

Dear Lalith,

In view of discussions had, I thought it appropriate to send a short *Aide-Memoire*, which would explain the facts, on which you once sought explanation. I did not take it up at that time, since other matters you discussed were of urgent priority.

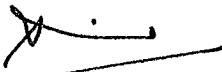
I have annexed to the *Aide-Memoire* a List of Salient Documents, attaching copies thereof with numbered separators, and giving references to the numbers in the *Aide-Memoire*.

Given the current status quo, I am precluded from pursuing this matter at other fora, which would only jeopardize your expectations from me, particularly as per your last E-mail of 13.2.2013.

Hence, I am forwarding this to you, with a view to mutually reaching a just and equitable resolution on this long outstanding matter.

With warm regards,

Very sincerely,



Nihal

21.2.2013

SALIENT DOCUMENTS

1. Letter dated 18.6.2012 to the Secretary to the Treasury, with copy to Minister of Finance
2. Settlement Agreement No. 3 dated 28.6.1995 between the Government and Nihal Sri Ameresekere
 - + HDL Board Paper of 28.6.1995 setting out the Write-offs of Claims by the Japanese, and the re-scheduling of the balance
3. Merchant Bank of Sri Lanka Report dated 19.7.2006 to the Treasury on amount payable to Nihal Sri Ameresekere / his Company by the Government
 - + Letters indicating comparable rates of Professional Fees
 - + Statement of costs in defending the interests of HDL and Government in several litigations -- from July 1995
4. Supreme Court Minutes of 24.4.2006 where Treasury had confirmed to the Supreme Court that payment to Nihal Sri Ameresekere / his Company 'would be quantified on an independent assessment'
5. Addendum signed between the Government, Mitsui & Taisei and Nihal Sri Ameresekere in September / October 1996 to give effect to the Settlement Agreements of 28.6.1995
 - + Decrees entered on 23.10.1996 by the Commercial High Court upon Nihal Sri Ameresekere withdrawing the Cases to enable payment to be made to Mitsui & Taisei
 - + Letters dated 29.10.1996 and 14.11.1996 showing the initial payments of US \$ 29 Mn., made to the Mitsui & Taisei from accumulated funds of HDL.
6. Cabinet Memorandum dated 21.1.2007
 - + Cabinet Approval of 24.1.2007
 - + Cabinet Memorandum dated 5.10.2005
 - + Cabinet Approval of 13.10.2005
 - + Government Proposals / CANC Report of July 2005
7. Agreed Terms of new Hilton Management Agreement, approved by the CANC and Cabinet Memorandum of 5.10.2005
 - + Fraudulent attempt by Hilton International to takeover HDL thwarted by Nihal Sri Ameresekere
 - + Attempt to mortgage Hilton Hotel to Mitsui & Taisei thwarted by Nihal Sri Ameresekere
8. Settlement Agreement No. 1 dated 28.6.1995 between the Government, Mitsui & Taisei and HDL
 - + Settlement Agreement No. 2 dated 28.6.1995 between the Government and HDL
 - + Settlement Agreement No. 4 dated 28.6.1995 between Nihal Sri Ameresekere, Mitsui & Taisei and HDL
(*Agreement No. 3 dated 28.6.1995 given at 2 above*)
 - + Surrender of Special Grant Instruments Nos. 673 and 674 re-vesting the Land in the Government in July 1999 at the behest of Nihal Sri Ameresekere, as per the Settlement Agreements
9. A separate Settlement Agreement dated 28.6.1995 between HDL and Nihal Sri Ameresekere on the baseless and malicious actions caused to be filed against him, because of the Cases filed by him to expose the Hilton Hotel construction fraud
 - + Letters of Apology given by HDL / Treasury / Mitsui & Taisei
 - + Settlement Terms suggested by the Supreme Court in Cases filed against Minister of Justice / Deputy Minister of Finance

10. 'Extracts' from Petition filed by Nihal Sri Ameresekere to restructure HDL
 - + Letter dated 10.5.2011 of Treasury to HDL giving two years' time to settle Claims of the Treasury
 - + Letters pertaining to last two Installments paid to the Japanese by the Treasury / HDL, whilst HDL was under Winding-up proceedings
11. Double Page Advertisement placed by Cornel & Co. Ltd., *revealing* evidence of the commencement of the Hilton Hotel Project
12. Agreement dated 15.6.2012 between Cornel L. Perera / Cornel & Co. Ltd., and Nihal Sri Ameresekere / Consultants 21 Ltd., agreeing that each party was free to pursue their own legitimate Claims / entitlements.
13. One of the Charge Sheets by the Special Presidential Commission
 - + Letters of direction to the Inspector General of Police by the President to proceed immediately with the criminal prosecution of the fraud on the construction of the Hilton Hotel

AID-MEMOIRE

1. The Hilton Hotel was mooted in the early 1980s by Hotel Developers (Lanka) Ltd. (HDL). The construction commenced in March 1984 and the Hilton Hotel opened for operations in July 1987. I was a Promoter and a founder Director, and one of those *key persons* actively involved and responsible for the development of the Hilton Hotel (*See 11*).
2. Consequent to the *disastrous communal riots of July 1983*, the Government was very *anxious* to have the Hilton Hotel urgently implemented to repair the tarnished image of the country. Thus, the Land was made available by the UDA and Government Guarantees were issued to Mitsui & Taisei for the construction and development of the Hilton Hotel on a Japanese Yen Loan basis.
3. *As a consequence of the other HDL Directors unwilling to take any action on the fraud in the construction of the Hilton Hotel discovered by me, I, as a Shareholder and Director, instituted in the District Court of Colombo a derivative action in law in September 1990, and the District Court promptly issued enjoining orders preventing any payments to Mitsui & Taisei.*
4. Thereafter, the Supreme Court in December 1992 upheld my Case *as a serious case of fraud, with real prospects of being successfully proven*, and affirmed the *interim injunctions*, which had been issued by the District Court in October 1991 *to prevent the devious syphoning to Mitsui & Taisei of a large scale of foreign exchange from the country.*
5. Subsequently, I was compelled to institute a further legal action in the District Court of Colombo in January 1991 consequent to the HDL Directors, *including the Treasury*, having endeavoured to adopt HDL's Financial Accounts in December 1990 *to cover-up the above fraud.* As a consequence, HDL's Financial Accounts were promptly *enjoined* by the District Court.
6. Upon the People's Alliance Government assuming Office in August 1994, a Special Presidential Commission was warranted in March 1995. After investigations conducted by the Criminal Investigation Department, and the recording of Statements from 24 Witnesses, assisted by the Solicitor General, and having obtained a Report from a Panel of 3 Chartered Architects and discovering *irrefutable proof of criminality*, (*admitted by the Japanese Architects in not having disputed my evidence placed before the Commission*), the Commission issued Show Cause Notices on grounds of fraud against the Government on 4 persons (*See 13*)
7. The Warrant of the Special Presidential Commission *was not extended* due to the *interceding* by the Minister of Justice / Deputy Minister of Finance, to have *misled* the President, with the assurance that the Opposition United National Party would support the proposed draft Constitution of August 2000 presented to Parliament, *which however was reneged upon*; and such draft Constitution was *torn and burnt* in Parliament.
8. Subsequently in March 2004, the President *admitting* and *regretting* the foregoing, directed the Inspector General of Police to proceed with criminal prosecutions on an urgent basis. However such endeavour was *thwarted* by the Attorney General's Department (*See 13*).
9. As a result of *interim injunctions* which had been obtained by me, funds had accumulated in HDL from September 1990. Mitsui & Taisei were unable to answer *interrogatories* served by me, and had pleaded with the Treasury for a settlement, with Japan being a major *Aid* provider. Hence, the Treasury, through the Attorney General, *intervened* and *persuaded* me to agree to reach a Settlement. After *protracted* negotiations, Settlement Agreements Nos. 1, 2, 3 and 4 were executed in June 1995, as had been finalized by the Attorney General and approved by the Cabinet of Ministers (*See 2 & 8*). **I need not have agreed to this.**

10. **In the context of the fraud in the construction of the Hilton Hotel, Mitsui & Taisei upon my insistence for such right-off for the reaching of a Settlement in June 1995 wrote-off from their stated claims a sum of Jap. Yen 17,586 Mn., i.e. then US \$ 207 Mn., / SL Rs. 10,200 Mn., on the Government Guarantees, and re-scheduled the balance over a further period of 15-years up to 2010 (originally fully payable by 1999) at a reduced rate of interest of 5.25% p.a. (originally of 6.00% p.a.), with a grace period of one year, to further financially re-structure HDL as per the Settlement Agreements Nos. 1, 2, 3 and 4 (See 2 & 8)**
11. The foregoing further *financial restructuring* of HDL was *frustrated* due to the wrongful and unlawful *interference* by the Minister of Justice / Deputy Minister of Finance, who had been a party personally affected by one of the Conditions in the Settlement Agreements finalized by the Attorney General, pertaining to the inaction, *vis-à-vis*, this fraud in a listed public company by the Securities & Exchange Commission of which he had been a then Member.
12. In the face of the Sri Lanka Aid-Group Meeting in November 1996, whereat an *Aid* component of US \$ 245 Mn., was to be pledged by Japan, the Government *interceded* with me, pleading to have the Settlement Agreements implemented, without the Conditions Precedent having been pre-fulfilled, for me to withdraw the Cases, to enable payments to be made to Mitsui & Taisei. The Government guaranteed in writing that the said Conditions Precedent would be fulfilled, as Conditions Subsequent, for which purpose an Addendum finalized by the Attorney General was signed with me by the Government and Mitsui & Taisei in September / October 1996 (See 5). I need not have agreed with this.
13. Due to the interim injunctions which had been obtained by me, HDL by October 1996 had accumulated nearly US \$ 30 Mn., and in the face of the *pressures* exerted by Japan, *who was still the largest Aid provider*, I was *persuaded* by the Government *pleading* with me to withdraw my Cases, without proceeding to Trial.
14. **Thus in October / November 1996 out of the accumulated funds of US \$ 30 Mn., of HDL, US \$ 29 Mn., was remitted to Mitsui & Taisei, after I withdrew the Cases on the written guarantees given by the Government by way of the Addendum (See 5).**
15. **Had I not agreed to withdraw the Cases and release HDL's funds amounting to US \$ 30 Mn., accumulated by October 1996 due to the *interim injunction*, which I had obtained, and I had proceeded to Trial, which I would have most certainly succeeded with, *as had been affirmed by the Supreme Court*, then HDL would have accumulated well over US \$ 100 Mn., by 2012, with no debts, whatsoever, to the Government.**
16. In compliance with the said Settlement Agreements Nos. 1, 2, 3 and 4 (See 2 & 8), at my behest the Lands were *re-vested* with the Government, through Surrender of Special Grant Instruments executed as far back as July 1999. (See 8)
17. As per the Settlement Agreement No. 3 (See 2), concurred in Settlement Agreement No. 4 (See 8) the Government agreed to duly compensate me / my Company (*Consultants 21 Ltd.*) for professional time and efforts in obtaining the above *write-off* and further *re-scheduling* the balance Loan of HDL, obtained under Government Guarantees, which was of immense benefit to the Government and HDL. The quantum of such payment was to be determined upon by an independent merchant banking / financial institution, as was stipulated in the Settlement Agreement No. 3 (See 2).

18. With the concurrence of the Supreme Court in April 2006 (See 4), in July 2006 the Treasury obtained a Report from the Merchant Bank of Sri Lanka, on the professional compensation payable to me / my Company (Consultants 21 Ltd.) (See 3), including in respect of my sustained efforts to protect the interests of the Government and HDL in several vexatious litigations instituted against HDL and the Government, consequent to the wrongful conduct and actions of then Minister of Justice / Deputy Minister of Finance.
19. The foregoing had been also endorsed in July 2005 in the recommendations made by a Cabinet Appointed Negotiation Committee, and approved by the Cabinet of Ministers in July 2005, and re-affirmed by the Cabinet of Ministers in January 2007 (See 6)
20. The Merchant Bank of Sri Lanka Ltd., in its Report to the Treasury (See 3) had, *inter-alia*, recommended as follows, also recommending the adjustment of the payment for the passage of time from June 1995 for the subsequent period, with the average weighted Fixed Deposit annual interest rate given in Annex V of their Report. This payment which had been a 'Condition Precedent', and changed at the request of the Government to be a 'Condition Subsequent' is yet to be fulfilled. – viz: MBSL Report page 6

8 OUR OPINION

- 8.1 In view of the matters set out above we are of the opinion that in respect of NSA's claim for services rendered, NSA/Comindtax Management Services Limited (now Consultants 21 Ltd) be compensated within the range of **0.1% to 0.75%** of the benefit obtained by the Government and HDL as a result of the said write off of **Japanese Yen 17,586,000,000 (LKR 10,200,000,000 as at June 1995)** under **Option (1)** given below. The details of calculation under different rates of Compensation is given in **Annexure (I)** for your convenience.

However the Treasury can consider a higher rate of compensation up to **2.00%** taking in to consideration NSA's valuable services, the relationship the Government wishes to continue with him in the future and any other relevant factors. We also wish to state that commission payment upto **2.00 %** is within the Market Practice as explained in Section 6 of this Report. We also enclose herewith **Annexures (I), (II), (III) & (IV)** to indicate the cost and impact to the Treasury on the above compensation which we have calculated under two different options, as given below:-

Such recommendation had been in conformity with the fee structures of Merchant Bank of Sri Lanka Ltd., Vanik Incorporation Ltd., and Ernst & Young, Chartered Accountants (See 3)

21. In addition, as per the Settlement Agreement No. 3 with the Government (See 3), also concurred in Settlement Agreement No. 4 (See 8), I was further entitled to nominate myself and two others to the Board of Directors of HDL. This also is yet to be fulfilled. viz:

LETTER REFERRED TO AT CLAUSE 3 (a) AND CLAUSE 4 (i) (a)

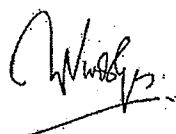
OF AGREEMENT NO. 3

Whereas in the context of the Agreements Numbered 1, 2, 3 and 4 dated 28th June '95 entered into by and between the relevant parties to settle and withdraw the Actions Numbered 3155/Spl. and 3231/Spl., of the District Court of Colombo, instituted by Mr. Amerasekera, as a Shareholder of Hotel Developers (Lanka) Ltd., on its behalf and in its right for its benefit and interest and that of its Shareholders, including the Government, as the major Shareholder and Guarantor of Hotel Developers (Lanka) Ltd., I do hereby confirm as follows:

- i. The Board of Directors of Hotel Developers (Lanka) Ltd., will be reconstituted to, include Mr. Amerasekera, Mr. K. Kanag-Isvaran, P.C. and Mr. M. Radhakrishnan, Attorney-at-Law, as Directors, whereas Mr. Amerasekera and Mr. K. Kanag-Isvaran having already been so appointed.
- ii. The Government having previously reimbursed all costs amounting to Rs. 6,983,839/= incurred by Mr. Amerasekera in connection with the above litigations, will as determined by an independent financial/merchant banking institution/s, also compensate Mr. Amerasekera for his professional time and efforts, incurred on behalf of and in the interest of Hotel Developers (Lanka) Ltd., for its benefit and interest and that of its Shareholders, including the Government as the major Shareholder and Guarantor of the Loans of Hotel Developers (Lanka) Ltd., resulting in the write-offs, reductions and rescheduling, referred to in the said Agreement No. 1.

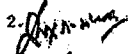
This 28th day of June 1995.

SECRETARY, MINISTRY OF
FINANCE PLANNING, ETHNIC
AFFAIRS AND NATIONAL
INTEGRATION & SECRETARY TREASURY



Witnesses

1.  Amerasekera.


2. 

To: Mr. Nihal Srinath Amerasekera,
167/4, Sri Vipulasena Mawatha,
Colombo 10.

22. In addition to the foregoing, I successfully performed the following, which were of immense benefit to the Government and/or HDL.
 - (a) Negotiated new terms of a Hilton Management Agreement, *with reduced charges*, which was approved by the CANC in July 2005 and the Cabinet of Ministers in July 2005, but given effect to only in 2012. (See 7)
 - (b) Thwarted the surreptitious and fraudulent attempt made by Hilton International in January 1998 to acquire a major Shareholding of HDL on the *false pretext* that the insurance payment in respect of Colombo Hilton Hotel belonged to Hilton International, consequent to the damage caused by a terrorist bomb. (See 7)
 - (c) Reversed the undertaking which had been surreptitiously given in 1989 to mortgage the Hilton Hotel to Mitsui & Taisei. (See 7)
23. The endeavours made to further *re-structuring* HDL got frustrated in 2006. Hence, I filed an Application in November 2006 to Wind-up HDL, with a view to forcing a restructuring, which the Attorney General and the Cabinet of Ministers had agreed to in January 2007 (See 6). The Directors of HDL opposed the Winding-up violating the provisions of the Companies Act No. 7

of 2007, thereby becoming personally liable for the debts of HDL in terms of the provisions of the Companies Act.

24. Since HDL had not been further financially restructured, as had been envisaged and provided for in the Settlement Agreements Nos. 1, 2, 3 and 4, the Government had to advance Rs. 3,949 Mn., to make balance payments to Mitsui & Taisei, on which interest of Rs. 8,949 Mn., had accumulated by May 2012 (as per Civil Law Ordinance Interest cannot exceed Capital), making total Claims by the Government from HDL in May 2011 of Rs. 12,098 Mn. The Treasury gave HDL two years' time from May 2011 to repay such Claims (See 10).
25. By Letter dated 10th May 2011 of the Treasury to HDL a two year time period was given to HDL to re-pay the above Claims (See 10), for which purpose I instituted a legal action in the Commercial High Court to financially restructure HDL, as per the provisions of the Companies Act No. 7 of 2007. (See 10)

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Date: 10.05.2011					
Mr. T.Nadaratne, Chairman, Hotel Development (Lanka) P.L.C. C/o Colombo Hilton, Colombo 01.					
Dear Sir, Loans Granted by the Government of Sri Lanka for the Settlement of the Loans to the Japanese Lending Mitsui & Co. Ltd and Taisei Corporation.					
This refers to your letter dated 04 May 2011 on the above subject. It is regretted to inform our inability to accept the repayment schedule proposed by HDL, extending the repayment period for 10 years. In view of the High occupancy ratio resulting in development of tourism industry, the General Treasury requests HDL to repay the outstanding amount of Rs.12,098,084,709.77 within a shorter period of time preferably two years, on monthly installment basis. I, therefore, would request you to keep the Board of Directors informed of the Treasury's stand.					
Thanking you, Yours faithfully, D. V. Managarmahachari, Deputy Secretary to Treasury					

26. Notwithstanding the foregoing facts, the Government had been misled to acquire HDL in November 2011 under an Urgent Bill, which was inconsistent with the Constitution, but had been wrongfully determined, without jurisdiction, to be consistent with the Constitution by the former Chief Justice, who was impeached, including on Charges for wrongful determinations.
27. I have further Claims against HDL and against the then Minister of Justice / Deputy Minister of Finance, for his wrongful and malicious conduct and actions. The Government, Mitsui & Taisei and HDL have given me Letters of Apology. The Minister of Justice / Deputy Minister of Finance had *interceded* with the Chief Justice to bring about a settlement in the Cases, which had been filed against him (See 9)
28. Since I did not wish that my / Consultants 21 Ltd.'s actions *denied / deprived* Cornel L. Perera / Cornel & Co. Ltd., of his/its legitimate claims / entitlements, on 15.6.2012, I / Consultants 21 Ltd. signed an Agreement with Cornel L. Perera / Cornel & Co. Ltd., agreeing that each of the parties were free to pursue with their own legitimate claims / entitlements. (See 12)

21.2.2013