

IN THE DISTRICT COURT OF COLOMBO

Nihal Sri Ameresekere
167/4, Sri Vipulasena Mawatha
Colombo 10.

Case No : 21819/MR
Nature : Money Recovery
Value : Rs. 100,000,000/-
Procedure : Regular

PLAINTIFF

Vs

1. Gamini Lakshman Peiris
of "Visumpaya", Staples Street
Colombo 2, and also of
37 Kirula Place
Colombo 5.
2. Hotel Developers (Lanka) Ltd.
C/o Colombo Hilton Sports Complex
Echelon Square,
Lotus Road
Colombo 1.

DEFENDANTS

On this 27th day of October 1998

THE PLAINT of the Plaintiff abovenamed appearing by J.W.D. Perera, practising under the name and style of DE SILVA & PERERA, his Attorney-at-Law, states as follows:

1. The Plaintiff and the 1st Defendant abovenamed reside and the Registered Office of the 2nd Defendant Company abovenamed is situate and the cause of action set out hereinafter arose within the jurisdiction of this Court.
2. The Plaintiff,
 - i. is a Fellow Member of the Institute of Chartered Accountants of Sri Lanka and the Chartered Institute of Management Accountants, U.K.
 - ii. was an Advisor, Ministry of Finance from 21.9.'94 to 20.9.'95 and wished not to continue
 - iii. is a Shareholder and a Director of the 2nd Defendant Company.
3. The 1st Defendant,
 - i. was some time previously, Professor of Law and Vice-Chancellor of the University of Colombo.
 - ii. was also the Vice Chairman, Janasaviya Trust Fund, Member, Presidential Youth Commission, Law Commission, Securities & Exchange Commission, National Education Commission, under the former United National Party Government.
 - iii. is at present, a National List Member of Parliament of the People's Alliance and the Deputy Minister of Finance, Minister of Justice & Constitutional Affairs and Ethnic Affairs & National Integration of the present Government.
4. a) The 2nd Defendant Company is a public Company incorporated on or about 15.3.'83 and listed on the Colombo Stock Exchange and owns the Colombo Hilton Hotel.
 - b) The Share Capital of the 2nd Defendant Company, Rs. 452.26 million, is owned 65% by the Government of Sri Lanka, 27% by Mitsui & Co. Ltd. and Taisei Corporation, both of Japan [hereinafter referred to as "Mitsui & Taisei"] and 8% by the public.
 - c) The Government nominates 6 out of 11 Directors of the 2nd Defendant Company.
 - d) The Government had issued Guarantees on behalf of the 2nd Defendant Company to Mitsui & Taisei on the foreign loans taken by the 2nd Defendant Company for the construction of the said hotel.
5. The Plaintiff then a Director, qua Shareholder of the 2nd Defendant Company, instituted a derivative action, D.C. Colombo Case No. 3155/Spl, in the right and for and on behalf of the 2nd Defendant Company on 13.9.'90, in respect of the construction of the said hotel, against Mitsui & Taisei and others, in circumstances, that those in control of the management of the affairs of the 2nd Defendant Company, majority owned and controlled by the Government,

- had failed and neglected to take any action as warranted, to protect the interests of the 2nd Defendant Company and its shareholders.
6. The interim injunctions issued by the District Court in D.C. Colombo Case No. 3155/Spl were affirmed by the Supreme Court on 2.12.'92, observing, inter-alia, that *they had been issued to prevent the devious siphoning of a large scale of foreign exchange from the 2nd Defendant Company and the country, and that in the given circumstances, being the major shareholder and guarantor, the Government could not be indifferent.*
 7. a) Consequently, a Settlement was brought about by the Government, represented by the Attorney General and the Secretary to the Treasury, as the major shareholder and guarantor of the 2nd Defendant Company.
 - b) Settlement Agreements were executed on 28.6.'95, as had been finalised since June '93 by the Attorney General, who had represented the 2nd Defendant Company in the said D.C. Colombo Case No. 3155/Spl.
 - c) The Government being a party to the Settlement Agreements, the Secretary to the Treasury signed the same.
 - d) The Cabinet Memorandum dated 21.6.'95 approving the Settlement, inter-alia, stated *"A Special Presidential Commission is carrying out an inquiry into the totality of this matter and the Government and the public would be afforded a report thereon. The Government would consider taking appropriate action, based on the findings and recommendations of the Commission. The Solicitor General has kept the Commission apprised of this Settlement."*
 8. Prior to signing the Settlement Agreements, the draft agreements, correspondence and documents pertaining thereto since 1992 had been placed in evidence by the Plaintiff before the public sittings of the Special Presidential Commission appointed to inquire into the alleged "Hilton fraud", through the Solicitor General, who on behalf of the Attorney General, approved the Settlement Agreements for signature on 28.6.'95.
 9. a) The Settlement benefited the 2nd Defendant Company and the Government, with a write-off by Mitsui & Taisei of 10-years' interest and 30% of the capital, amounting to a total write-off of Jap.Yen. 17,586 million [Rs.10,200 million] from the claims they had made from the 2nd Defendant Company.
 - b) After payment of Jap .Yen. 2312 million, from monies accumulated with the 2nd Defendant Company due to interim injunctions that had been obtained by the Plaintiff, the balance due was agreed at Jap.Yen. 7834 million to be paid over 15-years, with a 1-year grace period, by the year 2010 at 5.25% p.a. interest [*previously payable by 1999 at 6% p.a.*].
 - c) Such benefits to the 2nd Defendant Company, the Government and the public were achieved due to the sole efforts of the Plaintiff, amidst pressures and obstructions by concerned parties.
 10. Announcing the Settlement on 30.6.'95 at a press conference convened and chaired by himself, the 1st Defendant, inter-alia, stated:- *"The settlement signed with the Japanese contractors also conforms to the major planks of the People's Alliance government's election manifesto of combating the pillage and plunder of national resources and the government's commitment, which has brought about the large scale saving. However, this settlement has nothing to do with the punitive action, which the legal machinery will take against the offenders by the Special Presidential Commission of Inquiry and the Permanent Commission on Bribery and Corruption."*
 11. The Settlement Agreements finalised since June '93 contained, inter-alia, a condition, whereby the Government, as determined by the Attorney General, had agreed to take action against the then Members of the Securities & Exchange Commission, that also included the 1st Defendant, for deliberate and willful neglect of statutory duties, obligations and responsibilities, to have taken action, to prevent the *"the pillage and plunder of national resources"* [as so described by the 1st Defendant], as warranted by law on the legitimate complaints made by the Plaintiff.
 12. a i) The Secretary, Ministry of Finance & Planning, under the present Government, addressed Letter dated 23.9.'94 to the Securities & Exchange Commission, pointing out that the Supreme Court had made adverse observations in the Judgment in D.C. Colombo Case No. 3155/Spl and that the Minister of Finance, having reviewed the matter, had requested that remedial action be taken, and that the matter be investigated, with a view to taking appropriate action.

- ii) The Letter had been copied to D.Y. Liyanage, a Member of the said Commission, as the Deputy Secretary to the Treasury
 - b) By Letter dated 6.10.'94, the Chairman of the said Commission, having agreed to take up the matter before the Commission, the Plaintiff verily believes, that under the provisions of the Securities & Exchange Commission Act No. 36 of '87, as amended, the Commission established a Committee of 3 Members, to hear and determine the matter and that one of them was D.Y. Liyanage.
 - c) To the Plaintiff's knowledge, no inquiry was held and the said Commission has failed and neglected to even reply to Letters subsequently addressed to the Commission on his behalf.
13. a) Upon discovery in the Settlement Agreements of the condition that affected the Members of the Securities & Exchange Commission, including the 1st Defendant, in a remarkable turnabout, he, whilst holding the office as Deputy Minister of Finance and Minister of Justice & Constitutional Affairs, misusing and abusing such office, notwithstanding being affected by such condition, acting in his personal interest, precipitating a public controversy, interfered and intervened to cause the wrongful and unlawful suspension on 24.7.'95 of the implementation of the Settlement Agreements signed on 28.6.'95.
- b) On 24.7.'95 the Secretary Ministry of Finance addressed Letters to Mitsui & Taisei stating that he is directed by the 1st Defendant to inform them that the Settlement Agreements will not be implemented until the determination of the Special Presidential Commission Inquiry. The 1st Defendant also made public pronouncement to this effect. The 1st Defendant thus intervened to cause the wrongful and unlawful suspension of the implementation of the Settlement Agreements on 24.7.'95.
14. In answering questions by Mahinda Samarasinghe M.P., in Parliament, the 1st Defendant admitted on 8.8.'95, that it was he who intervened to cause the suspension of the implementation of the Settlement Agreements, due to a number of conditions in the Settlement Agreements being unacceptable to the Government.
15. As a result of the wrongful and unlawful suspension of the implementation of the Settlement Agreements, caused by the 1st Defendant, the 2nd Defendant Company
- a) could not make the agreed payments to Mitsui & Taisei on the due dates, thereby causing the 2nd Defendant Company to pay additional interests.
 - b) could not proceed, during the 1-year grace period from July '95 to June '96 specifically provided to restructure the finances of the 2nd Defendant Company and to build the 3rd tower of hotel rooms to enhance its profitability and debt service ability, in terms of the following condition in the Settlement Agreements, - vide Agreement No. 2 – " 14. HDL [2nd Defendant Company] shall and will explore the feasibility of building the 3rd Tower of Hotel Rooms at the Hotel and consider financing the cost of same, through a Rights and/or a new Issue of its Shares or otherwise, as considered feasible, to enhance HDL's profitability and debt service ability, to enable the repayment of the Loans to Mitsui and Taisei and/or to the Government as aforesaid. "
 - c) as a consequence of the above, was compelled to borrow Rs. 288.567 million in July '97 incurring further interests, from the government as the guarantor,
 - d) was prevented from converting its balance unwritten-off loan from Japanese Yen into United States Dollars to take advantage of the depreciation of the Japanese Yen.
16. a) After discussions between President Kumaratunga/Minister of Finance and the Plaintiff in March '96, the signed Settlement Agreements were subsequently given effect to.
- b) Thereafter, the Board of Directors of the 2nd Defendant Company on 25.10.'96 approved payments and issued Promissory Notes to Mitsui & Taisei, in terms of the Settlement Agreements.
 - c) At the behest of the Secretary to the Treasury and the Attorney General, by an Addendum signed in September/October '96 to the Settlement Agreements, only the said condition that affected the Members of the Securities & Exchange Commission, including the 1st Defendant, was excluded.
 - d) The said Addendum provided for arrangements to ensure and secure the implementation of all other conditions in the Settlement Agreements, to protect the interests of the 2nd Defendant Company and the Government.

- e) Contrary to what the 1st Defendant stated in causing the suspension of the implementation of the Settlement Agreements in 1995, the implementation of the Settlement Agreements was effected in 1996, prior to the conclusion of the Special Presidential Commission Inquiry, without any public pronouncement being made thereon by the 1st Defendant.
17. a) In reply to questions by Ravi Karunanayake M.P. – vide Hansard of 13.12.'96, the 1st Defendant tabled in Parliament a Statement on the implementation of the Settlement, admitting that the Settlement, with a write-off of Rs. 10,624 million and the re-scheduling of the balance agreed debt over a further 15-year period to the year 2010 [*originally fully payable by 1999*] was of benefit to the country.
- b) Such benefit, however, was achieved, only as a result of the Plaintiff's efforts and actions, which the 1st Defendant never acknowledged.
18. The wrongful and unlawful suspension of the implementation of the Settlement Agreements in toto, caused by the 1st Defendant, without a legal basis to have done so, has been detrimental and has caused substantial loss and damage to the 2nd Defendant Company and its Shareholders, including the Government, the Plaintiff and the public.
19. As a consequence of the wrongful and unlawful suspension of the implementation of the Settlement Agreements, caused by the 1st Defendant,
- a i) The 2nd Defendant Company had to incur an additional interests of Rs. 79.629 million, as disclosed in the Operational Accounts of the 2nd Defendant Company circulated by the Secretaries on 23.9.'97, and
- ii) Taking into account interest income on Sri Lankan Rupees and Japanese Yen deposits with the 2nd Defendant Company, the loss to the 2nd Defendant Company is reckoned to be Rs. 35.938 million.
- b i) The financial restructuring of the 2nd Defendant Company, that had been envisaged to be carried out as specifically provided for in the Settlement Agreements, during the one year grace period from July '95, could not be carried out, including pursuing the feasibility of building the 3rd Tower of Hotel Rooms to enhance the 2nd Defendant Company's profitability and debt service ability. Hilton International, the management company, taking on the management of JAIC Towers in Colombo underscored the marketability; and.
- ii) As a result of the above, continuing loss and damage has been and is being caused to the 2nd Defendant Company.
- c i) The 2nd Defendant Company as a consequence of b i) above, had to borrow from the Government as the Guarantor Rs. 288.567 million in July '97 as disclosed in the Operational Accounts of the 2nd Defendant Company circulated by the Secretaries on 7.11.'97; repayable in 5-years in equal instalments commencing from 1st July 2001, at 12.5% p.a. interest payable in June each year – vide Letter dated 13.11.'97 to the 2nd Defendant Company from the Secretary to the Treasury; and
- ii) As a result b i) above, the 2nd Defendant Company as a consequence would be compelled to borrow further from the Government, contrary to the dicta of the said Letter, incurring further losses by way of interests.
- iii) The aforesaid has frustrated and rendered nugatory the direction that had been given by the Secretary, Ministry of Finance – vide Letter dated 19.10.'94 to the Attorney General and the Government Nominee Directors – *to conclude the Settlement with Mitsui & Taisei, subject to the financial restructuring and debt re-scheduling facilitating the loan repayments to Mitsui & Taisei by the 2nd Defendant Company, and*
- d) In addition, the 2nd Defendant Company has been prevented from converting the balance unwritten-off loan of Jap.Yen 7,834 million into US Dollars at a later date, as had been envisaged at the time of Settlement in June '95, causing loss to the 2nd Defendant Company.
20. a) The false statements made and controversies created by the 1st Defendant and the suspension of the implementation of the Settlement Agreements caused by him had been exhaustively pleaded, as material issues, in several vexatious litigations involving the 2nd Defendant Company, instituted or caused to be instituted by C.L. Perera, former Chairman & Managing Director and present Director of the 2nd Defendant Company.

- b) In D.C. Colombo Case No. 5095/Spl and H.C. (Civil) W.P. Case No. 1/98 (2) [*now dismissed*], instituted by C.L. Perera's Cornel & Co. Ltd., in March '98, the 2nd Defendant Company and the Government, as Defendants therein, have filed Objections and Answers defending the Settlement Agreements, thereby giving the lie to the statement made by the 1st Defendant – vide para 14 above.
 - c) The said vexatious litigations have, seriously impeded the conduct of the affairs of the 2nd Defendant Company, and subjected the 2nd Defendant Company to further public controversy and scandal, causing considerable loss and damage.
21. a) In seeking the Plaintiff's co-operation and concurrence to implement the Settlement Agreements in 1996, the Secretary, Ministry of Finance/Treasury, B.C. Perera and the Deputy Secretary to the Treasury, Dr. P.B. Jayasundera gave an undertaking to the Plaintiff, that an official public pronouncement would be made by the Government to clear all controversies that had been created by the 1st Defendant in relation to the wrongful and unlawful suspension of the implementation of the Settlement Agreements.
- b) Notwithstanding several repeated assurances by the Secretary, Ministry of Finance/Treasury, no such public pronouncement has been made to-date to clear such controversies.
 - c) Deputy Secretary to the Treasury, D.Y. Liyanage, present Chairman of the 2nd Defendant Company, is aware of the above.
 - d) The Plaintiff having put the 1st Defendant on notice, notwithstanding the aforesaid controversies widely reported in the media, the 1st Defendant has deliberately continued to evade making any public clarifications to clear such controversies that had been created by him, to the continuing detriment of the 2nd Defendant Company.
22. a) The Plaintiff made oral and written representations, inter-alia, dated 1.4.'97, 22.4.'97, 13.6.'97, 18.8.'97, 22.10.'97, 30.1.'98, 23.3.'98 and 29.6.'98 to the Secretary, Ministry of Finance/Treasury, amongst other matters, on the loss, damage and jeopardy caused to the 2nd Defendant Company by the wrongful and unlawful suspension of the implementation of the Settlement Agreements, caused by the 1st Defendant.
- b) Plaintiff made similar oral representations to the Deputy Secretaries to the Treasury, D.Y. Liyanage and Dr. P.B. Jayasundera, Chairman and Director, respectively, of the 2nd Defendant Company and the abovementioned written representations were copied to them.
 - c) No action was taken on the said representations.
23. a) From 3.2.'97 D.Y. Liyanage, functions as the Chairman of the 2nd Defendant Company and on 22.10.'97 he was empowered to cover the duties of the Managing Director of the 2nd Defendant Company until a permanent appointment is made, and
- b) As the Chairman of the 2nd Defendant Company, the Board of Directors of the 2nd Defendant Company had – *empowered and authorised him 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.*
 - c) At the time the Secretary, Ministry of Finance, on the direction of the Minister of Finance, by Letter dated 23.9.'94 required the Securities & Exchange Commission to carry out an investigation, D.Y. Liyanage was a Member thereof and continues to be to date. – vide para 12 above.
24. a) The Plaintiff by Letters dated 18.3.'97 and 15.6.'98 apprised President Kumaratunga/ Minister of Finance of the loss, damage and jeopardy caused to the 2nd Defendant Company by the conduct and actions of the 1st Defendant.
- b) In terms of Article 101 of the Articles of Association of the 2nd Defendant Company, the Minister of Finance nominates the Government Directors.

25. The Plaintiff by Memorandum dated 12.8.'98 to the Secretary, Ministry of Finance/Treasury and copied to D.Y. Liyanage, Chairman of the 2nd Defendant Company, set out the losses and damages caused to 2nd Defendant Company and stated – " *If the Government and/or HDL [2nd Defendant Company] does not take action in the interest of HDL and its Shareholders, having already put the Deputy Minister of Finance, Mr. G. L. Peiris on notice in this regard, I shall be compelled to institute action and/or move to wind-up HDL*".
26. a i) At the Board Meeting of the 2nd Defendant Company on 17.7.'97, the Plaintiff – vide Board Minute No. 97.7.5 (viii), stated –
- " Mr. N.S. Amerersekere expressed regret that funds had to be advanced by the government under state guarantees and wanted it to be recorded that the suspension of the implementation of the settlement had caused additional interest cost of around Rs. 55.0 million to the company and had also frustrated the financial restructuring that was to have been carried out during the grace period as had been provided for under the settlement agreements, to enhance the debt service ability of the company and also to build the 3rd tower of hotel rooms. Mr. Amerersekere stressed that the Hilton management of the JAIC towers only underscored the need to have strategised for the 3rd tower, which is now a setback to the company. "
- ii) No Director of the 2nd Defendant Company objected.
- b i) At the Board Meeting of the 2nd Defendant Company on 4.9.'98, the Plaintiff tabled Memorandum dated 4.9.'98 setting out the losses and damages caused to the 2nd Defendant Company by the conduct and actions of the 1st Defendant and stated – " *In the foregoing circumstances, in the interest of the Company and its Shareholders, action ought to be taken against the Deputy Minister of Finance, Mr. G.L. Peiris to recover the loss and damage caused to the Company.*"
- ii) The Plaintiff urged that the matter be acted upon at the next Board Meeting.
- c i) Thereafter, the Plaintiff addressed Memorandum dated 21.9.'98 to D.Y. Liyanage, Chairman of the 2nd Defendant Company, with copies to the other Government Nominee Directors of the 2nd Defendant Company and, inter-alia, stated – " *In view of the aforesaid loss, damage and frustration caused to HDL, I tabled Memorandum dated 4th September '98 at the HDL Board Meeting on 4th September '98. I require that immediate action be taken thereon in the interest of HDL and its shareholders. HDL is a government owned listed public Company and the said matters are of a grave and serious nature and could not warrant any re-consideration, but demand to be acted upon without delay.*"
- ii) The Plaintiff followed up with Memorandum dated 13.10.'98 to D.Y. Liyanage, Chairman of the 2nd Defendant Company urging that it is warranted, essential and urgent that a decision be taken at the next Board Meeting.
- d i) At the next Board Meeting on 14.10.'98, the Plaintiff read out the Board Minute of 17.7.'97 vide 26 a i) above and urged that action be taken on his Memorandum dated 4.9.'98 circulated thereat.
- ii) Chairman, D.Y. Liyanage suggested that the matter be referred to the 2nd Defendant Company's Lawyers and the Plaintiff urging that the matter was urgent requiring action to be taken before 28.10.'98, the Chairman requested the 2nd Defendant Company's Secretaries to remind him the next day to follow up.
- e) Accordingly, the Plaintiff promptly forwarded Letters dated 15.10.'98 to,
- i the 2nd Defendant Company's Secretaries, Corporate Services Ltd., and
ii the 2nd Defendant Company's Lawyers, F.J. & G. De Saram,
- with copies to D.Y. Liyanage, Chairman of the 2nd Defendant Company, stressing that to protect the interest of the 2nd Defendant Company, immediate action has to be taken before 28.10.'98.
- f) Upon enquiry from the 2nd Defendant Company's Secretaries, Corporate Services Ltd., the Plaintiff was informed that Chairman, D.Y. Liyanage had instructed them not to refer the matter to the 2nd Defendant Company's Lawyers, until the Board Minutes are approved by him, and that they were forwarding to him on 16.10.'98 the draft Minutes of the Board Meeting of 14.10.'98.

- g) Consequently, the Plaintiff addressed a further Memorandum dated 16.10.'98 to D.Y. Liyanage, Chairman of the 2nd Defendant Company, with copies to Dr. P.B. Jayasundera and the other Government Nominee Director of the 2nd Defendant Company, and reiterating the gravity and seriousness of the matter warranting action without delay, urged that the matter be referred to the 2nd Defendant Company's Lawyers urgently and that an emergency Board Meeting be summoned to consider action, to prevent any prescription in law.
- h) As at 23.10.'98 the matter had not been referred to the 2nd Defendant Company's Lawyers, nor has an emergency Board Meeting been summoned. The 2nd Defendant Company's Secretaries confirmed to the Plaintiff that the draft Board Minutes had been forwarded to the Chairman of the 2nd Defendant Company on 16.10.'98.
27. a) The present Directors of the 2nd Defendant Company are;
- i. Government Nominee Directors – D.Y. Liyanage, Dr. P.B. Jayasundera, Padma Maharaja and the Plaintiff, and there are 2 Vacancies since October '97 & March '98
 - ii. Mitsui & Taisei Nominee Directors – K. Kojima and D. Kondo
 - iii. Cornel & Co. Ltd. Nominee Directors - C.L. Perera and T.P. Perera
 - iv. Other Director – Vacant since July '97
- b) 1st Defendant being an influential and powerful Cabinet Minister, and the officials of the Ministry of Finance coming under his purview, the Plaintiff verily believes, particularly in the context of discussions had with D.Y. Liyanage, Chairman of the 2nd Defendant Company, that they would be helpless and unable to take action against the 1st Defendant, inasmuch as the Plaintiff's representations have not been acted upon.
- c) Mitsui & Taisei Nominee Directors, the Plaintiff verily believes would not take action against the 1st Defendant.
- d) Having pleaded in Cases in its support, the conduct and actions of the 1st Defendant, to the detriment of the 2nd Defendant Company, Cornel & Co. Ltd., Nominee Directors would be disqualified from partaking in decisions in this regard in terms of Article 123 of the Articles of Association of the 2nd Defendant Company.
28. a) The Plaintiff, a professional, as a Director of the 2nd Defendant Company, has spent considerable time and effort, in protecting and safeguarding the interest of the 2nd Defendant Company, consequent to controversies created by the 1st Defendant and the said vexatious litigations based thereon. The Plaintiff had similarly spent considerable time and effort previously, resulting in immense benefit to the 2nd Defendant Company – vide para 9 above
- b) In the premises the control of the 2nd Defendant Company being such, no proceedings can and/or will be brought in the name of the 2nd Defendant Company, as the Plaintiff, against the 1st Defendant, to protect and safeguard the 2nd Defendant Company's interests and that of its shareholders and for its benefit and that of its shareholders
- c) The Plaintiff, qua Shareholder of the 2nd Defendant Company, in the given circumstances, is compelled to institute this action in the right and for and on behalf of the 2nd Defendant Company and its shareholders, to protect and safeguard its interest and that of its shareholders and for its benefit and that of its shareholders
- d) To protect the interests of the 2nd Defendant Company and its shareholders, this action has to be instituted without further delay on or before 28.10.'98, as part of one of the claims against the 1st Defendant will be prescribed to the detriment of the 2nd Defendant Company and its shareholders.
29. a) The 1st Defendant having purported to act in his official capacity, the Plaintiff, in conformity with Section 461 of the Civil Procedure Code, through his Attorney-at-Law had addressed a notice to the 1st Defendant by Letter dated 21.9.'98, which the 1st Defendant has replied by Letter dated 30.9.'98 through his Attorneys-at-Law.
- b) The 1st Defendant has not denied and/or controverted the several facts set out in Plaintiff's communication, but had merely denied legal liability.
30. In the premises aforesaid, a cause of action has accrued to the Plaintiff, qua shareholder of the 2nd Defendant Company, to sue the 1st Defendant for damages in the right and interest of, and for and on behalf of the 2nd Defendant Company and its shareholders, to wit;

- a) for the recovery from the 1st Defendant of a sum of Rupees Thirty Five Million Nine Hundred and Thirty Eight Thousand [Rs. 35,938,000] on account of additional interest paid to Mitsui & Taisei on 29.10.'96 and 14.11.'96, together with legal interest thereon upto the date of Plaint and thereafter interest at the legal rate until date of decree and thereafter interest at the legal rate on the decretal amount until payment in full
- b) for the recovery from the 1st Defendant of a sum of Rupees Thirty Six Million Seventy One Thousand [Rs. 36,071,000/-] being interest incurred upto 30.6.'98 in respect of the loan of Rs. 288.567 million granted by the Government on 1.7.'97 to the 2nd Defendant Company, together with continuing interest payable thereon, until the full discharge and final settlement of the said loan, together with interest at the legal rate on the payment of any interest from the date of payment until date of decree and thereafter, interest at the legal rate on the decretal amount until payment in full
- c) for the recovery from the 1st Defendant of a further sum of money to be ascertained and determined by Court, on account of damages caused to the 2nd Defendant Company by it being prevented from,
 - i. restructuring its finances as had been envisaged in the Settlement Agreements,
 - ii. including converting the balance unwritten-off Japanese Yen loan into Unites States Dollars, and
 - iii. proceeding to build the 3rd tower of hotel rooms,

to enhance the 2nd Defendant Company's profitability and debt service ability, but limited to a period of five (5) years from 1.7.'96, together with interest at the legal rate on the decretal amount until payment in full

- d) for an Order directing the 1st Defendant to pay the said sums of monies referred to in para 30. a), b) and c) above to the 2nd Defendant Company

31. Plaintiff values this action at Rs 100,000,000/- for the purpose of stamp duty.

WHEREFORE the Plaintiff prays;

- a) for Judgment against the 1st Defendant in a sum of Rupees Thirty Five Million Nine Hundred and Thirty Eight Thousand [Rs. 35,938,000] on account of additional interest paid to Mitsui & Taisei on 29.10.'96 and 14.11.'96, together with legal interest thereon upto the date of Plaint and thereafter interest at the legal rate until date of decree and thereafter interest at the legal rate on the decretal amount until payment in full
- b) for Judgment against the 1st Defendant in a sum of Rupees Thirty Six Million Seventy One Thousand [Rs. 36,071,000/-] being interest incurred upto 30.6.'98 in respect of the loan of Rs. 288.567 million granted by the Government on 1.7.'97 to the 2nd Defendant Company, together with continuing interest payable thereon, until the full discharge and final settlement of the said loan, together with interest at the legal rate on the payment of any interest from the date of payment until date of decree and thereafter, interest at the legal rate on the decretal amount until payment in full
- c) for Judgment against the 1st Defendant in a further sum of money to be ascertained and determined by Court, on account of damages caused to the 2nd Defendant Company by it being prevented from,
 - i. restructuring its finances as had been envisaged in the Settlement Agreements,
 - ii. including converting the balance unwritten-off Japanese Yen loan into Unites States Dollars, and
 - iii. proceeding to build the 3rd tower of hotel rooms,

to enhance the 2nd Defendant Company's profitability and debt service ability, but limited to a period of five (5) years from 1.7.'96, together with interest at the legal rate on the decretal amount until payment in full.

- d) for an Order directing the 1st Defendant to pay the said sums of monies referred to in prayers a), b) and c) above to the 2nd Defendant Company
- e) for costs of suit, and
- f) for such other and further reliefs as to Your Honour's Court shall seem meet



Attorney-at-Law for the Plaintiff