

IN THE DISTRICT COURT OF COLOMBO

Hotel Developers (Lanka) Limited
Colombo Hilton Sports Complex
Echelon Square
Lotus Road
Colombo 1

Plaintiff

Case No: 15322/MR



- Vs -

Nihal Sri Ameresekere
Comindtax Management Services Ltd.
167/4, Sri Vipulasena Mawatha
Colombo 10

Defendant

on this 04th day of August 1994.

The Plaintiff of the Plaintiff abovenamed appearing by Hussain Ahamed, its Attorney-at-Law states as follows:-

01. The Plaintiff is a public quoted company duly incorporated in Sri Lanka with limited liability having its reputed office at the address mentioned above.
02. The Defendant resides, and the cause of action hereafter set forth arose within the local limits of the jurisdiction of this Court.
03. The Defendant is a Chartered Accountant by profession and had been a Director of the plaintiff company from 15/3/83 to 17/1/91.
04. The Plaintiff company was incorporated mainly to construct, equip and operate the Hilton International Hotel in Colombo.
05. The Plaintiff company obtained for the said purpose, a loan of Japanese Yen 12,300,000,000 from the companies called "MITSUI & COMPANY LIMITED" and "TAISEI CORPORATION" both incorporated in Japan, repayable in 15 years with an interest of 7.95% per annum subject to the terms and conditions set out in the written agreement dated 31/1/1984, a true copy of which is filed herewith marked "A" and pleaded as part and parcel hereof.
06. The Plaintiff pleads that in terms of Article 6.01 (d) of the said loan agreement it was a condition precedent for the Plaintiff Company to obtain from the Government of Sri Lanka exemption from liability in respect of all taxes on interest and any other payment to be made under

the said loan agreement.

07. The Plaintiff pleads that the Defendant being a Director and a Chartered Accountant, agreed to and in fact provided professional services as such Accountant. The Plaintiff pleads that the Defendant agreed and/or represented and/or held out to be responsible to obtain the said tax exemption and/or to obtain for the Plaintiff company permanent exemption from withholding tax on the remittance of interest on the said loan and/or to satisfy the Department of Inland Revenue that there was no profit in the hands of the said foreign principals arising out of the interest payable under the said loan and the Plaintiff company bona-fide acted thereon.
08. In the circumstance the Plaintiff pleads that the Defendant is estopped and/or precluded in-law from denying which is pleaded in paragraph 07 above.
09. The Plaintiff pleads that the Defendant being a professionally qualified Accountant and a Director of the Plaintiff company was obliged in law to act in the best interest of the company, particularly in view of the fiduciary obligations towards the Plaintiff company as such a Director of the company.
10. The Plaintiff pleads that the Defendant acting on his aforesaid agreement and/or representations and/or understanding and/or in pursuance of his obligations, wrote the letter dated 28/2/84 to the Secretary, Ministry of Finance and Planning which had been replied to by letter dated 1/3/84 of the Inland Revenue Department of Sri Lanka, true copies of which are filed herewith marked "B" and "C" respectively and pleaded as part and parcel hereof.
11. The Plaintiff pleads that the Defendant thereafter in breach of his agreement and/or representation and/or promises and/or obligations and wrongfully and/or maliciously failed to take steps at all as per letter dated 1/3/84 marked "C" above and/or to obtain required tax exemption.
12. The Plaintiff states that the Department of Inland Revenue by the letter dated 30/5/94, a true copy of which is filed herewith marked "D" and pleaded as part and parcel hereof, has notified and/or demanded the payment of 33 1/3% per cent on the sum of Rs. 79,885,837/- being the interest paid by the Plaintiff company to the said Japanese companies on the said Loan as no tax exemption had been obtained by the Plaintiff company.


13. The Plaintiff pleads that the Plaintiff has become obliged and/or liable in law to pay a sum of Rs. 26,628,613/- to the Department of Inland Revenue in view of the aforesaid wrongful conduct of the Defendant, which sum the Defendant is liable and/or obliged in law to pay to the Plaintiff company.
14. The Plaintiff pleads that the Plaintiff company has thus suffered loss and damage in the said sum of Rs. 26,628,613/- in consequence of the Defendant's wrongful conduct in breach of all his obligations and/or agreement and/or promises and/or representations and/or against the welfare of the Plaintiff company.
15. In the circumstances pleaded above, a cause of action has accrued to the Plaintiff to sue the Defendant for the recovery of the said sum of Rs. 26,628,613/- with legal interest thereon which sum the Defendant has wrongfully failed and neglected to pay to the Plaintiff though thereto obliged and/or demanded.
16. The Plaintiff values the subject matter of this action at Rs. 26, 628,613/-.

WHEREFORE the Plaintiff pray for judgement and decree against the Defendant.

- (a) in a sum of Rs. 26,628,613/- with legal interest thereon from date hereof till date of decree and thereafter on the aggregate amount thereof till payment in full.
- (b) for costs and
- (c) for such other and further relief as to this Court shall deem meet.

Settled by:

Padma Bandara Esqr,
Ikram Mohamed Esqr,
Attorneys-at-Law.


Attorney-at-Law for
Plaintiff

HUSSAIN AHAMED
Attorney-at-Law

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