

IN THE DISTRICT COURT OF COLOMBO

HOTEL DEVELOPERS (LANKA) LIMITED Co
Hilton Sports Complex Echelon Square,
Lotus Road,
Colombo 1

PLAINTIFF

Case No. 15322/MR.

Vs.

NIHAL SRI AMERESEKERE
No. 167/4, Sri Vipulasena Mawatha,
Colombo 10.

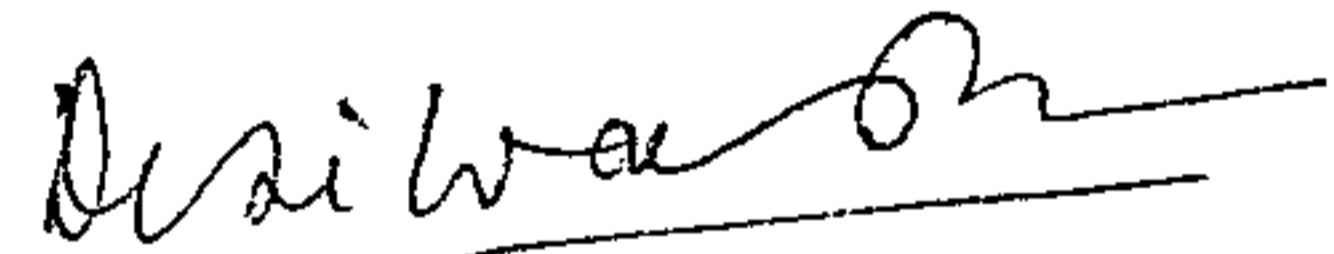
DEFENDANT

WE MOVE that the Court be pleased to grant us leave to deliver the Court, Interrogatories, set forth in the Form annexed hereto for the examination of the Plaintiff abovenamed, under Section 94 read with Section 95, of the Civil Procedure Code, on Mr. Suren Wickremasinghe, Chairman, Urban Development Authority and Mr. A.S.M. Perera, Deputy Solicitor General, Directors of Hotel Developers (Lanka) Ltd., the Plaintiff, under the provisions of Section 97 of the Civil Procedure Code, requiring the said Directors to answer the Interrogatories.

We also MOVE that the Court be pleased to fix a date for the return of said Interrogatories.

We further MOVE that the Court be pleased to call this Case today, 15th March 1995, to enable the Counsel for the Defendant to support this Motion.

Colombo, 15th March 1995



Attorneys-at Law for Defendant

I N T H E D I S T R I C T C O U R T O F C O L O M B O

HOTEL DEVELOPERS (LANKA) LIMITED Colombo
Hilton Sports Complex Echelon Square,
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PLAINTIFF

Case No. 15322/MR.

Vs.

NIHAL SRI AMERESEKERE
No. 167/4, Sri Vipulasena Mawatha,
Colombo 10.

DEFENDANT

The Plaintiff abovenamed

(To be served through its Directors, Mr. Suren Wickremasinghe, Chairman, Urban Development Authority and Mr. A.S.M. Perera, Deputy Solicitor General)

Interrogatories on behalf of the Defendant abovenamed for the examination of the Plaintiff abovenamed

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

1. i Do you admit that as per Article 127 of your Articles of Association, that you cannot constitute a meeting of your Board of Directors, without the presence of at least one of the Directors nominated by Mitsui & Co. Ltd. and Taisei Corporation, both of Japan, as their representatives on your Board of Directors ?
- ii Do you admit that as per Article 129 of the Articles of Association of your Company, that your Board of Directors cannot pass a resolution or take a decision, without one of the Directors nominated by Mitsui & Co. Ltd., and Taisei Corporation, both of Japan, as their representatives on your Board of Directors, having voted in favour of such resolution or decision ?
2. i Do you admit that there was no explicit resolution or decision of your Board of Directors to institute this Action ? If there was, when was such resolution passed or decision made and what was the resolution and was such resolution or decision confirmed by your Board of Directors at subsequent meeting ? If so, when ?
- ii Do you admit that your Chairman and Managing Director was not specifically authorised to institute this Action and that he has so acted without the specific authority of your Board of Directors, out of malice for his own personal interest ?
3. i Do you admit that on or about 5th June 1994, and 3rd July 1994, that the "Sunday Island" newspaper carried an undisputed news report, that President D.B. Wijetunge had instructed the Attorney General to settle the D.C. Colombo Actions Nos. 3155/Spl. and 3231/Spl., instituted on your behalf and in your right and in your interest and for your benefit, as per the Settlement Agreements that had been finalised by the Attorney General ?
- ii Do you admit that the said news reports of 5th June '94 and 3rd July '94 published the terms of such settlement, which, inter-alia, included the removal of your Chairman and Managing Director from your Board of Directors ?
- iii Do you admit that the matter of such newspaper reports had been the subject of discussion at the Meeting of your Board of Directors on 5th July '94, just prior to the institution of this Action on 4th August '94 ?
4. Do you admit that your Chairman and Managing Director without specific authority has instituted this Action to stultify and stymie such settlement finalised by the Attorney General and also his proposed removal as your Chairman and Managing Director under the proposed settlement ?

5. Do you admit that 64.0% of your Share Capital is owned by the Government of Sri Lanka and that the Government of Sri Lanka had issued State Guarantees to Mitsui & Co. Ltd. and Taisei Corporation, both of Japan, your behalf, and that the alleged claims under such State Guarantees amount today over US\$ 280.0 Mn. SL Rs. 14,000 Mn. ? If not, what is the value of the alleged claims by Mitsui & Co. Ltd. and Taisei Corporation ?
- 6.i Do you admit that the said D.C. Colombo Actions Nos. 3155/Spl. & 3231/Spl., had been instituted as Derivative Actions in Law, on your behalf and in your right, in your interest and for your benefit ? And that in the context of the aforesaid State Guarantees in issue, the said Actions would also be in public interest ?
- ii Do you admit that both the District Court and Supreme Court, have upheld the right of the Plaintiff in the given circumstances to institute the said D.C. Colombo Action No. 3155/Spl. ?
- iii Do you admit that in D.C. Colombo Action No. 3155/Spl Interim Injunction had been issued against Mitsui & Co. Ltd. and Taisei Corporation both in Japan and against you, preventing any payment to Mitsui and Co. Ltd. and Taisei Corporation, by you and/or by the Government of Sri Lanka under the aforesaid State Guarantees that had been issued ?
- iv Do you admit that the Learned District Judge, inter-alia, made the following observations in his Order in issuing the said Interim Injunctions:
- *there is no acceptable basis, at present, for making payments to Mitsui/Taisei ?*
 - *whether, the other Defendants, the Directors, as persons having connections and showing interest concerning the Company, acting to obtain monies, had not readily acted to conduct a correct examination ?*
 - *whether, the said persons having prevented such correct examination were attempting to, howsoever, effect the payment of monies ?*
 - *whether, these persons are exercising the influence, that they have gained in society, to prevent the raising of questions concerning the matters of work in connection with the Contracts and the Prospectus etc ?*
 - *whether, the collaboration of the said persons, was adverse to the interest of the Shareholders of the Company, and that they were acting through such collaboration, in a manner amounting to defraud the interests of the Shareholders of the Company ?*
 - *if the position, that explains this is correct, then, this actually is an instance of acting in fraudulent collusion ?*
- 7.i Do you admit that the Attorney General appearing for you in the said D.C. Colombo Action No. 3155/Spl, did not file any Objections, whatsoever, to the issuance of these Interim Injunctions, including one Interim Injunction specifically against you ?
- ii Do you admit that the local Directors named as Defendants, including your Chairman & Managing Director Mr. Cornel L. Perera and Director Mr. K. Choksy did not file any objections, whatsoever, and nor did they file an Answer ?
- iii Do you admit that the Defendant had exhorted in writing all the local Directors to controvert his averments in D.C.Colombo Action No. 3155/Spl if they could, but none of them could or did so ?
- 8.i Do you admit that in the said D.C. Colombo Action No. 3155/Spl the Supreme Court had upheld the issuance of the said Interim Injunctions, observing that the Plaintiff has established a strong prima-facie case of fraud with real prospect of success, even in the light of the pleading objections and submissions of the Defendants ?

ii Do you admit that the Supreme Court, inter-alia, made the following observations ?

- *the Plaintiff has succeeded in establishing that he has a legally enforceable right and that there is a serious question and prima-facie case of fraud and wrong-doer control, and that the Company is entitled to the reliefs claimed - [The reliefs claimed being that the Japanese Collaborators are not entitled to any payments whatsoever]*
- *the Plaintiff has a reasonable and real prospect of success, even in the light of the defences raised in the pleadings, objections and submissions of the Defendants*
- *the Plaintiff's prospect of success was real and not fanciful and that he had more than a merely arguable case*
- *because in the circumstances of the case, the Directors, including the Government's representatives on the Board will not assist or are helpless to intervene*
- *Interim Injunctions were granted to prevent the "syphoning out of money" from the Company and the Country*
- *but for the Interim Injunctions, the Company, like Pyrrhus after the battle of Asculum in Apulia, might well be constrained to say, "One more such victory and we are lost".*
- *it might be pointed out that it could not entirely be a matter of indifference to the Government the Government made itself eventually responsible for the repayment of the monies borrowed by the Company*

9.i Do you admit that, amongst others, your following Directors have been specifically named by the Plaintiff as wrong-doers, setting out specifically their wrong-doings, in D.C.Colombo Action No. 3155/Spl., in the Plaintiff's Written Submissions to the Supreme Court, at pages 36 to 44 to therein,

Mr. Cornel L. Perera, Chairman & Managing Director ?
Mr. K.N. Choksy, Director ?
Mr. A. Naka, Executive Director ?
Mr. H. Ogami, Executive Director ?

ii Do you admit that the specific wrong-doings by them that have been detrimental to your interests have been set out against their respective names, at pages 36-44 in the said Written Submissions ?

iii Do you admit that your Board of Directors have failed and neglected to take any action, whatsoever, on such grave wrong-doings that had been detrimental to your interests and those of your shareholders ?

iv Do you admit that, by not taking any action, whatsoever, your other Directors have acted in collusion to deliberately suppress the matter of this fraud ?

v Do you admit that, having failed to take any action on such serious and grave wrong-doings, involving a fraud perpetrated on you and your shareholders, on the contrary, this Action against the Defendant has been instituted out of sheer malice and to stifle and stymie the Defendant's aforesaid Actions instituted in your very own interest and benefit and those of your Shareholders, including the Government of Sri Lanka and also the public in the context of the aforesaid State Guarantees in issue ?

10.i Do you admit that on or about the 29th July'94, that you had caused a complaint to be made through Mr. John Wilson, Attorney-at-Law, against the Defendant, on the very premise of the subject matter of this Action ?

ii Do you admit that there is no Board Resolution authorising the said Mr. John Wilson, Attorney-at-Law, to have made such a complaint against the Defendant ? If there is, when was such Resolution passed and what did it state ?

- iii Do you admit that such complaint had been also caused by your Chairman Managing Director, Mr. Cornel L. Perera, without the express authority of your Board of Directors, out of sheer malice and that such Action is mal fide and made to stifle and stymie the Defendant's aforesaid Action
- 11.i Do you admit that various pressures were exerted on the Defendant to vary the terms of the Settlement Agreements that had been finalised by the Attorney General, particularly to exclude the condition for the removal of your Chairman & Managing Director Mr. Cornel L. Perera ?
- ii Do you admit that the Defendant steadfastly refused to vary the terms of such Settlement Agreements, notwithstanding such pressures exerted on him and that the said Settlement Agreements were not executed ?
- iii Do you admit that the Attorney General, appearing for you in the aforesaid D.C.Colombo Actions Nos. 3155/Spl.and 3231/Spl.is aware of the aforesaid pressures exerted on the Defendant ?
- 12.i Do you admit that, being a majority Government owned Company, your registered Attorney-at-Law to institute Action on your behalf, is normally required to be the Attorney General ?
- ii Do you admit that, contrary to such normal requirement, your Chairman Managing Director, Mr. Cornel L. Perera, questionably instituted the Action through another registered Attorney, namely Mr. Hussain Ahamed
- iii Do you admit that, there is no specific resolution by your Board of Directors, to give your Proxy to the said Mr. Hussain Ahamed ? If not, where is such resolution and when was it passed ?
- iv Do you, therefore, admit that, the Proxy given under your Common Seal and signed by your Chairman & Managing Director Mr. Cornel L. Perera and your Secretaries, Corporate Advisory Services (Pvt) Ltd., is improper and illegal and not valid in law ?
- v Do you admit that, your Board of Directors had just previous to instituting this action had appointed the said Corporate Advisory Services (Pvt) Ltd., as your Secretaries from May'94, replacing Ceylon Secretaries Services Ltd., who had been your Secretaries from your very inception
- 13.i Do you admit that, this Action was instituted on 4th August 1994, just prior to the General Election held on 16th August 1994 ?
- ii Do you admit that, after the new Government assumed office in August 1994, that the 6 Government Nominee Directors on your Board of Directors were removed and 6 new Government Nominee Directors were appointed by the Hon. Minister of Finance, presently Her Excellency the President ?
- iii Do you admit that the new Government Nominee Directors so appointed by the Hon. Minister of Finance, presently Her Excellency the President, to your Board of Directors, are the following:

Mr. Suren Wickremasinghe,
Chairman, Urban Development Authority ?

Mr. Nihal Sri Ameresekere,
Advisor, Ministry of Finance, Planning,
Ethnic Affairs & National Integration.

Dr. P. B. Jayasundera,
Economic Advisor, Ministry of Finance ?

Mrs. Padma Maharaja,
Additional Secretary to Her Excellency
the President ?

Mr. A.S.M. Perera,
Deputy Solicitor General ?

Mr. K. Kanag-Isvaran, P.C. ?

- 14.i Do you admit that Her Excellency the President in her television interview to the nation during December '94, highlighted this fraud as one of the biggest frauds in this country and the said interview was widely reported in the press ?
- ii Do you admit that in the Warrant issued to the Special Presidential Commission to inquire into malpractices, fraud and corruption in public bodies, you being a public body, the aforesaid matter, including the details of commission and omission by the Government and other public bodies in connection therewith, is listed as item No. 2 for such inquiry, as per the Warrant issued by Her Excellency the President ?
15. Do you admit that you have not had a single meeting of your Board of Directors, since the reconstitution of your Board of Directors, with the appointment of the abovenamed new Government Nominee Directors thereby frustrating the efforts of the new Government to take prompt action as warranted on such fraud perpetrated on you ?
- 16.i Do you admit that Mitsui & Co. Ltd. and Taisei Corporation, both of Japan, exercising their power under Article 127 of your Articles of Association, had refused to hold Board Meetings, thereby subverting any effort by the newly appointed Government Nominee Directors from taking corrective action as warranted on such fraud perpetrated on you ?
- ii Do you admit that the Supreme Court had observed that in the given circumstances that the Government could not be indifferent ?
- 17.i Do you admit that since you have failed to hold any meetings of your Board of Directors from the time your Board of Directors was reconstituted as aforesaid, that the Government Nominee Director, Mr. Suren Wickremasinghe, Chairman, Urban Development Authority by his Letter dated 1st March 1994 requisitioned a meeting of your Board of Directors ?
- ii Do you admit that, the Directors of Mitsui and Co. Ltd. and Taisei Corporation, both of Japan, both such Directors being resident in Sri Lanka, intimated their inability to attend such meeting, thereby preventing a meeting of your Board of Directors, which required their presence to constitute a quorum as per Article 127 of your Articles of Association ?
- iii Do you admit that when your Secretaries had endeavoured to give notice for a Board Meeting as far back as December '94, that the Directors, resident in Sri Lanka, nominated by Mitsui & Co. Ltd. and Taisei Corporation, refused to consent to hold any Board Meeting ?
- 18.i Do you admit that, the Answer filed in this Action by the Defendant including his Claim in Reconvention against you, had not been tabled or considered at a meeting of your Board of Directors ? If it was, when was such Meeting held ?
- ii Do you admit that under such circumstances, the Replication filed by your registered Attorney-at-Law in this Action is without any authority and without any instructions from your Board of Directors and is without deliberation and consideration by your Board of Directors ?
- 19.i Do you admit that, your Annual Accounts had been audited by M/s. F. Rhodes, Thornton & Co., Chartered Accountants, from your very inception upto 31.03.'90 ?
- ii Do you admit that the said Auditors in their aforesaid Annual Report, did not ever report on the matter of any tax on interest payable on the loan which is the subject matter of this Action ?
- iii Do you not admit that it was the duty and responsibility of such Auditors to have reported on such matter, if at all ? If not why ?
- iv Do you admit that your tax matters from your inception were the responsibility of the said Auditors, and that accordingly this matter should have been attended to by them ?

- 20.i Do you admit that in November'90, the said Auditors, acting in collusion with your Board of Directors, certified the Annual Accounts of 31.03.'9 deliberately suppressing the matter of the fraud perpetrated on you concerning which fraud D.C. Colombo Action No. 3155/Spl had already been previously instituted in September'90 and the Court having already issued Enjoining Orders ?
- ii Do you admit that the Defendant then being a Director having instituted the said D.C. Colombo Action No. 3155/Spl had objected to and rejected the aforesaid Annual Accounts prior to the aforesaid certification ?
- iii Do you admit that, subsequently, the Defendant instituted D.C. Colombo Action No. 3231/Spl and that the adoption of the said Annual Accounts of 31.03.'90 have been enjoined by Court upto date ?
- iv Do you admit, that notwithstanding the aforesaid circumstances, that your Board of Directors had deliberately failed and neglected to take any action, whatsoever, against the said Auditors ? Why ?
- 21.i Do you admit that Mr. A. Naka, representative of Mitsui & Co. Ltd., Japan assumed office as your first Executive Director on or about 4th March 1984, and that Mr. Cornel L. Perera has been your Chairman and Managing Director from your very inception ?
- ii Do you admit that, it was the duty and responsibility of Mr. A. Naka, your Executive Director and Mr. Cornel L. Perera, your Chairman & Managing Director to have attended to this matter together with the aforesaid auditors ?
- 22.1 Do you admit that the letters written by the Defendant, marked in this Action, has been written in his capacity as your Director and prior to your Executive Director Mr. A. Naka assuming office ?
- ii Do you admit that the Defendant was never an Executive Director of yours and that he was never engaged by you professionally to handle the subject matter of this Action ?
23. Do you admit that as per Article 17.02 of the Investment Agreement, marked and filed in this Action, it was the responsibility of Cornet & Co. Ltd. to have secured such tax exemption on interest on the loans, the subject matter of this Action ? If not, what does Article 17.02 state ?
- 24.i Do you admit that Letter marked "C" to the Plaintiff in this Action is not a reply to the Letter marked "B" to the Plaintiff in this Action, but is a reply to the Letter marked "D2A" together with the enclosure thereto, Telex marked "D2C" to the Answer in this Action ?
- ii Do you admit that the said Letter marked "D2A" to the Answer has been or the representations that had been made by Mitsui & Co. Ltd. and Taisei Corporation, both of Japan, as per their Telex marked "D2C" to the Answer?
- iii Do you admit, that accordingly, the very premise of the allegation in the Plaintiff is basically misplaced and misconstrued ?
- iv Do you admit that in the given circumstances, it was the duty and responsibility of Mitsui & Co. Ltd. and Taisei Corporation to have followed up as per their very own representations that had been made by them in the Telex marked "D2C" to the Answer, with the necessary facts and data to substantiate and obtain the tax relief on their very own loans, the subject matter of this Action ?
25. Do you admit that in the given circumstances as aforesaid, that institution of this Action against the Defendant has been utterly baseless without any foundation and has been out of sheer malice and is a mala-fide Action, whereas, any Action if at all, should have been instituted against the other persons responsible as aforesaid ?

This ^{15th} 14th day of March 1995



Attorneys-at-Law for the Defendant