

IN THE DISTRICT COURT OF COLOMBO

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

PLAINTIFF

Case No: 21819/MR

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

To:

The Chairman of the 2nd Defendant Company abovenamed, D.Y. Liyanage, Deputy Secretary to the Treasury, under Section 97 of the Civil Procedure Code

Interrogatories on behalf of the Plaintiff abovenamed for the examination of the 2nd Defendant Company abovenamed, delivered to the abovenamed.

In terms of Section 94 of the Civil Procedure Code, you are required to Answer all the following Interrogatories within ten days of the service of same on you:

1. Do you admit that your Chairman, D.Y. Liyanage,
 - i. is the Deputy Secretary to the Treasury ?
 - ii. has held such office since 1994 ? If not, from when ?
 - iii. was appointed as your Chairman from 03.02.1997, because he held office as the Deputy Secretary to the Treasury, since the Government owns 65% of your share capital ?
 - iv. has also acted at times as the Secretary, Ministry of Finance and Secretary to the Treasury ?
 - v. accordingly, is aware of the minutes, records and documents pertaining to you maintained at the Ministry of Finance/Treasury, more particularly in the Files bearing Reference No. EA/05/26 ?
 - vi. as the Deputy Secretary to the Treasury, is also a member of the Securities & Exchange Commission (hereinafter referred to as "SEC") since 1993 ? If not, from when ?
2. Do you not admit that your Chairman, D.Y. Liyanage,
 - i. had received, inter-alia, Plaintiff's Letters/Memoranda dated 01.04.1997, 22.04.1997, 13.06.1997, 18.08.1997, 22.10.1997, 30.01.1998, 23.03.1998, 29.06.1998, 12.08.1998 and 19.01.1999 addressed to the Secretary to the Treasury and also copied to him, as your Chairman ? If not all, which of such Letters/Memoranda had he received ?
 - ii. had received, inter-alia, Plaintiff's Letters/Memoranda dated 21.09.1998, 13.10.1998, 15.10.1998(2), 16.10.1998, 23.11.1998, 26.11.1998, 27.11.1998, 01.12.1998, 18.01.1999, 19.01.1999, 20.01.1999(3) addressed to him as your Chairman ? If not all, which of such Letters/Memoranda had he received ?

3. Do you not admit that,
 - i. Letters/Memoranda forwarded to the Chairman of a Company are communications made to a Company ?
 - ii. accordingly, Plaintiff's Letters/Memoranda referred to in 2 i. and 2 ii. above are communications made to you ?
 - iii. copies of the Plaintiff's said Letters/Memoranda had also been forwarded to your Director, Dr. P.B. Jayasundera, the other Deputy Secretary to the Treasury ?
4. Do you not admit that
 - i. at your Board Meeting held on 17.02.1997 your Chairman, D.Y. Liyanage was – "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" ?
 - ii. accordingly, your Chairman was empowered and authorised to have expeditiously, without any fear or favour, cause prompt and effective action to be taken in your interest against the 1st Defendant, who had caused severe loss, damage and setback to you, in interfering with the Settlement Agreements entered into on 28.06.1995.? Had he done so ?
5. Do you not admit that,
 - i. the Plaintiff had through oral and written representations urged your Chairman to take action against the 1st Defendant for the wrong done to you, pointing out the loss, damage and setback caused to you by the 1st Defendant ?
 - ii. at your Board Meeting on 14.10.1998, upon the urging by the Plaintiff, your Chairman undertook to refer the said matter to your Lawyers and requested your Secretaries to remind him to do so the next day ?
6. Do you deny that,
 - i. the 1st Defendant intervened with your Chairman, no sooner the Plaintiff's Board Memorandum dated 04.09.1998 was discussed at your Board Meeting ?
 - ii. the said intervention by the 1st Defendant prevented your Chairman from referring the said matter to your Lawyers reneging on the assurance he had given at the Board Meeting on 14.10.1998 ?
7. Do you not admit that,
 - i. it had not been your practice and procedure to await confirmation of Board Minutes to take action on decisions made at the Board ?
 - ii. in fact, it is your practice and procedure to report progress at the next Board Meeting on action taken on decisions made ?
 - iii. your Answer in this Case was filed on 21.1.1999 after finalising same at the Board Meeting on 20.01.1999, without awaiting the confirmation of the Minutes at the next Board Meeting, which was held on 18.03.1999 ?
8. Do you not admit that,
 - i. notwithstanding the conflict of interest, that the representatives of Cornel & Co. Ltd., had been permitted to be present at your Board deliberations, whereat your said Answer had been finalised, regardless of the Plaintiff having pointed out such conflict ?
 - ii. your Counsel by his Letter dated 12.03.1999 has confirmed that the said position asserted by the Plaintiff was correct ?

9. Do you deny that,

- i. Mitsui & Taisei have benefited from the loss caused to you by way of additional interest paid to them, due to the suspension of the Settlement caused by the 1st Defendant ?
- ii. Mitsui & Taisei have government guarantees given to them, administered by the Ministry of Finance ?
- iii. in such circumstances, Mitsui & Taisei could/would not agree to take action against the 1st Defendant ?

10. Do you not admit that,

- i. your Chairman, D.Y. Liyanage and Director, Dr. P.B. Jayasundera would be unable even to consider taking any action against the 1st Defendant, since he is a Minister of State and more particularly, the Deputy Minister of Finance, under whose supervision, control and direction they function, as the Deputy Secretaries to the Treasury ?
- ii. notwithstanding, the Plaintiff pointing out the seriousness and gravity of the said matter through several Memoranda/Letters forwarded to your Chairman, D.Y. Liyanage and Director, Dr. P.B. Jayasundera, they did not take any action, whatsoever, thereon ?

11. Do you not admit that,

- i. several positions averred by the Plaintiff in the Plaint in this Case have been the very positions taken by you, as a Defendant in D.C. Colombo Case No. 5095/Spl., and H.C. (Civil) W.P. Case No. 1/98(2) filed by Cornel & Co. Ltd. ?
- ii. your Chairman, D.Y. Liyanage has also filed Affidavits on your behalf in the said Cases, affirming to the said positions ?
- iii. your Objections and Answers filed in the said Cases had been tabled at your Board ?
- iv. the Plaintiff by his Memoranda brought the said position to your attention, prior to you finalising your Answer in this Case ?

12. Do you not admit that,

- i. your Chairman, D.Y. Liyanage, as a member of the SEC would be aware that the Plaintiff and/or his Attorneys-at-law, M/s De Silva & Perera, through several written representations had specifically brought, amongst other, the relevant facts and documents pertaining to the Plaintiff's derivative action, filed on your behalf, D.C. Colombo Case No. 3155/Spl, including the Supreme Court Judgment, to the notice of the then members of the SEC ?
- ii. it was because your then Directors did not take any action, even in the face of the Supreme Court judgment in December 1992, that upheld the Plaintiff's action, as a prima-facie case of fraud, that the Special Presidential Commission of Inquiry was appointed to inquire into this matter ?

13. Do you not admit that,

- i. your Chairman, as a member of the SEC would be aware that the said written representations to the then members of SEC also pertained to another derivative action in law, D.C. Colombo Case No. 3231/Spl, also instituted by the Plaintiff, that related to your Annual Accounts of 31.03.1990, which as a consequence were enjoined by Court ?
- ii. the conduct of your affairs and your Annual Accounts were matters that came within the purview of the SEC, as per the SEC Act No. 36 of 1987 as amended, governed by its rules ?

14, In the Cases referred to at Interrogatory No. 11 above, have you not averred in your Objections/Answers that,

- i. the Secretary, Ministry of Finance forwarded letter dated 23rd September 1994 to the SEC, requiring the SEC to take appropriate action in regard to the aforesaid, stating that the Minister of Finance, having reviewed the said matter, had directed that remedial action be taken by the SEC ?
- ii. the Chairman of the SEC had replied by letter dated 6th October 1994 undertaking to do so ?

15. In the Cases referred to at Interrogatory No. 11 above, have you not averred in your Objections/Answers that,

- i. the then Attorney General, Tilak Marapana P.C. and the then Addl. Solicitor General, Srinath Perera (now P.C.) deemed that action ought to be taken by the government, amongst others, against the then members of the SEC, for failure and neglect of statutory duties, by including a specific condition in such very regard in the Hilton Settlement Agreements ?
- ii. subsequently the Solicitor General, Douglas Premaratne P.C. also concurred therewith ?

16. As averred as aforesaid,

- i. do you not admit that the 1st Defendant made a statement in Parliament on 8th August 1995, inter-alia, quoting out of context only a middle part of a specific Clause from the said Settlement Agreements, leaving out an integral part thereof ?
- ii. was not the following first part and last part of the said Clause omitted by the 1st Defendant in his said statement to Parliament, only quoting the middle part thereof ?

"Whereas in the context of the promotion of the Colombo Hilton Hotel and/or Hotel Developers (Lanka) Ltd., Nihal Srinath Ameresekere (hereinafter referred to as "Mr. Ameresekere") of 167/4, Sri Vipulasena Mawatha, Colombo 10, having been induced by the main promoters thereof to get involved and/or concerned in the affairs of Sun-Cornel Textiles Ltd., and the Colombo Apothecaries Co. Ltd., and in consideration of the settlement initiated by the Government and the write-offs, reductions and rescheduling referred to in Agreement No.1, the Government as the major Shareholder and Guarantor, being a beneficiary thereof and further in the context of the conditions stipulated in Clause 9 in the Agreement No. 4 shall and will assist Mr. Ameresekere

[middle part only quoted to Parliament]

..... and whereas in some of the said Actions, Mr. Ameresekere had been added and/or had been moved to be added as a party and/or an accused only after the institution of the litigations referred to in the aforesaid Agreement No. 3, to which this Annexure "Y" relates"

- iii. was it not thereby a misleading statement made by the 1st Defendant to Parliament and thereby to the public ?

17. Do you deny, that the Settlement Agreements, specifically Agreement No. 3, from which the 1st Defendant misleadingly so quoted,

- i. in its preamble stated, that the Secretary, Ministry of Finance, at the instance of the Japanese Companies [Mitsui/Taisei], had intervened to have discussions with the Plaintiff, with a view to reaching such settlement ?

- ii. contained the condition, inter-alia, that the government shall and will take action against then members of the SEC, on their conduct and actions on the representations made by the Plaintiff, whilst the Plaintiff also reserved his right to pursue such action ?

18. Do you not admit that your Chairman, as the Deputy Secretary to the Treasury is aware that,

- i. the Cabinet of Ministers approved a Cabinet Memorandum dated 21st June 1995 submitted by the Minister of Finance on the matter of the said Hilton Settlement Agreements on or about 28th June 1995, the Cabinet having been previously briefed thereof by the Minister of Finance on 21st June 1995, as revealed by the Finance Ministry file, reference No. EA/05/26 ?
- ii. the said Cabinet Memorandum stated that the Settlement Agreements to be executed had been finalised by the Solicitor General and that the Solicitor General had kept the Special Presidential Commission apprised of the said settlement and that you had so admitted in your Objections/Answers, referred to at Interrogatory No. 11 above ?

19. Accordingly, do you not admit, that the said Cabinet Memorandum, inter-alia, also stated:

- i. “Thereafter, in December ’92 the Supreme Court, presided by the Chief Justice, upheld the Interim Injunctions, that had been issued by the District Court, observing in its judgment, that Mr. Ameresekere had established a strong prima-facie case, with a reasonable and real prospect of success, even in the light of the defences, and that the Interim Injunctions had been issued to prevent the devious syphoning of a large scale of foreign exchange from the country.” ?
- ii. “The Supreme Court in its judgment had, inter-alia, further specifically observed, that under the given circumstances of the Government being the major Shareholder and Guarantor, that this could not entirely be a matter of indifference to the Government. In the given circumstances, it is the Government that should have taken action and not Mr. Ameresekere, a private citizen, as a individual Shareholder, acting on behalf of the Company, owned by the Government, with substantial Loans Guaranteed by the Government, which is a commitment on public funds.” ?

20. Do you deny, that in the statement made by the 1st Defendant to Parliament on 8th August 1995, he specifically referred to certain comparatively insignificant Court Cases, in which the Plaintiff had been impleaded, as a consequence of the promotion of the Hilton Hotel and the 1st Defendant had suppressed, such relevant parts of the paragraph, that specified how the Plaintiff was so impleaded in such Court Cases and as to why, the government was obligated to assist the Plaintiff ?

21. Did not the said Cabinet Memorandum dated 21st June 1995 approved by the Cabinet on 28th June 1995, also inter-alia, state:

“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.” ?

22. Did not the 1st Defendant state to the press, as reported in the Daily News of 25th July 1995 that –

“no payment which is contemplated by the settlement will be made nor will any other aspect of the settlement be implemented in any way, until the conclusion of the inquiry by the Special Presidential Commission into the Hilton case” ?

23. i. Did not the 1st Defendant state to Parliament on 8th August 1995 that,

“The People's Alliance promised to uncover the facts behind this episode during the election campaign and in keeping with its pledge, set up a Special Presidential Commission of Inquiry to inquire into the circumstances behind the transaction. It

must be reiterated that this Commission will continue with its inquiries into this matter and that the Government will take all necessary action to ensure that the wrongdoers are dealt with under the laws of this country.” ?

“However, it must be reiterated that there was no intention or understanding whatsoever at any stage, to either slow down or shelve the work of the Special Presidential Commission inquiring into the circumstances relating to the alleged fraud and misdeeds behind the Hilton project and that it remained the intention of the Government, that if any wrongdoing is discovered or found by the Commission, such activity will be dealt with severely under the laws of the country.” ?

ii. Did not the 1st Defendant state to Parliament on 19th September 1995 again as follows -

“The signing of the settlement agreements by the Secretary to the Treasury will not and should not in any way affect, slow down or influence the inquiries conducted by the Special Presidential Commission into the circumstances relating to the alleged frauds and misdeeds behind the Hilton Project. It remains the intention of the Government that, if any wrongdoing is discovered or found by the Commission, the wrongdoers will be dealt with severely under the laws of the land.” ?

iii. Do you not admit, that the then members of the SEC, including the 1st Defendant, did not take action in the said matter, as they ought to have done under statute ?

24. Do you not admit that,

i. the Hilton settlement arrived at as a consequence of the action of the Plaintiff was immensely beneficial to you, the government and the country ?

ii. the 1st Defendant endeavoured to pinpoint and mislead Parliament on 8th August 1995 and thereby the people of this country, by referring to only one condition, that pertained to the Plaintiff, as an unacceptable condition to the government, that too, not disclosing the full facts pertaining thereto ?

iii. it was the sole sustained efforts of the Plaintiff, that resulted in such immense benefit to the government and the country, with a write-off of Rs. 10,200 million and the balance debt re-scheduled over further 15-years upto 2010, at a reduced rate of interest ? If not, whose efforts was it due to ?

iv. the then members of the SEC, including the 1st Defendant, had failed and neglected to take any action, whatsoever, in regard to you, notwithstanding the Plaintiff's/Plaintiff's Lawyers' said several written representations, urging them to do so ?

25. Do you not admit, that at the press conference on or about 30th June 1995, the 1st Defendant, inter-alia, stated,

i. that **'it was the happiest day in his life'**, making out that the settlement was his achievement and/or that of the government, thereby denying the Plaintiff the credit that was legitimately due to him ?

ii. “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” ? [*emphasis added*]

26. Do you not admit that,

i. it would have been the responsibility of your Directors to have taken action, on the several grave matters that had been brought to their notice by the Plaintiff, to have prevented the "pillage and plunder of national resources", as the 1st Defendant had so stated ?

- ii. your Auditors, M/s Ford, Rhodes, Thornton & Co., ought to have refrained from certifying your Annual Accounts, under the grave circumstances then known to them, as had been brought to their notice by the Plaintiff, to have prevented the "pillage and plunder of national resources", as the 1st Defendant had stated ?
- iii. in the same manner, would not such "pillage and plunder of national resources" have been prevented, had the government, being the major shareholder and guarantor, taken prompt and effective action, in the grave circumstances revealed/disclosed by the Plaintiff since 1990 ?
- iv. similarly, you being governed, by the rules and regulations of the SEC, that the then members of the SEC, including the 1st Defendant, ought to have taken action, when the Plaintiff had brought to their notice several grave malpractices in violation of such rules and regulations, to have prevented such "pillage and plunder of national resources", as the 1st Defendant had so stated ?
- v. the circumstances and facts pertaining to such "pillage and plunder of national resources" were well within the knowledge, of the then members of the SEC, including the 1st Defendant, in the circumstances of the said several representations that had been made to them by the Plaintiff/Plaintiff's Lawyers ?

27. Do you deny that,

- i. the letters dated 24.7.'95 addressed to Mitsui & Taisei by the Secretary to the Ministry of Finance, had been as directed by the 1st Defendant, as the Deputy Minister of Finance, as stated therein ?
- ii. it is stated in the said letters that the settlement will not be implemented until the determination of the Hilton Inquiry by the Special Presidential Commission ?
- iii. the Hilton Inquiry by the Special Presidential Commission has not yet been concluded and determined ?
- iv. in October 1996, the Hilton Settlement was given effect to, prior to the conclusion and determination of the Hilton Inquiry by the Special Presidential Commission ?

28. Do you not admit that,

- i. in announcing the suspension of the Hilton Settlement, as reported in the Daily News of 25th July 1995, that the 1st Defendant had made public pronouncement, that the settlement will not be implemented in any way, until the conclusion of the Inquiry by the Special Presidential Commission into the Hilton Case ?
- ii. the 1st Defendant made no public statement or explanation, whatsoever, on the retraction of the aforesaid position, of the non-implementation of the Hilton Settlement until the conclusion and determination of the Hilton Inquiry by the Special Presidential Commission, when the Settlement was implemented and given effect to in October 1996 ?
- iii. such suspension of the implementation of the Hilton Settlement was caused by the 1st Defendant, as the Deputy Minister of Finance, as admitted by him in Parliament on 8th August 1995, by him intervening with President Kumaratunga, as the Minister of Finance ?

29. i. On what legal basis, were the said Settlement Agreements that had been legally and contractually entered into suspended ?

- ii. Do you not admit, that the 1st Defendant's aforesaid conduct and actions were a remarkable turnabout of the stand taken by him, as aforesaid, at the previous press conference on 30th June 1995 ?
- iii. Do you deny, that such remarkable turnabout was because of his personal interests, vis-a-vis the Condition to take action against him, as a then member of the SEC ?

30. Do you not admit that,

- i. the Plaintiff had publicly placed all material documents and facts pertaining to the Hilton Settlement in evidence before the Special Presidential Commission, through the Solicitor General, before the Hilton Settlement Agreements were executed on 28th June 1995 ?
- ii. the Solicitor General with the concurrence of the Special Presidential Commission had given written approval for the execution of the said Settlements Agreement, prior to the execution thereof ?
- iii. the Cabinet Memorandum dated 21st June 1995, approved by the Cabinet on 28th June 1995, inter-alia, stated – “The Solicitor General has kept the Commission apprised of this Settlement “ ?
- iv. the Plaintiff after the signing of the Settlement Agreements on 28th June 1995, had given evidence in public before the Special Presidential Commission, through the Solicitor General, on the Settlement Agreements that had been signed ?
- v. thereby the Plaintiff had handled the finalisation and conclusion of the Hilton Settlement Agreements, with full disclosure, before the public hearings of the Special Presidential Commission of Inquiry, which proceedings had been given wide publicity in the media ?
- vi. such is not the normal practice and procedure, that the government follows in finalising and concluding government contracts, regardless of the government’s deep and unequivocal commitment to uphold transparency ?
- vii. several other contracts/agreements have been entered into by the government, without such degree of public disclosure and transparency, as much as the Hilton Settlement Agreements, such as Colombo Gas, Orient Lanka, Kotagala, Air Lanka, Tawakkal, etc., ?
- viii. the 1st Defendant did not intervene to similarly suspend agreements in relation to Colombo Gas, Orient Lanka, Kotagala, Air Lanka, Tawakkal, etc., which are reported to have had a number of unsatisfactory conditions ?

31. Do you not admit that,

- i. your Chairman, D.Y. Liyanage, as the Secretary to the Treasury, is aware, that the Secretary, Ministry of Finance and the Hon. Minister of Finance had both been directly and indirectly, fully aware and involved in the negotiations had and the Settlement reached and concluded, as evidenced by the several memoranda and minutes in the Finance Ministry file bearing reference No. EA/05/26. ?
- ii. you are a party to the Settlement Agreements signed on 28.06.1995 ?
- iii. the settlement negotiations were had before the Attorney General and/or the Solicitor General, who acted on behalf of the Secretary, Ministry of Finance/Minister of Finance/the Government ?

32. i. Do you deny, that the 1st Defendant's aforesaid conduct, actions and statements in causing the suspension of the settlement had been directly, as a result of him having discovered, the condition in the Settlement Agreement No. 3, which committed the government to take action, amongst others, against him, as a then member of the SEC ?

- ii. Do you not admit, that the only condition, that had been excluded from the Settlement Agreements in the implementation thereof in October 1996, by way of an Addendum executed in October 1996, was the aforesaid condition, that specifically pertained to and personally affected the 1st Defendant ?

33. i Do you not admit, that in the 1st Defendant's aforesaid statement to Parliament on 8th August 1995, he further stated –

“Subsequently, however, it was discovered by the Deputy Minister of Finance and brought to the notice of the Minister of Finance, that the

agreements signed by the Secretary to the Treasury on behalf of the Government of Sri Lanka in the course of this settlement committed the Government to a number of obligations of an unacceptable nature" ?

- ii. Do you deny that the 1st Defendant, in preparing such statement, would have examined the relevant documentations in the Finance Ministry file bearing reference No. EA/05/26, which contained evidence, inter-alia of memoranda and minutes pertaining to negotiations, clearly disclosing, that the Settlement matters had been well known to the Secretary, Ministry of Finance and the Minister of Finance, who had minuted approving the Settlement Agreements ?

34. Do you not admit,

- i. whilst the 1st Defendant had so stated to Parliament on 8th August 1995, that the Hilton Settlement Agreements had committed the government to a number of unacceptable obligations, he referred to only one specific obligation, that only related specifically to the Plaintiff, without disclosing the circumstances that necessitated the government's obligation to so commit, as had been clearly set out therein ?
- ii. that the 1st Defendant having stated that there had been a number of obligations unacceptable to the government, failed and neglected to identify, what the other conditions/obligations unacceptable to the government had been ?

35. Do you not admit that,

- i. in the context of the condition in the Settlement Agreement that the government had to take action against the then members of the SEC, the 1st Defendant was in fact, an interested and affected party ?
- ii. the 1st Defendant suppressed his personal interest and affectation and did not disclose the same to Parliament, and thereby to the people ?

36. i. Do you not admit, that the 1st Defendant's aforesaid statement was misleading, by virtue of him quoting out of context, only the middle part of a certain paragraph relating to the Plaintiff, leaving out the first and the last parts thereof and identifying same to be an unacceptable condition ?

- ii. Do you deny that this was done with the intent to cause prejudice to the Hilton Settlement and scuttling the same ?

- iii. Do you not admit, that at no time, whatsoever, thereafter, had the 1st Defendant made any correction to the aforesaid misleading statement so made by him ?

37 a). Do you not admit that your Chairman, as the Deputy Secretary to the Treasury, is aware that,

- i. the Secretary, Ministry of Finance, who was in full possession of all the facts, on the direction of President Kumaratunga, as the Minister of Finance, had prepared an official answer dated 18th September 1995, setting out the true and correct facts to be given by the 1st Defendant, as an answer to a question in Parliament, as revealed by the Finance Ministry file reference No. EA/05/26 ?

- ii.. such is the normal administrative practice and procedure followed by Ministries to prepare answers to questions raised in Parliament ?

- iii. the 1st Defendant having rejected the aforesaid true and correct official answer dated 18th September 1995, chose to give his own answer to Parliament, contrary to the true and correct facts, on 19th September 1995 ?

b) Do you not admit that,

- i. the aforesaid has been averred in the Objections/Answers referred to at Interrogatory No. 11 above, with a copy of the said official answer as a part thereof ?

- ii. a copy of the said official answer had been tabled at your Board ?
38. i. Do you deny that the 1st Defendant was unable to controvert and/or prove false, the matters disclosed by Dr. Rajitha Senaratne in his statement to Parliament on 15th December 1995 ?
- ii Do you not admit, that the 1st Defendant's inability to have controverted and/or prove false the several matters disclosed by Dr. Rajitha Senaratne in his said statement, only proved that the matters disclosed by Dr. Rajitha Senaratne in his said statement were factually true and correct ?
 - iii Do you not admit, that in the face of the said statement, the 1st Defendant failed and neglected to make any correction, whatsoever, to his aforesaid misleading statements made to Parliament on 8th August 1995 ?
 - iv Do you not admit that the aforesaid has been averred in the Objections/Answers referred to at Interrogatory No. 11 above, with a copy of the said statement as a part thereof ?
 - v Do you not admit that a copy of the said statement in the Hansard of 15th December 1995 had been tabled at your Board ?
39. Do you not admit that,
- i. one of the matters dealt with by Dr. Rajitha Senaratne in his said statement, was the 1st Defendant's conduct and actions, in having precipitated a controversy and having forced the resignation of the then Secretary, Ministry of Finance, Mr. A.S. Jayawardena, in November 1995, for an Affidavit he had filed, as the Secretary to the Treasury in D.C. Colombo Case No. 4414/Spl, mainly to protect the interests of the government ?
 - ii. your Chairman, as the Deputy Secretary to the Treasury, is aware, that the Minister of Finance, having examined the said Affidavit, did not find fault with Mr. A.S. Jayawardena and on the contrary, appointed him to a higher post, as the Governor of the Central Bank ?
 - iii the 1st Defendant's aforesaid conduct, as the Minister of Justice & Constitutional Affairs, would be improper in terms of Article 116 of the Constitution ?
40. Do you not admit that,
- i. as had been finalised by the Attorney General, an Addendum to the Hilton Settlement Agreements entered into on 28th June 1995, was executed by and between the Japanese Companies [Mitsui/Taisei], and the Secretary, Ministry of Finance/ Secretary to the Treasury and the Plaintiff in October 1996 ?
 - ii. the Hilton Settlement Agreements entered into on 28th June 1995, comprised Agreements Nos. 1 to 4, which were inter-related, inter-connected and inter-dependent and were integral parts of one composite settlement ?
 - iii. under the aforesaid Addendum executed in September/October 1996 to the said Settlement Agreements, irrevocable permanent and specific Powers of Attorney were given by the Japanese Companies [Mitsui & Taisei] to the Secretary, Ministry of Finance/Secretary to the Treasury ?
 - iv. the said Powers of Attorney authorised and empowered the Secretary to the Treasury and/or his representative, to vote on 15% of the shareholdings of HDL held by the Japanese Companies [Mitsui/Taisei] for the specific purposes of implementing the conditions precedent contained in Agreements Nos. 3 and 4 ? Or, what did the said Powers of Attorney empower ?
 - v. thereby the Plaintiff negotiated and achieved a 80% voting right of your shareholdings to vest in the hands of the Secretary, Ministry of Finance/Secretary to the Treasury representing the government, to ensure the fulfilment of all the conditions contained in

the said Settlement Agreements Nos. 1 to 4, save and except one condition, that was specifically excluded by the said Addendum ?

- vi. the only material condition that was significantly excluded from the said Settlement Agreements by the said Addendum was the condition given below in Clause No. 5 of Agreement No. 3, that pertained to the government's commitment to take action against the then members of the SEC, including the 1st Defendant,

“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.” ?

- vii. your Chairman is aware that the Plaintiff had acquiesced in the exclusion of the aforesaid condition, at the behest of the Attorney General, Sarath Silva P.C., then Secretary, Ministry of Finance, B.C. Perera and Deputy Secretary to the Treasury, Dr. P.B. Jayasundera, all of whom come under the 1st Defendant's purview, as the Minister of Justice and the Deputy Minister of Finance, and this had been at the 1st Defendant's instance ?

- viii. in terms of the said Addendum and the irrevocable Powers of Attorney given thereunder by the Japanese Companies [Mitsui & Taisei], the Government agreed and undertook to ensure the fulfilment and implementation of all the conditions in the Settlement Agreement Nos. 1 to 4 entered into on 28th June 1995, save and except one condition referred to at Interrogatory No. 40 (vi) above ?

- ix. your Chairman, D.Y Liyanage and Director, Dr. P.B. Jayasundera. are aware, that prior to the implementation of the Settlement Agreements in October 1996, the very condition in the Settlement Agreement No. 3, that the 1st Defendant identified as a condition unacceptable to the government in his statement to Parliament on 8th August 1995, was given effect to and implemented by the Attorney General in September/October 1996, thereby giving the lie to the 1st Defendant's said statement ?

41. Do you not admit that,

- i. your Chairman, D.Y Liyanage and Director, Dr. P.B. Jayasundera are aware, that the 1st Defendant had been required, as had been approved by the Attorney General, to make a statement to Parliament during the committee stage of the Finance Ministry votes in December 1996, on the retraction of the suspension of the Hilton Settlement Agreements, that had been caused by him and to make a true and correct statement of facts, clarifying the misconceptions that had been so caused by him ?

ii. the 1st Defendant had failed and neglected to do so ?

42. i. Do you not admit, that your quarterly accounts signed by your Chairman, D.Y. Liyanage and Director, Dr. P.B. Jayasundera and circulated by your Secretaries on 7th November 1997, disclosed, that a sum of Japanese Yen. 156,478,693 [SL Rs. 79,629,171] had in addition been paid by you as interest for delay ?

ii. Do you deny, that such additional interest costs to you had been caused by the suspension caused by the 1st Defendant of the Hilton Settlement ?

43. Do you not admit, that due to the suspension caused by the 1st Defendant of the Hilton Settlement, further restructuring of your finances could not be effected, as had been specifically provided for in Clauses Nos. 13 and 14 in the Settlement Agreement No. 2, during the one year grace period on the repayment of the balance loan, that had been specifically negotiated for such purpose by the Plaintiff ?

44. Do you deny that,

- i. your aforesaid quarterly accounts, further disclosed, that a massive sum of Rs. 288,567,634 had to be paid by the government, on your behalf to make payment to the Japanese Companies [Mitsui & Taisei] on 1st July 1997 ? If not, what was paid ?
 - ii. such payment by the government of such massive sum of money utilising public funds had been caused by the suspension caused by the 1st Defendant of the Hilton Settlement, that prevented your further financial restructuring as referred to above ?
- 45 i Do you deny, in the given circumstances, causing such loss to you/Government and conferring benefit upon oneself, falls within the meaning of "corruption" as defined under the Bribery Amendment Act No.20 of 1994 ?
- ii Do you not admit, that the 1st Defendant in his Affidavit dated 29th August 1998 filed in the Court of Appeal in Revision Application No. 775/98 (DC Colombo 19849/MR filed against the 1st Defendant by the Plaintiff), the 1st Defendant had affirmed at para 8 therein that – "**.....no power or duty pertaining to the subject of finance has been delegated to me under Article 46(2) of the Constitution by Notification published in the Gazette**" ?
 - iii Do you not admit, that a copy of the said Affidavit of the 1st Defendant had been tabled at your Board ?
46. a) Do you not admit, that your Chairman, D.Y Liyanage, as Deputy Secretary to the Treasury is aware that the records pertaining to the Hilton Settlement are in the Finance Ministry files bearing reference No. EA/05/26 ?
- b) Accordingly, do you not admit that, your Chairman is aware that,
- i. the terms of Settlement, all those conditions contained in the Settlement Agreements entered into on 28th June 1995, had been agreed upon before the Attorney General/his officials and Secretary Ministry of Finance/officials in October 1992 ?
 - ii. the Attorney General had subsequently finalised the Settlement Agreements in 1993 on the basis of such terms of Settlement that had been so agreed upon ?
 - iii. President Wijetunga, subsequently in June 1994, having been briefed by the Attorney General and the Secretary, Ministry of Finance, had approved the Settlement Agreements and had authorised and empowered the Secretary/Ministry of Finance or in his absence, the Deputy Secretary to the Treasury to execute them ?
 - iv. the Settlement Agreements were not executed essentially because the Plaintiff refused to do so, on the condition insisted upon by the Japanese Companies [Mitsui/Taisei] to receive promissory notes from the Government, who was the guarantor, whereas you were the borrower ?
 - v. subsequently, the Japanese Companies [Mitsui/Taisei] having relented on the said condition, that then Secretary, Ministry of Finance on 19th October 1994, with the concurrence of the Minister of Finance, wrote to the Attorney General that the Settlement Agreements that had been finalised previously be proceeded with to finalise the Settlement, **subject to financial re-structuring/debt re-scheduling facilitating loan re-payments by you** ?
 - vi. the Settlement Agreements Nos. 1 to 4 entered into on 28th June 1995 were accordingly so finalised ?
 - vii. the suspension caused by the 1st Defendant of the settlement had frustrated and rendered nugatory the said direction that had been given by the Secretary, Ministry of Finance by letter dated 19th October 1994 ?
- c) Do you not admit that the aforesaid have been averred in your Objections/Answers referred to at Interrogatory No. 11 above ?

This 3rd day of May 1999

A handwritten signature in cursive script, appearing to read "Desiwan", written over a horizontal line.

Attorney-at-Law for Plaintiff