

Contemporary

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HILTON

A SCANDAL AND THE COVER-UP

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HILTON

The Hotel, The Scandal, The Cover up

Right from the beginning it was clear that the Hilton was destined for preferential treatment. The seven acres of land on which the hotel is sited in Echelon Square was a "gift" from the late President Premadasa. How else can one describe the 99 year lease at a total cost of Rs 125 million, amounting to Rs 110,000/- a perch, to be paid back over 33 years with no interest levied at all? The fact that even these absurdly easy terms have not been adhered to by HDL who haven't paid the Urban Development Authority a penny is further evidence of the spirit in which this transaction took place.

Mitsui of Japan, whose local agents are closely related to former President Jayewardene, were a shoo-in for the construction contract for the Hilton. In fact, to this date the Hilton remains the one and only private sector enterprise which has received a government guarantee of its liability to Mitsui and Taisei (another Japanese multinational specialising in civil engineering work) to construct, equip and furnish the hotel. For instance, none of the other hotels in similar circumstances received such concessions.

The Hilton Hotel is owned by Hotel Developers (Lanka) Limited (HDL) who, in March 1984, issued a prospectus to solicit public funds on the basis of their plans to build a twin-tower 22 storey, 452 room hotel with basement parking for 400 vehicles. It must be noted that such a prospectus is a legal document and not one that

can be altered at will.

Profitability forecasts and cashflow forecasts with which to finance the cost of building and equipping the hotel were made by Hilton International and Mitsui/Taisei on the basis of these specifications. On receiving the government guarantees, Mitsui/Taisei entered into loan agreements with HDL where the cost of construction and supplies were deemed loans to the company.

The basis for all these agreements, the guarantees, the prospectus, the profitability analysis and so on was the 452-room plan which was approved by the Board of Directors in March 1984 and duly submitted to the UDA. Construction by Mitsui/

notice of the Board of Directors. The changes can only be described as drastic. Instead of 452 rooms (known as bays) there were now only 357, and the underground parking had been dispensed with altogether. Obviously, the hotel's ability to generate revenue to pay back its loans was adversely affected by these changes. Most troubling, however, was the fact that neither the architects nor the contractors had informed the Board of Directors or anyone else for that matter about these crucial changes. In addition, the circumstances in which the original plans were allegedly lost is hard to believe. The plans (Mitsui/Taisei's, the architects and even HDL's own copy) were supposedly destroyed in a fire at the site at 2.38 a.m. on 18/10/1985. The Fort Police Report on this fire is as strange a document as any. The Report which is undated does not even indicate the date of the fire, but states that the "report submitted to us [Fort Police] by you [Mitsui/Taisei Consortium] has been found to be completely accurate

and honest." However, no copy of this report alluded to is attached, but the report has been certified and endorsed by the Police to be used "as evidence to the relevant authorities, Government Departments and also your Head Office in Tokyo." Such a thoughtful and all-encompassing endorsement must have really touched Mitsui/Taisei to the quick! Particularly since fires like this are getting to be more and more necessary

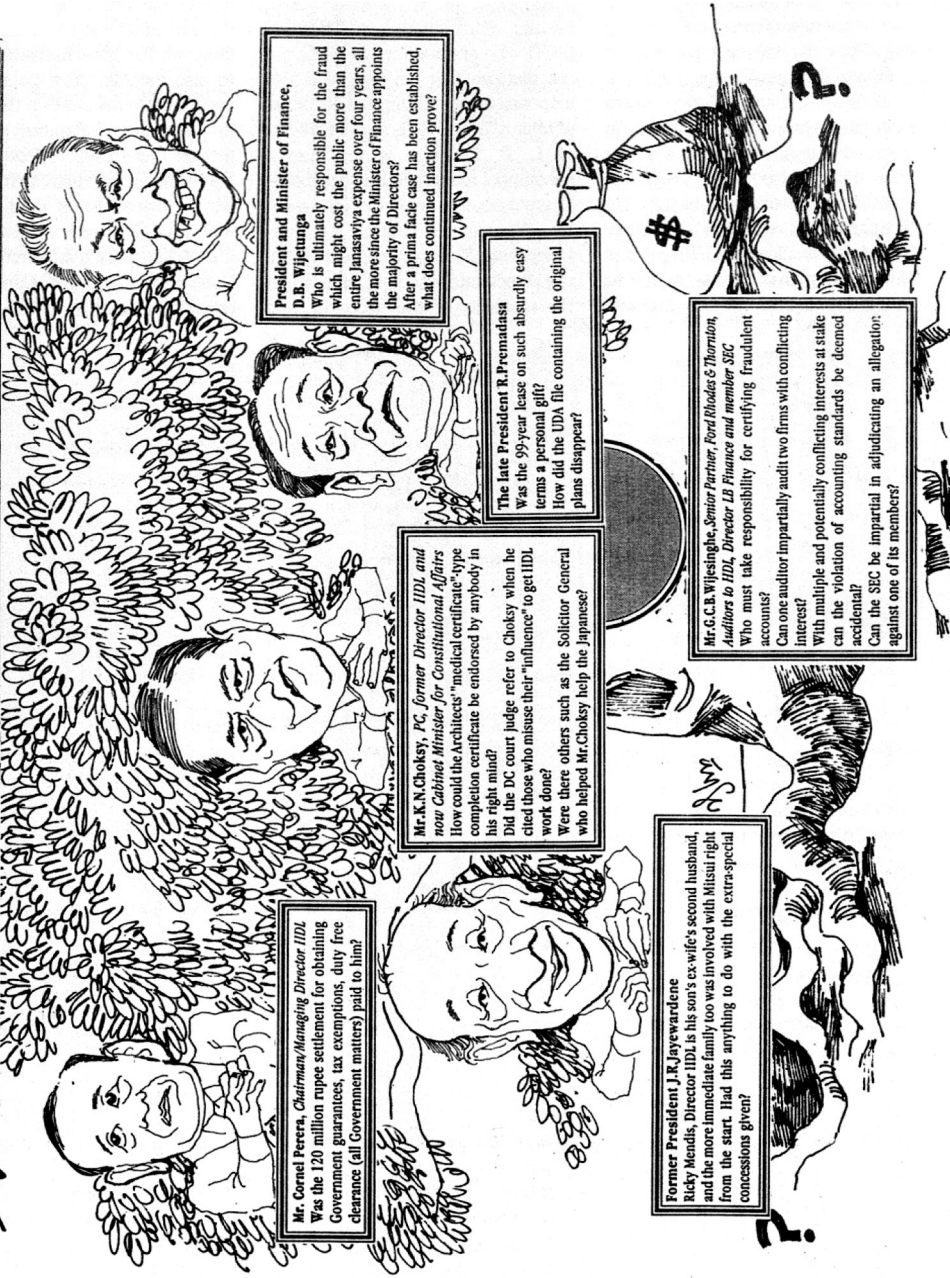


Nihal Sri Ameresekere in consultation with his lawyers K. Kanagisvaran, P.C., and attorney Harsha Cabral.

Taisei began shortly after on the basis of these building plans approved by the UDA. These building plans were submitted to the UDA in October 1983 and ratified in March 1984.

The hotel was completed and handed over in April 1987 and began operations in July. It was only in October 1987 that it was discovered that the hotel had been built to a "revised" set of plans which had not been approved or even brought to the

The Happy Hilton Family



Mr. Cornel Peters, Chairman/Managing Director IDL
 Was the 120 million rupee settlement for obtaining Government guarantees, tax exemptions, duty free clearance (all Government matters) paid to him?

Mr. K.N. Choksy, PC, former Director IDL and now Cabinet Minister for Constitutional Affairs
 How could the Architects' "medical certificate" type completion certificate be endorsed by anybody in his right mind?
 Did the DC court judge refer to Choksy when he cited those who misuse their "influence" to get IDL work done?
 Were there others such as the Solicitor General who helped Mr. Choksy help the Japanese?

The late President R. Premadasa
 Was the 99-year lease on such absurdly easy terms a personal gift?
 How did the UDA file containing the original plans disappear?

President and Minister of Finance, D.B. Wijetunga
 Who is ultimately responsible for the fraud which might cost the public more than the entire Jansaviya expense over four years, all the more since the Minister of Finance appoints the majority of Directors?
 After a prima facie case has been established, what does continued inaction prove?

Former President J.R. Jayewardene
 Ricky Mendis, Director IDL, is his son's ex-wife's second husband, and the more immediate family too was involved with Mitsui right from the start. Had this anything to do with the extra-special concessions given?

Mr. G.C.B. Wijesinghe, Senior Partner, Ford Rhodes & Thornton, Auditors to IDL, Director LB Finance and member SEC
 Who must take responsibility for certifying fraudulent accounts?
 Can one auditor impartially audit two firms with conflicting interest?
 With multiple and potentially conflicting interests at stake can the violation of accounting standards be deemed accidental?
 Can the SEC be impartial in adjudicating an allegation against one of its members?

in Japan.

To make matters worse Tokyo claimed that it had lost its copy and the UDA, Mr. Premadasa's first love, had just as mysteriously lost its Hilton file. Thus, it was not possible to compare the new plans with the original ones, though it does seem more than a little strange that the old plans went up in smoke just a month after unauthorised new plans had been surreptitiously sent to the UDA for approval in September 1985. There is a minute on file at the HDL office to say that its plan copy was "borrowed by the Japanese architects" and was

of whom Cornel Perera, Chairman and Managing Director of HDL, has an interest in around 1.25%.

Mr. G. C. B. Wijesinghe, Senior Partner, Ford Rhodes & Thornton (FRT) who are auditors to HDL, did not disclose that his firm was also responsible for auditing the accounts of Mitsui/Taisei. He is also a Director of L. B. Finance which has a substantial interest in this company. There is clearly a conflict of interest in Mr. Wijesinghe's multiple commitments here. Thus, in a context where the Directorate was itself split about the reliability of the accounts, the

accounts, a Director of HDL, Nihal Sri Ameresekere had challenged the value of the building stated in the balance sheet, and this was brought in as Supplementary Note 19 in its final form. The auditors had advised HDL to also include, as a post balance sheet event, the fact that the change in the value of the buildings and fittings would also affect the total figure shown as liability to the lender, which instead reads in the annual report as "This may also affect the total figure shown as liability to the Contractor under the Construction agreement dated 31/1/84." This is a

DATE	TRANSFEROR	SHARES	AMOUNT	TRANSFEREE	SHARES	AMOUNT	PRICE CHANGE	TOTAL
1-1-1992	L.B. FINANCE LIMITED 101, VIMYALAKRISHNA MALDENIA COLOMBO	31,700	27799907 27804906 (5000) 27803907 27806906 (1000)	TAT GARMENTS (EXPS) LIMITED 105, SWGA, MITTABA UNNES, COLOMBO 13	307	01508	3000	2779990 2780294
3-1-1992		12,800	27785707 27786206 (500)	DO	308	01509	1000	278029 278035
3-1-1992		12,800	27814007 (500)	DO	309	01510	1000	278039
3-1-1992		10,750	27786707 27788506 (1800)					
			27815507 27816506 (1000)					

DATE	NO. OF SHARES	AMOUNT	PRICE CHANGE	TOTAL
JAN. '92				51,750.00
02.01.92	2,300	22.50	0.50	34,500.00
03.01.92	1,500	23.00		284,500.00
06.01.92	11,500	23.00		728,500.00
07.01.92	31,600	24.00		331,200.00
07.01.92	13,600	28.00		87,800.00
07.01.92	2,800	27.00	4.25	81,000.00
07.01.92	3,000	27.25		84,000.00
07.01.92	2,000	32.00		114,000.00
07.01.92	2,000	38.00	8.75	432,000.00
08.01.92	3,000	38.00		220,000.00
08.01.92	12,000	40.00		869,900.00
08.01.92	5,500	41.00		81,500.00
09.01.92	13,300	40.75	4.00	56,000.00
09.01.92	-2,000	40.00		420,000.00
09.01.92	1,400	40.00		575,800.00
09.01.92	10,500	40.25	1.25	12,375.00
10.01.92	14,400	41.25		92,000.00
10.01.92	300	40.00		68,425.00
10.01.92	2,300	40.25	(0.50)	40,750.00
13.01.92	1,700	40.75	(1.75)	154,000.00
13.01.92	1,000	38.50	1.50	220,000.00
13.01.92	4,000	40.00		60,000.00
16.01.92	5,500	40.00		99,375.00
17.01.92	2,000	39.75		1,160,000.00
17.01.92	2,500	40.00		8,250.00
17.01.92	25,000	37.00		320,000.00
17.01.92	750	40.00	(2.00)	57,000.00

"burnt in the fire in 1984" which is more than one year before the actual fire on record!

FAMILY TIES

Mitsui had long since made Delmege Ponsyth & Co. Ltd. its agents for its business activities in Sri Lanka, whose Chairman is Ricky Mendis, married to Charmaine -- the mother of J. R. Jayewardene's three grandchildren by an earlier marriage to Ravi Jayewardene. Delmege through its subsidiary company L. B. Finance, purchased 2 million rupees worth of shares in Hotel Developers Limited (HDL), the owning company of Colombo Hilton which is approximately 0.5% of the total issued share capital, the rest being owned by the Treasury (64%), Mitsui (28%) and about 1000 public shareholders,

Annual Report for the year ending 31/3/1990 of Hotel Developers Ltd. (HDL) was blithely audited and endorsed by FRT despite the fact that Mr. Wijesinghe was a Director of a company with substantial share-interest in HDL on the one hand, and a partner of the auditing firm on the other. During the preparation of the

clear case of misrepresentation for in the mind of any person there cannot be any doubt regarding the degree of certainty conveyed through "would" and "may". Substitution of "Contractor" instead of "lender" furthermore shows a keen interest in the Contractor Mitsui, and raises questions on the all-consuming role

played by the Contractor in this controversial project. Moreover, the liability to the "lender" directly affects the company (HDL) since the lender must be given the money back at some point, whereas liability to "the contractor" distances the liability of HDL.

It is interesting to note that this concern for the Contractor by HDL is given new meaning when the Chairman LB Finance, Mr Eric Amarasinghe appeared as lawyer for Mitsui, in the subsequent court action instituted on behalf of HDL itself by a shareholder against the contractors and architects!

When Nihal Sri Ameresekere appealed to the Government to investigate what appeared blatant fraud to all but the other Directors of HDL, the State brought Justice J F A Soza out of retirement to conduct an inquiry into Ameresekere's allegations. Whilst the choice may never be ideal, it is nonetheless astonishing that the learned gentleman accepted the brief knowing full well that his son, Harsha Soza, married to Ricky Mendis's niece, was a Director of two Companies in the Delmege Group, who in general have been agents for Mitsui products. Moreover, Mendis himself was one of those cited in the plaint as having aided and abetted the Japanese multinationals to perpetrate the fraud on HDL. Not surprisingly, having taken on the assignment, he found "no irregularities in the implementation of the project". In the next phase of the Court action brought against Mitsui by Ameresekere, Harsha Soza was to appear for Mitsui, confirming, beyond a shadow of a doubt, his loyalties in this conflict.

AND THE COVER UP

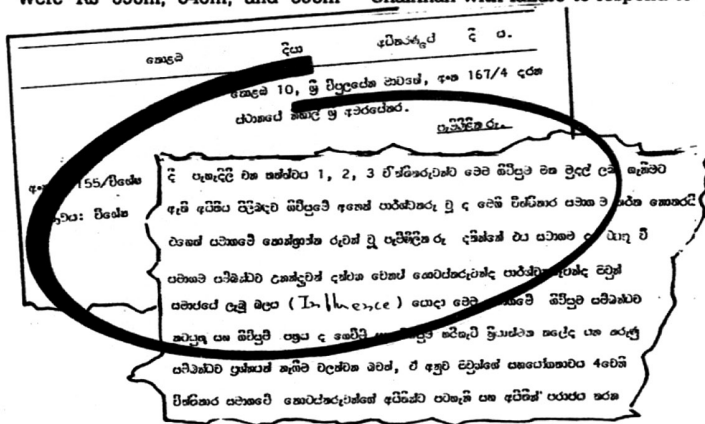
More recently, continuing a lonely crusade, Ameresekere wrote to the Director General, SEC through his lawyer, in August 1992 drawing attention to 10 letters written to the Commission during the period August 91 to March 92, calling for their intervention in matters that clearly contravened Sri Lankan law. He

charged that the Commission had deliberately failed and neglected to take action against HDL, and to investigate these complaints made in the interests of the investors, and the public in general by using its semi-judicial power to look into, and above all safeguard this very interest.

In addition to the Commission not taking any action at all regarding the financial misrepresentation in HDL's published annual reports, he draws the attention of the SEC to the losses for the years 1989 to 1991, which were Rs 393m, 343m, and 395m

unconscionable profit, before the price plummeted when the actual position was revealed. G. C. B. Wijesinghe is also a member of the SEC, and in an earlier letter to the Director General SEC, Mr Stanley Jayawardene, Ameresekere had questioned the propriety of G C B Wijesinghe sitting in at meetings convened to look into his allegations, of a company in which he had a financial interest.

In his letter to Stanley Jayawardana, Chairman SEC, dated 28/12/1991, Nihal Sri Ameresekere charges the Chairman with failure to respond to



respectively. In each year mentioned, the interest costs exceed the total turnover. In other words, the company could not generate sales even to cover interest costs, let alone other expenditure. He states that upto 30/9/92, the cumulative losses of the company, at Rs 1914m, is more than four times its share capital.

In a grave case of misrepresentation, he points out that by misreporting the net assets at 31/3/90 as a surplus of Rs 171m, whereas in reality it was a massive deficit of Rs 1306m, the investing public were deliberately misled regarding the actual financial position of the company. In the three months following the report being published, the share price rose from Rs 10/- per share to over Rs 40/-, and LB Finance, of which G. C. B. Wijesinghe, Senior Partner of the auditors FRT, is a Director, as well as Delmege Forsyth itself unloaded much of their holding of 200,000 shares onto the public, at what is an

several serious irregularities in the published company accounts of 90/91. In particular, he refers to the fact that the company has understated its current liabilities in contravention of accounting standards that give the company a surplus of Rs 171 million instead of the actual deficit of Rs 1,231 million. The regulation which is legally binding by gazette notification clearly stipulates the condition under which the current liabilities falling within the forthcoming 12 months may be excluded from the statement of current liabilities, for example in the case of refinancing. This requirement attempts to safeguard both existing and potential investors, to convey unambiguously, the liquidity position of the company, its ability to service its long term debt and remain an on-going concern.

Instead, HDL has misstated its true position to show a comfortable financial state when, in fact, on its own admission, its inability to service

debt had defaulted in both capital and interest, circumstances under which normally winding-up proceedings would be instituted.

The effect of misleading the public has been to sustain their interest in the share as a financially sound business, and permit continued trading of share in the stock market. The movement in share price cannot be disregarded in the events immediately after the publication of the in-effect falsified annual accounts. The price moved from Rs 10/- to Rs 22/50, an increase of 114% following the Colombo Stock Exchange's letter overriding Ameresekere's objections, and, for all intents and purposes, confirming that there were no irregularities. As mentioned above, the share price went upto Rs 40/-, and LB Finance disposed of its shares in the company in a steady stream of instalments, making a handsome profit at the expense of the deceived public. The record shows, for instance, that on January 9, 1992 just as the controversy was at its height, L. B. Finance sold 31,700 shares at just over 40/- per share. When the company, in an undated circular admitted that they had contravened the accounting standards, the price fell to what they were considered worth, by which time LB Finance and its sister-companies had made a killing. One can hardly envisage a 300% price increase on hearing that the Company had a deficit of Rs 1.2 billion, nor even that it couldn't generate sufficient funds to meet its loan interest, let alone capital plus interest. Can anyone under these circumstances honestly say that these amazing events were simply a miracle via the Fairy Godmother's wand?

Despite drawing to the notice of the Chairman, SEC, this gross matter of misrepresentation in the annual report, the Commission did nothing, although its own gazetted rules required the share to be suspended from being traded. In other, less influential instances, the SEC has been known to "interfere" as in the case of Kelani Cables and of Cargo Boat Company. What compounds this shocking state of affairs is the attitude

CHRONOLOGY OF EVENTS OF THE SCANDAL

Preliminary Agreement signed with Mitsui/Taisei for construction of the Colombo Hilton. All costs and supplies defined in this agreement. Project Plans of July 1980 reconfirmed	March 1983
Profitability forecast by Hilton International and Mitsui based on original plans	March 1983
Letter of award for construction to Mitsui/Taisei	March 1983
Original Plans submitted to UDA	October 1983
99-year lease of 7 acres at Echelon Square	January 1984
Investment Agreement, Construction Agreement, Supplies Contract, Loan Agreement and Design and Supervision Agreement entered into as approved by the Attorney General	January 1984
Government Guarantees granted	February 1984
Plans approved by UDA	March 1984
Prospectus issued by HDL	March 1984
Construction by Mitsui/Taisei begins	March 1984
Agreement Signed	April 1984
Requests for Progress Reports on construction	July 1985
New set of Plans submitted to UDA without Board approval (discovered in March 1990)	September 1985
Fire at Construction Site Office at which all plans, including HDL's copy "borrowed" by Architect, burnt	October 1985
Architect's completion certificate given and hotel handed over by M/T. Change in plans not indicated	April 1987
Hilton Hotel opened for operations	July 1987
Mitsui submits revised profitability forecasts on the basis of original plan of 452 rooms	July 1987
Discrepancy in number of rooms discovered by Director Ameresekere	October 1987
Mitsui profitability forecasts changed to tally with actual number of rooms (387)	October 1987
Memo to Board by Ameresekere stressing that loans can't be serviced even with 100% occupancy at a rate of \$100.00 per day	December 1987
Final Inspection by Architects conducted	March 1988
Request of independent engineering examination and inspection by Director (Govt) Fernando who alleges connection between architects and construction companies	March 1988
Choksy upholds architect's completion certificate	August 8, 1988
Final Inspection Certificate by Architects submitted. Still no reference to change of plans	August 25, 1988
Mortgage of hotel property to Mitsui/Taisei, done despite Board's rejection	July 1989
Commitment to mortgage hotel to Mitsui/Taisei discovered. Secretary/Finance directs deletion from Agreement	November 1989
Director Ameresekere raising discrepancies objected in writing to any payments to M/T until clarification received from architects. He states, unless matter properly resolved monies should be refunded to private shareholders	December 1989
Choksy accompanies Cornel Perera and Mitsui/Taisei to meet Paskaralingam where \$2 million paid to Mitsui/Taisei, of which \$1m from govt funds	January 1990
Choksy's second letter ratifying Architects' Inspection Certificates, despite Ameresekere's detailed protests	February 1990
Illegal substitution of plans discovered by Ameresekere and reported to the Board	March 1990
Government Director Shanmugalingam reiterates that guarantees were given on the basis of original plans	March 1990
Ameresekere's Memo to the Board indicating the serious nature	

Cover Story I

of the problem and suggesting arbitration	April 1990
HDL admits that it does not have Bills of Quantities & Final Measurements to support Architects' certificates	April 1990
Cabinet-appointed committee assigned to negotiate with Mitsui/Taisei	April/May 1990
J.F.A. Soza (ret'd. Supreme Court Judge) appointed by Finance Ministry as one-man-committee to investigate this issue, and finds no irregularities	May 1990
Deletion of mortgage clause surreptitiously included in Agreement	May 1990
UDA discovers that it doesn't have original building plans approved in March 1984	June 1990
HDL admits not possessing owner's copy of original plans	July 1990
HDL admits not possessing original schedules of furniture, fixtures and equipment of the supplies contract with Mitsui	September 1990
Ameresekere institutes legal action on behalf HDL against Mitsui/Taisei aided and abetted by some Directors, before the District Court. The derivative action is premised on fraud by wrong-doers controlling the company.	
Judge issues Enjoining Orders preventing payment to M/T	September 1990
Accounts for year ending 31/03/1990 certified by Auditors (FRT) despite serious discrepancies brought to their notice by Ameresekere.	
Accounts in violation of AG and Enjoining Orders of Court	November 1990
Ameresekere removed from HDL Board of Directors	December 1990
Ameresekere institutes Accounts Action in District Court preventing HDL from adopting the certified annual accounts of 31/3/1990	January 1991
Wijeratne J issues Enjoining Orders preventing any payments to Mitsui/Taisei	January 1991
After having considered the objections of M/T District Judge Wijeratne issues Interim Injunction preventing any payments to M/T as there was no basis for such payment	October 1991
Second of many complaints (in over 12 letters) by Ameresekere to Stock Exchange and Securities Council regarding accounting violations. No action to date	October 1991
Application to Court by Ameresekere to conduct architectural inspection of hotel premises	March 1992
Solicitor General Shibley Aziz appearing for HDL opposes application by Ameresekere for an independent architect's inspection and examination supervised by Court on grounds that it would affect interests of M/T	March 1992
Interrogatories filed in District Court by Ameresekere	March, April 1992
Justice Palakidnar, President Court of Appeal allows Mitsui/Taisei and the Japanese Architects leave to appeal against the Interim Injunctions. Choksy and Shibley Aziz support this application.	January 1992
Ameresekere allowed Special Leave to Appeal to the Supreme Court by Justice Bandaranaike. Choksy and Aziz refused permission to participate	May 1992
Supreme Court presided by Chief Justice G.P.S. de Silva upholds District Court order and issuance of Interim Injunctions. The judgement states that Ameresekere has established a prima facie case of fraud with real prospect of success even in the light of the defence. The Interim Injunctions were granted to prevent "syphoning out of money" from the Company and the Country	December 1992
Repeated requests supported by specific charges and evidence by Vasudeva Nanayakkara, MP, to President to initiate an inquiry into this fraud (In addition to letters dated 08/8/91, 05/9/91, 18/11/91, 17/12/91)	Jan, Feb, March 1993
Choksy resigns from HDL Board of Directors on becoming a Cabinet Minister	June 1993

of the Chairman of the Securities Council, Stanley Jayawardana, and the Council's careless callous disregard for its own mandate in the face of the fraud taking place and being brought to their notice. Jayawardana adduces a host of excuses which are merely alibis for inaction and evading an investigation into the complaint because of obvious vested interests. For example, inadequate staff, pleaded by him, cannot be a valid excuse when a three member committee should look into the complaint.

Clearly, if the Commission did not intend to investigate such cases it really has no *raison d'être*. Moreover, he states in the *Daily News* of 9/8/91 "I would like to assure investors that the SEC is deeply conscious of its responsibilities to protect the interests of investors and I invite investors who have complaints or constructive comments or suggestions to write to the SEC." And later in the third of a series of press advertisements, "most certainly, you can expect that all valid complaints will be looked into in-depth, by either the Stock Exchange or the Securities & Exchange Commission, who will make a full inquiry and take the necessary action."

Jayawardana is his reply to Ameresekere of 3/12/91 then tries to justify his inertia by using the popular dilatory stratagem of "sub judice". As Ameresekere points out this refers to a court action brought against Mitsui/Taisei for an injunction against payment of dues by HDL because they had not completed the construction of the hotel according to its prospectus and the original plan, allegedly burnt and lost, at the hotel site and at Tokyo and the Urban Development Authority respectively! Misrepresentation of company accounts and the construction can are clearly two different matters, but it is in their coming together that they constitute the cover up of the decade.

As the matter had been on the agenda for discussion at the immediately-following meeting of the Securities Council, it is important to note that G. C. B. Wijesinghe, who had already allowed the inaccuracies