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YOUR REF:

OUR REF:

BY HAND

Mr. H.L. de Silva, President's Counsel,
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Dehiwela.

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J.W.D. PERERA
Solicitor, England & Wales, Attorney at Law
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Residence:
12 Sinsapa Road, Colombo 6. Phone: 583596

VERNON GOONERATNE
LLB Ceylon Attorney at Law
Residence:

10, Terrace Avenue, Mount Lavinia

6th October 1998

Dear Sir,

COURT OF APPEAL REVISION & LEAVE TO APPEAL APPLICATIONS NOS. 775/98 & 189/98
IN D.C. COLOMBO CASE NO. 19849/MR

Nihal Sri Ameresekere Vs. Gamini Lakshman Peiris

We are the Registered Attorneys-at-Law for the Plaintiff, Mr. Nihal Sri Ameresekere in the above Case.

As you are aware, we were also the Registered Attorneys-at-Law in D.C. Colombo Case No. 3155/Spl., instituted by our said Client in September 1990, on behalf of and in the right of Hotel Developers (Lanka) Ltd., as a derivative action in law.

In the said Action, you settled the requisite papers to the Supreme Court in S.C./L.A. Applications Nos. 33/92 (18/92) & 34/92 (19/92), including the Written Submissions, and appeared for our Client at the Hearings of the Special Leave to Appeal and the Appeal before the Supreme Court, where Judgment was entered and delivered in December 1992 in favour of our Client, the Supreme Court upholding the said Action as a prima-facie Case. The Supreme Court affirmed the issuance of the interim injunctions, observing, inter-alia, that the same had been issued *to prevent the devious siphoning of a large scale of foreign exchange from the Company and the country, and that in the given circumstances the government could not be indifferent.* A copy of the Judgment is annexed for your easy reference.

You may recall, that the said Action had been instituted, in the circumstances, that the Company though being majority owned and controlled by the government and thereby coming under the purview and direction of the Ministry of Finance, had deliberately failed and neglected to have taken any action, whatsoever, disregarding the several representations that had been made by our Client to the Directors of the Company, including the government Directors, as well as to the Minister/Ministry of Finance, setting out the relevant facts and urging that action be taken, as warranted.

In addition, the Company being a listed public Company, our Client since August 1991, and subsequently, we on behalf of our Client, had made several written representations to the Securities & Exchange Commission of Sri Lanka, under and in terms of the provisions of the Securities & Exchange Commission Act No. 36 of 1987, as amended, and the gazetted Rules and Regulations promulgated thereunder.

As you know, the said Commission also comes under the purview of the Ministry of Finance and the Minister of Finance appoints Members to the Commission. The Defendant in the aforementioned Case, Mr. G.L. Peiris, was one such Member appointed to the Commission by the then Minister of Finance under the former government.

The aforesaid representations that had been made to the said Commission were in relation to the subject matter of the derivative action D.C. Colombo Case No. 3155/Spl., and at the request of the Commission, we had submitted the relevant documents pertaining to the said Action.

In view of the inaction by the said Commission, several written representations had been made individually to the then Members of the Commission, including the Defendant, Mr. G.L. Peiris, urging that action be taken. Nevertheless, they deliberately failed and neglected to take any action as had been warranted, *to have prevented the devious siphoning of a large scale of foreign exchange from the Company and the country* and to hold those responsible accountable. Copy of our Letter dated 4th August 1992 addressed to the Commission and forwarded individually to the then Members of the Commission, including the Defendant, Mr. G.L. Peiris, is annexed for your easy reference.

The Supreme Court, however, subsequently in December 1992, upon your submissions and urgings, inter-alia, of the aforesaid inaction by the government and its agencies, delivered Judgment making adverse observations.

Consequently, the government through the Ministry of Finance intervened to bring about a Settlement, which was finalised by the Attorney General. The Attorney General having determined that the then Members of the Securities & Exchange Commission, including the Defendant, Mr. G.L. Peiris, had failed in their statutory duties and obligations to have taken any action on legitimate complaints that had been made, included the following Condition in the Settlement Agreements that were finalised in June 1993.

"The Government shall and will take appropriate independent actions on the conduct and actions on the Securities & Exchange 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"

The Settlement Agreements did not get executed in June 1993, purely and only because the Japanese Companies, in addition to the State Guarantees, had insisted that Promissory Notes be issued to them by the government for the balance agreed unwritten-off debt of the Company.

Upon the present government assuming office, Her Excellency the President, then Prime Minister, functioning as the Minister of Finance, had directed the then Secretary, Ministry of Finance, Mr. A.S. Jayawardena to require the Securities & Exchange Commission to take remedial action to have the matter investigated, with a view to taking appropriate action. Accordingly, the Secretary, Ministry of Finance had addressed Letter dated 23rd September 1994 to the then Chairman, Mr. R.S. Wanasundera of the Commission. Copy of the said Letter and the reply dated 6th October 1994 from the said Chairman of the Commission are annexed for your reference.

In the meantime, as directed by Ministry of Finance, the then Secretary, Ministry of Finance, Mr. A.S. Jayawardena by his Letter dated 19th October 1994 had requested the Hon. Attorney General to finalise the Settlement, proceeding on the basis of the Settlement Agreements that had been finalised in June 1993 as aforesaid. A copy of the said Letter is annexed for your reference. Accordingly, the Settlement was concluded and signed on 28th June 1995, further improving on the financial terms.

Prior to signing the Settlement Agreements, documents and records pertaining thereto since 1992, including copies of the Agreements, were placed in evidence by our Client through the Solicitor General before the public sittings of the Special Presidential Commission. The Solicitor General, acting on behalf of the Hon. Attorney General, by his Letter dated 15th June 1995 addressed to the Secretary, Ministry of Finance approved the Settlement Agreements for signature. A copy of the Letter is annexed for your reference.

The issues of a derivative action being mixed questions of both fact and law, the facts pertaining to the derivative action D.C. Colombo Case No. 3155/Spl., wherein you appeared for our Client, would have a direct bearing on the matters in issue in the aforementioned D.C. Colombo Case No. 19849/MR, wherein you have settled papers on behalf of the Defendant, Mr. G.L. Peiris in the aforementioned Court of Appeal Applications and supported the Revision Application to obtain a Stay Order on an Order made for an ex-parte trial in the said Case in favour of our Client.

We have set out the foregoing as instructed by our Client, to apprise you of the aforesaid for your kind recollection, to enable you to consider, whether or not in the given circumstances, you deem it fit to appear for the Defendant, Mr. G.L. Peiris in the said Case.

We are further instructed, that on or about 18th May 1998, our Client had telephoned you for an appointment, only to seek advice on the subject of professional etiquette and conduct of Attorneys-at-Law, in the context of the reference made at the Convocation of the Bar Association of Sri Lanka in March 1993, by His Lordship, The Chief Justice G.P.S de Silva to a statement made by you, as the President of the Bar Association of Sri Lanka, quoted on pages 20 and 21 of the book - "Professional Ethics and Responsibilities of Lawyers" written by His Lordship A.R.B. Amerasinghe J. You had declined to give an appointment, preferring not to discuss, if the matter pertained to the present controversies on the Hilton Hotel, which ofcourse had been politically precipitated by parties interested and/or affected by our Client's Action.

Yours faithfully,



Attorneys-at-Law

DE SILVA & PERERA
SOLICITORS ATTORNEYS—AT—LAW & NOTARIES PUBLIC

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YOUR REF:

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Residence:

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BY HAND

11th December 1998

Mr. H.L. de Silva, P.C.,
26, De Alwis Place,
Dehiwela.

Dear Sir,

COURT OF APPEAL REVISION APPLICATION NO. 775/98
IN D.C. COLOMBO CASE NO. 19849/MR

Nihal Sri Ameresekere Vs. Gamini Lakshman Peiris

Further to our Letter dated 6th October 1998 we write as instructed:

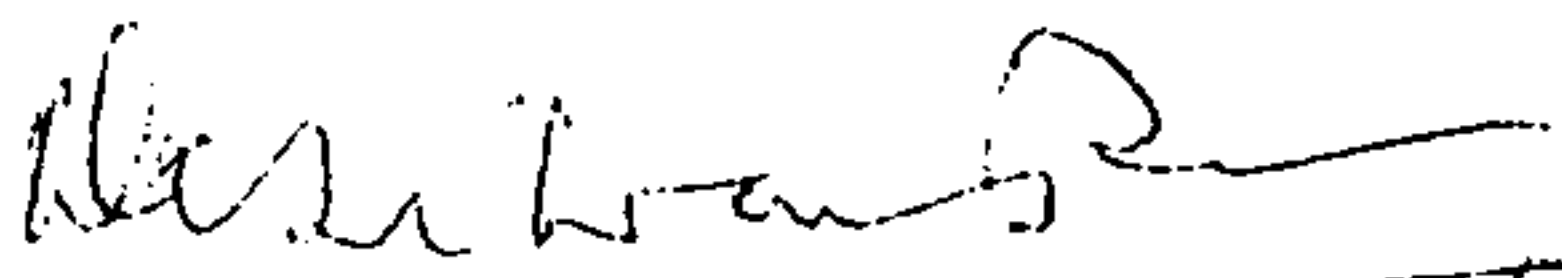
Our Client was present in the Court of Appeal at the Hearing on 26th November 1998.

Whilst making submissions on the contents of the Plaintiff, particularly on those relating to the conduct and actions of Mr. K.N. Choksy, P.C., M.P., to our Client's understanding, you had apparently endeavoured to scoffingly dismiss the same with disbelief.

We enclose a copy of the Written Submissions dated 6th July 1992 settled by you as Senior Counsel and tendered on behalf of our Client to the Supreme Court in Appeals Nos. 33 & 34/92 [D.C. Colombo Case No. 3155/Spl].

We draw your kind attention to pages 42 to 44 therein that set out the said wrongful conduct and actions of Mr. K.N. Choksy P.C., M.P.

Yours faithfully,



Attorneys-at-Law