lawyers, M/s F.J. & G. De Saram, as referred to at paragraph 6.8 a) above.*- vide their Letter dated 19th October 1999 [X7(a)].
- v. The same said Terms of Reference were communicated to Your Honour as per paragraph 7.4 above. The said Terms of Reference of this Mediation very clearly has set out two limbs or components as clearly evidenced from the very Terms of Reference - viz

- "1. To determine the question as to quantum of compensation payable to Mr. Nihal Sri Ameresekere by Hotel Developers (Lanka) Ltd., on account of the baseless and malicious action bearing D.C. Colombo Case No. 15322/MR being instituted against Mr. Ameresekere by HDL" *(emphasis added)*
- "2. To determine the question as to quantum of further damages that have accrued to Mr. Nihal Sri Ameresekere in view of the baseless and malicious complaints made to the Institute of Chartered Accountants, Sri Lanka and the Chartered Institute of Management Accountants U.K. by Mr. John Wilson, Attorney-at-Law acting for and on behalf of HDL and the Letters forwarded by then Chairman and Managing Director of HDL Mr. C.L. Perera to Her Excellency the President, Hon. Ministers and other Officials." *(emphasis added)*

16.2 The Complaints to Professional Institutes had been made on or about 29th July 1994. The D.C. Colombo Case No. 15322/MR instituted on or about 4th August 1994 was another matter. In addition, there is the matter of the correspondence referred to above.

16.3 The Claim in Reconvention in D.C. Colombo Case No. 15322/MR was made on 18th November 1994, claiming Rs. 50 million in the following manner, as per prayers "g" and "h" given below *(the Plaintiff Company referred to is HDL)*.

"g) for Judgment against the Plaintiff Company in a sum of Rupees Fifty Million, (Rs. 50,000,000/-) together with legal interest thereon from the date hereof, until date of decree and thereafter on the decretal amount at the same interest until payment in full." *(emphasis added)*

"h) for an order directing the Plaintiff Company to recover the said damages together with the aforesaid interest as per prayer g) hereinabove, from the Chairman and Managing Director of the Plaintiff Company, Cornel L. Perera, and any other Directors of the Plaintiff Company, who were responsible for the institution of this Action." *(emphasis added)*

16.4 a) The Complaint made to the Institute of Chartered Accountants of Sri Lanka was communicated to me for the first time by the Institute's Letter dated 5th December 1994. *I was unaware of the same at the time I filed the Claim in Reconvention on 18th November 1994 in the aforesaid D.C. Colombo Case No. 15322/MR and the said matter did not constitute a part of the said Claim in Reconvention.*

b) The matter of the correspondence referred to in Condition 1. vi of the Settlement Agreement and in Item 2 of the Terms of Reference is yet another matter not forming a part of the said Claim in Reconvention in D.C. Colombo Case No. 15322/MR.

16.5 **Accordingly**, having claimed Rs. 50 million as damages in the Claim in Reconvention in D.C. Colombo Case No. 15322/MR for the filing of such baseless, mala-fide and malicious action referred to at Item 1 of the Terms of Reference of this Mediation, *I claimed a further sum of Rs. 50 million in respect of the baseless, mala-fide, malicious and despicable Complaints made to Professional Institutions of which I am a Fellow Member of repute and in respect of the malicious and spiteful correspondence referred to in Condition 1. vi of the said Settlement Agreement, as per Item 2 of the aforesaid Terms of Reference*, thereby making a total Claim of Rs. 100 million.

16.6 a) In this connection, *as instructed by me*, by their Letter dated 9th June 2000, M/s De Silva & Perera, my Attorneys-at-Law, wrote to HDL Company Lawyers, M/s F.J. & G. De Saram confirming that, as per the proceedings before the Mediator on 26.1.2000, it was mutually agreed by Counsel, that the role of the Mediator is to come to a decision, as to the quantum of compensation that is payable to me and that I had instructed, that the Counsel could reach a settlement that is deemed mutually reasonable and acceptable.

b) By the said Letter dated 9th June 2000 my Attorneys-at-Law, M/s De Silva & Perera, inter-alia, further wrote as follows;

"Our Client's main concern is to clear his professional name, reputation and standing, vis-à-vis, the said matters, in that, the Letters of apology and explanation given (copies enclosed) have essentially been private correspondence, whereas, the concerned baseless and malicious actions had been given wide and undue publicity, creating unwarranted controversy to the detriment and damage of our Client; ironically, in the circumstances of he having acted to protect the very interests of HDL".

True copy of the said Letter dated 9th June 2000 of my Attorneys-at-Law, M/s De Silva & Perera addressed to HDL Company Lawyers, M/s F. J. & G De Saram is annexed hereto marked "X17"

16.7 a) **In this connection**, I also draw attention to HDL Counsel, Mr. I.S. De Silva, Attorney-at-Law's Letter dated 16th December 1998 [X5(b)] addressed to HDL Company Lawyers, M/s F.J. & G. De Saram and quote therefrom:

"I write to advise that an action could be instituted against Mr. C.L. Perera, to recover damages for any loss and damage that may result or has been caused to Hotel Developers (Lanka) Ltd., by him having caused the institution of D.C. Colombo Case No. 15322/MR against Mr. Nihal Sri Ameresekere without an express Board Resolution to do so, and the several baseless complaints made to professional institutes and letters to Her Excellency the President, Hon. Ministers and other Officials."

b) The same as aforesaid had been communicated to the then HDL Chairman, Mr. Daya Liyanage by HDL Company Lawyers, M/s F.J. & G. De Saram by their Letter dated 16th March 1999 as follows;

"As regards action to be instituted against Mr. C.L. Perera for loss/damage caused to the Company for having caused the institution of D.C. Colombo Case No. 15322/MR against Mr. N.S. Ameresekere without an express Board Resolution, that action would have to be based on the costs incurred by the Company by the institution of the said D.C. Colombo Case No. 15322/MR and the amount that will be awarded to Mr. Ameresekere by the Arbitrator/Mediator in terms of the settlement agreement dated 28th June 1995."

17. I refer to paragraphs 18 (a), (b), (c) and (d) of the Affidavit dated 19th June 2000 of HDL Chairman, Mr. Bandulasiri Wijyaratne and I state as follows:

- i. As regards paragraphs 18 (a) and (b) referring to deliberations, decisions, approval and authorisation of the Board of Directors of HDL, *I refer to the extracts of the HDL Board Minutes extensively quoted at paragraphs 5 and 8 above, and the actions taken in accordance therewith, pertaining to the subject matter of this Mediation as set out above.*

I particularly draw attention to contents of paragraph 5.17 and 5.18 above, that set out HDL Board Minutes of 22nd July 1998 and the Letter dated 1st July 1998 of HDL Company Lawyers, M/s F.J. & G. De Saram, tabled, read and circulated thereat and HDL Company Lawyers, M/s F.J. & G. De Saram being authorised and empowered to take actions as per their said Letter dated 1st July 1998, including the matter of settlement by Arbitration or reference to a mutually acceptable person i.e. Mediation.

I also draw particularly attention to paragraph 5.19 above that sets out HDL Board Minutes of 4th September 1998, by which, inter-alia, *then HDL Chairman was empowered to follow up the outstanding matters with the Company Lawyers, M/s F.J. & G. De Saram. viz:*

"98.09.02 MATTERS ARISING OUT OF THE MINUTES

"The Chairman stated that outstanding matters had been dealt with. He further added that as decided matters had been referred to the Company lawyers to be acted upon. The Chairman was empowered to follow up the outstanding matters with the Company Lawyers and report progress to the Board." [emphasis added]

- ii. As regards paragraph 18 (c) in relation to the appearance of Mr. I.S. De Silva, Attorney-at-Law at this Mediation, I refer more particularly to contents of paragraphs 6.5 a), 6.5 b) and 6.8 a) and Mr. I.S. De Silva, Attorney-at-Law's Letter dated 25th November 1998 [X5(a)], 16th December 1998 [X5(b)], and then HDL Chairman, Mr. Daya Liyanage's confirmation of the Terms of Reference of this Mediation as had been determined by Mr. I.S. De Silva, Attorney-at-Law as per his Letter dated 25th November 1998 - vide Letter dated 19th October 1999 [X7(a)] to me from HDL Company Lawyers, M/s F.J. & G. De Saram.

At the Hearing on 26th January 2000, HDL Company Lawyers, M/s F.J. & G. De Saram's Partner, Mr. M.I.M. Jaffer was present, together with HDL Counsel Mr. I.S. De Silva in terms of Letter dated 19th October 1999 [X7(a)] from HDL Company Lawyers, M/s F.J. & G. De Saram - vide paragraph 6.8 a) above.

I also draw attention to Letters dated 28th October 1999 [X8(a)] and 17th December 1999 [X8(d)] addressed by HDL Company Lawyers, M/s F.J. & G. De Saram to Mr. Sidath Sri Nandalochana, Attorney-at-Law, and to Your Honour, respectively, and copied to then HDL Chairman, Mr. Daya Liyanage and me, and HDL's Counsel, Mr. I.S. De Silva, nominating the Mediator and setting out the aforesaid Terms of Reference of Mediation, as referred to at paragraphs 7.1 and 7.4 above.

As per the aforesaid HDL Board Decisions, more particularly as per HDL Board Minute of 22nd July 1998 - vide paragraphs 5.17 and 5.18 above and the "HDL Chairman, Mr. Daya Liyanage having been empowered and authorised to attend to the implementation of all outstanding matters under the Settlement Agreements entered into by HDL and to take all necessary action and steps arising therefrom and in connection therewith" - vide paragraph 5.6 above giving HDL Board Minute of 17th February 1997 and paragraph 5.19 above giving HDL Board Minute of 4th September 1998, this Mediation process had been properly initiated by HDL and HDL's Counsel, Mr. I.S. De Silva had been knowingly duly instructed.

- iii. As regards paragraph 18(d), which states that HDL has fulfilled all its obligation as set out in Clause 1 of the separate Settlement Agreement [marked "E" to the aforesaid Affidavit], I state that Clause 1 consists of sub-clauses i, ii, iii, iv, v, vi and vii., and I further state as follows;

In terms of sub-clause i. HDL has only revoked the proxy that had been unauthorisedly given to Mr. Hussain Ahamed, Attorney-at-Law, but has not yet withdrawn the Action as undertaken thereby.

In terms of sub-clauses ii, iii, iv, and v Letters of Apology and Explanation had been tendered and forwarded by HDL on 21st October 1996 – vide paragraphs 5.3 above X1(a), X1(b), X1(c), X1(d) and X1(e).

In terms of sub-clause vi, this Mediation process has been duly initiated as aforesaid and HDL is bound thereby.

In terms of sub-clause vii, no action has been taken to date.

- 18.1 As clearly evidenced by the Settlement Agreements Nos. 3 and 4, the Conditions in Clauses 4 and Clauses 2 & 3, respectively contained therein, are Conditions Precedent that the Government had undertaken to duly fulfil or cause to be fulfilled, [subject to the proviso therein], prior to my withdrawing the said D.C. Colombo Cases Nos. 3155/Spl and 3231/Spl, which withdrawal and settlement was at the instance of the Government, as set out in the Preamble to the Settlement Agreement No. 3.
- 18.2 Consequent to the *perverse controversy* precipitated by Mr. G.L. Peiris, *who was a party affected* by a Condition in the said Settlement Agreement No. 3, *on the intervention of H.E. President C.B. Kumaratunga*, the then Hon. Attorney General, finalised in October 1996 an Addendum to the said Settlement Agreements Nos. 1, 2, 3, and 4 signed in June 1995, in agreement with then Secretary, Ministry of Finance/Secretary to the Treasury, Mr. B.C. Perera, and the then Deputy Secretary to the Treasury, Dr. P.B. Jayasundera, who is now Secretary, Ministry of Finance/Secretary to the Treasury.
- 18.3 As agreed, the aforesaid Addendum was signed in September/October 1996 by and between the Secretary to the Treasury representing the Government, myself and Mitsui & Taisei, after having had several discussions in that regard.
- True copies of the said Addendum and the irrevocable Powers of Attorney attached thereto given by Mitsui & Taisei to the Secretary to the Treasury are annexed hereto marked "X18(a)", "X18(b)" & "X18(c)".*
- 18.4 Mr. G.L. Peiris precipitating such *perverse controversy* and having caused the *wrongful and unlawful suspension* of Agreements that had been duly signed by the Government, *as had been drawn and finalised by the Hon. Attorney General*, led to serious concerns by the Ministry of Finance, regarding the Japanese Government's support at the Sri Lanka Aid-Group Meeting that was then scheduled for November 1996; the Japanese Government being known to be the main donors supporting Sri Lanka, their support was deemed vital and essential in the larger interests of the country, for obtaining such donor finance.

In the said Addendum [X18(a)] it has been, inter-alia, recited as follows:

"And whereas the Government wishes to continue to maintain without any impediment the cordial relationships with Japan and the Government has been concerned about the delay in the implementation of the aforesaid Agreements." *[emphasis added]*

- 18.5 In the aforesaid circumstances, the Government persuaded and induced me to consent and concur to have the aforesaid Conditions Precedent fulfilled and/or caused to be fulfilled by the Government, as Conditions Subsequent, with the Government giving an undertaking to fulfill all the said Conditions Precedent and Mitsui & Taisei in that regard giving irrevocable Instruments to the Secretary to the Treasury, to enable the Government to specifically fulfill and/or cause to be fulfilled the said Conditions Precedent, as Conditions Subsequent.
- 18.6 The aforesaid Addendum and the aforesaid Instruments accordingly were drawn and finalised by the Hon. Attorney General in accordance with the aforesaid.
- 18.7 Nevertheless, giving the lie to the false and misleading statements that had been knowingly made by Mr. G.L. Peiris, the aforesaid Addendum, drawn and finalised by the then Hon. Attorney General, Mr. Sarath Silva, P.C., present Chief Justice, affirmed all the Conditions in the Settlement Agreements Nos. 1, 2, 3, and 4, excluding only one Condition contained in Clause No. 5 of Agreement No. 3, which Clause read thus:

"5. The Government shall and will take appropriate independent actions on the conduct and actions of the Securities and Exchange Commission of Sri Lanka and/or Members of its Commission and the Colombo Stock Exchange and/or of its Directors, in relation to the representations made by Mr. Ameresekere to the said institutions on matters pertaining to HDL, which matters Mr. Ameresekere also reserves the right to pursue"
(emphasis added)

The aforesaid Condition had been included in the public interest, and was excluded at the behest of the Hon. Attorney General and then Secretary, Ministry of Finance/Secretary to the Treasury, Mr. B.C. Perera, only because it affected Mr. G.L. Peiris, as one of the former Members of the Securities and Exchange Commission of Sri Lanka, in the context of which Condition, he precipitated the said perverse controversy, suppressing his aforesaid affectation and knowingly making false and misleading statements, which have prejudiced even Orders of Court as aforesaid.

- 18.8 In the foregoing circumstances, the Government cannot renege on the fulfillment of any of the obligations on its part to be duly observed and performed, as contained in the aforesaid Settlement Agreements, either by itself or through its Nominee Directors on the Board of Directors of HDL, as explicitly set out in the said Settlement Agreements and as specifically provided for by the aforesaid Addendum.
- 18.9 Thus and thereby, the Government Nominee Directors on the Board of Directors of HDL, accordingly stand bound to fulfill and/or cause the fulfillment of the aforesaid Conditions, undertaken to be fulfilled by the Government, including the due fulfillment of all and singular the Conditions in the separate Settlement Agreement [marked "E" to the aforesaid Affidavit] entered into in the very context of the aforesaid Settlement Agreements, and failure to do so would tantamount to the breach and violation of the Terms and Conditions of the said Settlement Agreements and the said Addendum.

Accordingly, the Government Nominee Directors on the Board of Directors of HDL, cannot in any manner or howsoever commit a breach of any of the aforesaid terms and Conditions contained in the aforesaid Settlement Agreements; this Mediation already commenced as aforesaid is in conformity therewith.

The foregoing Affidavit having been duly read over and explained by me to the Affirmant within named and he having understood the contents thereof signed and affirmed to at Colombo on this 7th day of July 2000 }

TRUE COPY

De Silva & Perera

DE SILVA & PERERA

Attorneys-at-Law & Notaries Public

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BEFORE ME

C. A. S. Jayaweera Bandara

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