

**Institute of Chartered Accountants of Sri Lanka 'whitewashes' fraudsters ?  
KPMG Ford, Rhodes, Thornton & Co., removed by Commercial High Court of Sri Lanka,  
as Auditors of Hilton Hotel owning Company**

The District Court of Colombo having promptly issued in September 1990 Enjoining Orders in the main Case DC Colombo 3155/Spl., instituted by Nihal Sri Ameresekere, as a Derivative Action in Law, on the fraud perpetrated in the construction by Mitsui & Co. Ltd and Taisei Corporation of Japan of the Colombo Hilton Hotel, under Sate Guarantees, subsequently issued Interim Injunctions in October 1991 stating, *inter-alia*, as follows :

- # *the Contractors having performed a lesser volume of work, have attempted to obtain a larger sum of money... and the Plaintiff having raised the question concerning the basis for the payment of monies.*
- # *the other Defendants, [i.e .the Directors], as persons having connections concerning the said Hotel business, having intervened therein in such matter, acting to obtain the said monies, had not readily acted to conduct a correct examination.*
- # *they having prevented such correct examination, were attempting to, howsoever, effect the payment of monies.*
- # *they are exercising the influence, that they have gained in society, acting together with the Company, to prevent the raising of the questions concerning the matters of the work in connection with the Contracts, the Prospectus ...*
- # *their collaboration was adverse to the interest of the Shareholders of the Company, and that they were acting through such collaboration, in a manner amounting to defeat the interests of the Shareholders of the Company.*

The then Learned District Judge, P. Wijeyaratne Esqr., further observed, in his said Order; *inter-alia*, as follows;

"Accordingly, the present position is that the Defendants' statement, that they have performed their part of the Contracts and the willingness shown by the Company to accept the same, as set out by the Defendants, cannot be accepted as the basis for payment.... in fact, whether, as stated by the Plaintiff [*reference being to the 4<sup>th</sup> Defendant*], **this is a devious method of siphoning out, a large scale of foreign exchange from this country...**The significance, that is shown herein, is that generally, the Company which has to pay money, would be raising questions, in respect of such situation, and would not allow other parties to act arbitrarily...**If the position, that explains this is correct, then this actually, is an instance of acting in fraudulent collusion**".

Thereafter, the Supreme Court of Sri Lanka, the highest Judiciary, upheld the above Case and affirmed the Interim Injunctions, *inter-alia*, observing as follows in a Landmark Judgment reported in the 1992 Commonwealth Commercial Law Reports [1992] LRC (Comm) @ 636, *inter-alia*, observing as follows :

- # *the Plaintiff [reference being to the 4<sup>th</sup> Defendant] has succeeded in establishing that he has a legally enforceable right and that there is a serious question and prima-facie case and wrong-doer control, and that HDL is entitled to the reliefs claimed.*
- # *the Plaintiff [reference being to the 4<sup>th</sup> Defendant] 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 [reference being to the 4<sup>th</sup> Defendant] 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 HDL and the Country
- # but for the Interim Injunctions, HDL, 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 HDL

After the District of Colombo had issued Enjoining Orders, KPMG Ford, Rhodes, Thornton & Co., Chartered Accountants disregarding the aforesaid Case and Objections by Nihal Sri Amersekere had blatantly and deliberately certified the Annual Accounts of the Hilton Hotel Owning Company, Hotel Developers (Lanka) Ltd. (HDL) for the Financial Year ended 31<sup>st</sup> March 1990, **to cover-up the fraud.**

Upon Nihal Sri Amersekere instituting a further litigation, DC Colombo Case No. 3231/Spl., the Learned District Judge promptly issued an Order enjoining the aforesaid Accounts.

Subsequently, in December 1995 a Special Presidential Commission issued Charges on grounds of fraud against the Government of Sri Lanka on the fraudulent Directors, one of whom was K.N. Choksy, President's Counsel. One of the Charges pertained to the above Financial Accounts of HDL- Viz :

**INQUIRY NO. 1/95**

**NOTICE UNDER SECTION 9 OF THE SPECIAL PRESIDENTIAL COMMISSION OF INQUIRY LAW**

**TO : MR. KAIRSHASP NARIMAN CHOKSY**

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(4) disregard the discrepancies, shortcomings and irregularities which were brought to the notice of the Board of Directors, and wrongfully attempt to approve as authentic the Annual Accounts of the said Company for the year ended 31st March 1990 and endeavour to take action to adopt the accounts with the object of suppressing the aforesaid fraudulent acts and omissions,

Consequently, in October 1996 the Commercial High Court of the Western Province Sri Lanka Ordered and Decreed that KPMG Ford, Rhodes, Thornton & Co. be removed as Auditors of HDL and that HDL appoints another firm of Chartered Accountants, as Auditors of HDL, to have the aforesaid Accounts re-finalized and re-certified.

Notwithstanding the foregoing the Institute of Chartered Accountants of Sri Lanka under its President, Nivard Cabraal invited the said K.N. Choksy, as the Chief Guest for Ceremonial Presentation – **"For Excellence in Annual Report of Accounts - 1992" !!!**

Amazon Books –

['Colombo Hilton Hotel Construction - Fraud on Sri Lanka Government – Vol. 1 – Sri Lanka's First Derivative Action in Law'](#)

['Colombo Hilton Hotel Construction - Fraud on Sri Lanka Government - Vol. 2 - Criminality Exposed, but Perversely Covered-up'](#)

Google Books –

['Colombo Hilton Hotel Construction - Fraud on Sri Lanka Government Vol. 3 - Settlement of a Fraud'](#)

['Socio-Political Realities - Hilton Hotel Fiasco & Ad hominem Legislation - Expropriation Law'](#)

**Given below :**

1. Nihal Sri Ameresekere's Letter dated 9.10.1993 to the Institute of Chartered Accountants of Sri Lanka condemning its above action.
2. 'Extracts' from Supreme Court Written Submissions, re – K.N. Choksy, P.C., M.P., as settled, among others, by H.L. De Silva, P.C.
3. Charge Sheet by the Special Presidential Commission in December 1995.
4. Decree ordered by the Commercial High Court of Sri Lanka in October 1996
5. Petition to add KPMG Ford, Rhodes, Thornton & Co. in DC Colombo Case No. 3231/Spl.
6. Relevant Pages of the Annual Accounts of HDL for Financial Year ended 31<sup>st</sup> March 1990
7. Enjoining Order in January 1991 by the District Court of Colombo in DC Colombo Case No. 3231/Spl.
8. Affidavit by Senior Partner of KPMG Ford, Rhodes, Thornton & Co. denying their conduct and actions

DE SILVA & PERERA  
SOLICITORS ATTORNEYS—AT—LAW & NOTARIES PUBLIC

PHONE: 27767

YOUR REF:

OUR REF:

34/64, 65 & 1/49, New Lawyers Complex,  
San Sebastian Hill, Colombo 12.

J.W.D. PERERA  
Solicitor, England & Wales, Attorney at Law  
& Notary Public.

Residence:  
16, Sinsapa Road, Colombo 6. Telephone: 583596

VERNON GOONERATNE  
LLB Ceylon Attorney at Law

Residence:  
10, Terrace Avenue, Mount Lavinia

9th October '93

REGISTERED POST

The President & Members of the Council,  
The Institute of Chartered Accountants of Sri Lanka,  
30A, Malalasekera Mawatha,  
Colombo 7.

CONFIDENTIAL

Gentlemen,

CEREMONIAL AWARDS PRESENTATION

"FOR EXCELLENCE IN ANNUAL REPORT & ACCOUNTS - 1992"

Our Client Mr. Nihal Sri Ameresekere, a Fellow Member, an award winner and a former Member of the Council of your Institute, is in receipt of your invitation to the Ceremonial Awards Presentation - "For Excellence in Annual Report & Accounts - 1992" and we have instructions to respond as follows.

Your attention is drawn to Letters forwarded to you by our Client and ourselves, specifically on the subject of *Hotel Developers (Lanka) Ltd.*, a Public listed Company, in the matter of complaints made to the Securities & Exchange Commission of Sri Lanka, as per the provisions made therefor, in the Securities & Exchange Commission Act No. 36 of 1987 as amended.

The aforesaid correspondence was addressed to you, since the President of your Institute is an ex-officio Member, representing the Institute, on the aforesaid Commission, as per the provisions of the aforesaid Act and more so particularly as our Client is a Member of your Institute and the said matter, inter-alia, specifically pertained to the violation of the Accounting Standards of your Institute, further mandated under the aforesaid Act upon the Auditors of Public listed Companies; your Institute being the authority thereon.

In addition to the aforesaid correspondence, as a Member of the aforesaid Commission, your President has been in receipt of the totality of the submissions made, in relation to the litigation instituted by our Client, in the public interest, as a *Derivative Action* by a Shareholder of the aforesaid Company, in the right and on behalf of the said Company, on the premise of *fraud under circumstances of "wrong-doer control"*, which has been upheld by the Supreme Court, presided by His Lordship the Chief Justice, and also in relation to a further connected litigation instituted by our Client, *to prevent the adoption of Annual Accounts of the said Company*, notwithstanding such circumstances of fraud, *which Annual Accounts have been enjoined by Court.*

Mr. K.N. Choksy P.C., M.P., at the relevant time, was a *Director of the said Company* and is a *Defendant* in the aforesaid *Derivative Action*. He has also been cited as a *wrong-doer Director*, who had persistently obstructed our Client, a Professional Accountant, in the discharge of his duties and responsibilities, as a Director of a Public listed Company; whereas our Client acted in the interest of the Company and its Shareholders, who in the majority is the Government, to investigate and prevent a fraud on the said Company, and *which action is also in the interest of the public of this Country*, in the context of State Guarantees in issue, amounting at present to about US \$ 220.0 Mn. i.e. Rs 10,800.0 Mn.

Our Client was supported by the Government Nominee Directors, Mr.M.T.L. Fernando, Precedent Partner, Ernst & Young and a Fellow Member and a former Council Member of your Institute and by Dr.A.C. Randeni, the then Director Economic Affairs, Ministry of Finance and also by Mr.K. Shanmugalingam, Deputy Secretary Treasury. *Mr.K.N. Choksy however, obstructed and prevented a proper examination, which would be warranted by the basic professional rubrics and practices of your Institute.*

The Learned District Judge, in issuing the Interim Injunctions, in his *Order*, inter-alia, observed;

- *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*
- *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*
- *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 defeat the interests of the Shareholders of the Company*

*Significantly in his Order made in Sinhala, the Learned District Judge has pointedly interpolated the English term - "Influence".*

Mr.K.N. Choksy having not objected to the granting of the Enjoining Orders and the Interim Injunctions in the District Court, notwithstanding our Client's exhortation to him to do so if he could, and having not filed Answer in the District Court, nor an Appeal in the Court of Appeal, however intervened through Counsel in the Appeal Hearings of the Japanese Collaborators, to oppose our Client's Action, submitting through Counsel, that our Client had no right to bring this Derivative Action, and accordingly sought to have the said Action dismissed, disregarding that such Action had been instituted, also in the interest of the public of this Country. The Supreme Court however, correctly refused to even hear the Counsel for Mr.K.N. Choksy, in that he had no status.

The Supreme Court, presided by His Lordship the Chief Justice, in its *Judgment* upholding the Orders of the Learned District Judge, inter-alia, observed;

- *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 - [One of the reliefs claimed being an Order 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*
- *Interim Injunctions were granted to prevent the "syphoning out of money" from the Company and the Country*

The said Annual Accounts enjoined by Court in the aforesaid other litigation, is not only in gross violation of the Accounting Standards of your Institute, but also, is in violation of the very basic professional rubrics and practices enunciated by your Institute and more so, is in violation of those requirements mandated by law. Mr. K.N. Choksy was one of the Directors, who endeavoured to adopt the said Annual Accounts, notwithstanding our Clients objections thereto.

In the aforesaid known circumstances, it is not only questionable, but mala-fide and not in the best interest of the Institute and the profession, that Mr. K.N. Choksy should have been invited to be the Chief Guest, ironically at the aforesaid presentation of Awards - "*For Excellence in Annual Report & Accounts*". It is a poor reflection on the dignity and sanctity of the obligation cast on Accounting Professionals to uphold such Accounting Standards. *Far from excellence does it not make it a mockery of the very obligation to attain excellence?* The aforesaid matters were morefully dealt with in the said several submissions forwarded to the Members of the Securities & Exchange Commission and was accordingly, known to your President.

*Would not a Member of your Council be exposed to influencing and/or compromising circumstances, where interested and/or affected persons have been or are co-Partners and/or co-Directors in family and/or other Companies ?*

Our Client, being himself a Fellow Member of your Institute and in addition, a Fellow Member of the Institute of Management Accountants, U.K. and having also been one time a Member of the Council of your Institute, his opinion on the said several matters should have mattered and been of concern to your Institute; and whereas accordingly, you should have acted cautiously, prudently and with a greater sense of sensitivity.

It is a tragedy for any professional body, to compromise professional integrity independence and values, for short-sighted and ill-conceived political expediency and in this instance case, in the known circumstances, *it would appear to be an endeavour towards white-washing and sanctifying wrong-doing.* Surely, could not the Institute have found a *more fit and proper person*, in keeping with the obligation to uphold such Accounting Standards with dignity and sanctity ?

Let alone the intrusion into the realm of professional duties and responsibilities expected of professional Accountants and the obstructions caused thereto, at present, consideration is being given by our Client's Counsel, as to whether not, Mr. K.N. Choksy contravened specific provisions of the Constitution of this Country, in continuing to be a Director in Companies, having contracts with the Government and/or its Agencies. In similar but lesser circumstances, the Attorney General has given opinion, *that even in the absence of any express provision in the law, that it is contrary to law*, for even a Provincial Council Member, to be a Director of such a Company.

Yours faithfully,



Attorneys-at-Law

Mr. Nivard A L Cabraal, President  
Mr. Mohan A Abeynaike, Vice President  
Mr. M.H.G.A. Brito-Mutunayagam, Member  
Mr. N.S.C. De Silva, Member  
Mr. H.G. Fonseka, Member  
Mr. W. Gamini Epa, Member  
Mr. M. Reyaz Mihular, Member  
Mr. V. Lal C Nanayakkara, Member  
Mr. Samy M Pasupati, Member  
Mr. Fredrick H Puvimanasinghe, Member  
Mr. Lakshman R Watawala, Member

Further to our Letter dated 6<sup>th</sup> October 1998 we write as instructed:

Our Client was present in the Court of Appeal at the Hearing on 26<sup>th</sup> November 1998. Whilst making submissions on the contents of the Plaint, particularly on those relating to the conduct and actions of Mr. K.N. Choksy, P.C., M.P., to our Client's understanding, you had apparently endeavoured to scoffingly dismiss the same with disbelief.

We enclose a copy of the Written Submissions dated 6<sup>th</sup> July 1992 settled by you as Senior Counsel and tendered on behalf of our Client to the Supreme Court in Appeals Nos. 33 & 34/92 [D.C. Colombo Case No. 3155/Spl].

We draw your kind attention to pages 42 to 44 therein that set out the said wrongful conduct and actions of Mr. K.N. Choksy P.C., M.P. (*Copies set out below*)

Yours faithfully,



Attorneys-at-Law "

***Vide Pages 42 to 44 of Written Submissions on my behalf in SC Appeals Nos. 33 & 34/1992***

***DIRECTOR K.N. CHOKSY, 7TH DEFENDANT***

- v. Wrong-doing conduct and actions of the 7th Defendant, K.N.Choksy, Director of the 4th Defendant Company from 19.12.86;
  - a) supported the 1st & 2nd Defendants, in their Objections, to the suggestion made by the then Government Nominee Director, M.T.L. Fernando, (Fellow Chartered Accountant and Precedent Partner Ernst & Young), to appoint an independent Engineer, to examine the constructed Colombo Hilton Hotel, in the background of the discrepancies raised by the Plaintiff, prior to the issuance of the Final Certificate by the 3rd Defendant, and thereby prevented the 4th Defendant Company from ascertaining the factual position and the truth of the fraud perpetrated on it and its Shareholders, as discovered thereafter, by giving in writing, his opinion dated 08.08.88, disregarding the discrepancies and queries that had been raised by Plaintiff, also a Chartered Accountant,
  - b) without any notice to and/or approval and/or authority from the Board of Directors of the 4th Defendant Company accompanied the Representatives of the 1st & 2nd Defendants and arranged for a payment of U.S. \$ 2.0 Mn. obtaining the concurrence of the Secretary, Ministry of Finance, notwithstanding the written Objections submitted to the Board of Directors of the 4th Defendant Company by the Plaintiff, by way of a Memorandum dated 13.12.89, which stood unopposed at the said Board Meeting,
  - c) in the absence of Specified Bills of Quantities and Final Measurements, purely on the basis of two simple "Medical Certificates" type Letters, of

Completion and Final Certificates, given by the 3rd Defendant, and further notwithstanding the specific discrepancies raised by the Plaintiff by the Memorandum dated 13.12.89 and the specific clarifications called for therein from the 3rd Defendant, submitted a letter dated 28.02'90 to the Board of Directors of the 4th Defendant Company, stating, that, the aforesaid two Certificates *"are adequate coverage that the Hotel Construction Work is in conformity with all stipulations of the contract"* and that the 4th Defendant Company will be justified in making the balance payments; such Letter had been issued at the instance of the 1st & 2nd Defendants' Representative, without any deliberations at the Board in such regard; disregarding the financial consequences to the 4th Defendant Company, and further notwithstanding the fact he had no professional experience and/or expertise in the Hotel Construction and Engineering Industry, to have proffered such opinion,

- d) in issuing such aforesaid Letter dated 28.02.90, he misleading the Board, recklessly and deliberately neglecting and failing to take cognisance of the duties and responsibilities of the 3rd Defendant, professional Architects, as further stipulated in the Design & Supervision Contract by and between the 3rd Defendant and the 4th Defendant Company; and thereby clearly endeavored to prevent the probing of this matter and further to cover up the action of obtaining the concurrence for the payment of U.S. \$ 2.0 Mn., notwithstanding the specific Objections by the Plaintiff previously at the Board of Directors of the 4th Defendant Company,
- e) having given two written opinions as a Director of the 4th Defendant Company, as aforesaid, clearly in support of the 1st & 2nd Defendants, in their endeavour to cover up this massive fraud, did or said or wrote nothing whatsoever, when the surreptitiously and unauthorisedly substituted new set of Architectural Plans described as "Amended" Plans, was discovered at the Ministry of Finance and reported to the Board of Directors of the 4th Defendant Company; further failed to give any explanations whatsoever, of his aforesaid conduct and actions, which included the prevention of the 4th Defendant Company, from ascertaining the aforesaid matter, prior to the issuance of the Final Certificate by the 3rd Defendant,
- f) notwithstanding, being a Government Member of Parliament, continued to be a Member of the Board of Directors of the 4th Defendant Company, having a Shareholding by the Government and also having a contractual relationship with the Government of Sri Lanka, in the context of the State Guarantees that had been issued, for and on behalf of the 4th Defendant Company, and thereby exerted undue influence and pressure, styming the Government Officials, from taking proper and requisite actions independently, in regard to this fraud perpetrated on the 4th Defendant Company, and its Shareholders,
- g) at a Board Meeting of the 4th Defendant Company, when the Plaintiff disputed and objected to the adoption of the Accounts for the Year Ended 31.03.'90, supported the Representative of the 1st & 2nd Defendants, specifically drawing the attention to Article 129 of the Articles of Association of the Company, which Article afforded the right of veto over Board

Decisions, to the 1st & 2nd Defendants, thereby prompting the said 1st & 2nd Defendants to take undue advantage and cover under such provisions in the Articles of Association, to adopt the said Annual Accounts, disregarding the fraud perpetrated in the 4th Defendant Company and its Shareholders,

- h) disregarding the fact, that the Plaintiff pointedly stated that he had instituted this instant Action, as a Derivative Action, in the interest of the 4th Defendant Company and its Shareholders, required the Plaintiff to leave the Board Meeting held on 22.11.90, and further notwithstanding the implications of the matters disclosed in this instant Action, vis-a-vis the conduct and actions of the 1st & 2nd Defendants, continued to have deliberations at the said Board Meeting on the subject matter of the said Action, with the presence and participation of the 1st & 2nd Defendants' Representatives, notwithstanding the conflict of interest, and jeopardising the interest of the 4th Defendant Company and its Shareholders' further notwithstanding the specific recorded objections thereto, made by the Plaintiff, prior to leaving such Board Meeting,
  - i) failed and neglected to respond to the several Memoranda/ Letters dated 12.04.90 (2), 24.04.90 (2) 31.05.90, 29.06.90 and 04.07.90 forwarded to the Board of Directors of the 4th Defendant Company by the Plaintiff and copied to all the Directors, after the discovery in March '90 of the surreptitiously and unauthorisedly substituted new set of Architectural Plans, described as "Amended" Plans,
  - j) failed and neglected to respond to the Plaintiff's Memorandum dated 20.12.90 specifically addressed to the Directors of the 4th Defendant Company, which had set out the said several matters referred to herein and thereby has been unable to controvert the contents therein, eventhough specifically exhorted to do so by the Plaintiff, and take any action thereon, in the interest of the 4th Defendant Company and its Shareholders,
- vi. The aforesaid wrong-doing conduct and actions, jointly and/or severally by the aforesaid Directors of the 4th Defendant Company perpetrated an unconscionable act of fraud on the 4th Defendant Company and its Shareholders, and/or aided and abetted and/or endeavoured to suppress the same and/or obstructed the probing thereinto, causing irreparable and irremediable loss and damage to the 4th Defendant Company and its Shareholders, which include the Public; as a consequence of which the 4th Defendant Company is bankrupt and insolvent, resulting in its inability to reimburse the Government of Sri Lanka, for payments demanded by the 1st & 2nd Defendants under the said State Guarantees, thereby also affecting the Public of Sri Lanka, particularly moreso, in view of the sum of money concerned, at present amounting to about US \$ 175.0 Mn. i.e. S.L. Rs. 7250.0 Mn.

**My Subsequent Application to compel Defendant, Minister of Justice & Deputy Minister of Finance, G.L. Peiris, now Minister of External Affairs, to answer Interrogatories**

Consequent to the above Judgments in the Court of Appeal of 11<sup>th</sup> February 1999 and 27<sup>th</sup> April 1999 by which the entirety of the District Court of Colombo Order dated 30<sup>th</sup> July 1998 had been set aside, and further confirmed by the Court of Appeal that *there is nothing further left in the said District*

**INQUIRY NO. 1/95**

**NOTICE UNDER SECTION 2 OF THE SPECIAL PRESIDENTIAL  
COMMISSION OF INQUIRY LAW**

**TO : MR. KAIRSHASP NARIMAN CHOKSY**

You, whilst holding the office of Director of Hotel Developers (Lanka) Ltd., which was the owning Company of the Colombo Hilton Hotel and the Company responsible for the construction of the said Hotel by Mitsui and Taisei Corporation of Japan, did or omit to do, between 19th December 1986 and 10th June, 1993 the following acts -:

- (1) deliberately and wrongfully fail and neglect to take action to ensure that the construction of the said Hotel was in accordance with the original Architectural Plans dated 15.08.1983 and the schematic design plan of 1980 marked as P4 and P4A, notwithstanding the fact that these matters were specifically brought to your notice by Nihal Sri Amarasekera, a Director of the said Company,
- (2) wrongfully oppose the recommendation made by the Government Nominee Director, M.T.L. Fernando to have an independent physical examination of the said Hotel carried out to ascertain whether the said Hotel had been constructed by the contractor in accordance with the original Architectural Plans dated 15.08.1983 and the schematic design plan of 1980 marked as P4 and P4A,
- (3) notwithstanding the serious discrepancies and queries that had surfaced at the meetings of the Board of Directors of the said Company and the objections raised by several Directors to the payments to be made to the contractors, collusively act together with Cornel L. Perera and persuade and/or induce the Secretary, Ministry of Finance, R. Pas-karalingam, to make a payment of US Dollars Two Million (US \$ 2,000,000) to Mitsui & Taisei Corporation of Japan,
- (4) disregard the discrepancies, shortcomings and irregularities which were brought to the notice of the Board of Directors, and wrongfully attempt to approve as authentic the Annual Accounts of the said Company for the year ended 31st March 1990 and endeavour to take action to adopt the accounts with the object of suppressing the aforesaid fraudulent acts and omissions,

(5) Notwithstanding the serious discrepancies, shortcomings and queries that had surfaced and disregarding the objections raised at the Meetings of the Board of Directors of the said Company for the making of any payment to Mitsui & Taisei Corporation of Japan, issue a Letter dated 28.02.1990 addressed to H. Ogami, representative of Mitsui & Taisei Corporation, inter-alia, stating that, the two Certificates (of conformity) issued by the Urban Development Authority are "adequate coverage that the Hotel construction work is in conformity with all the stipulations of the Contract, and the owner will be justified in making the balance payment to the contractor" and thereby attempt to wrongfully and deliberately facilitate the making of the full payment to Mitsui & Taisei Corporation of Japan, which was detrimental to the interests of the said Company and/or the Government of Sri Lanka,

The aforesaid acts of commission and/or omission on your part were fraudulent and were detrimental to the interests of the said Company and/or the Government of Sri Lanka, in its capacity as the major Shareholder, causing financial loss and damage to the said Company and/or the Government of Sri Lanka.

Having regard to the matters set out hereinabove, you are hereby required to show cause as to why you should not be found guilty of misuse or abuse of power and/or corruption and/or the commission of fraudulent acts in terms of Section 9 of the Special Presidential Commission of Inquiry Law No. 7 of 1978, as amended.

BY ORDER OF THE COMMISSION

SECRETARY

My No: SPC 95/PIQ/1/95

12th December, 1995

Inquiry No. 1/95

TO: MR. KAIRSHASP NARIMAN CHOKSY

NOTICE UNDER SECTION 9 OF THE SPECIAL PRESIDENTIAL  
COMMISSIONS OF INQUIRY LAW.

The Commission has directed me to forward to you the original Notice in Sinhala in terms of Section 9 of the Presidential Commissions of Inquiry Law No. 7 of 1978, which is annexed hereto.

You are also informed that there is an error in Count 5 of the Notice served on you on 8.12.1995 (English Copy). This error has now been rectified. The correction being, in Count 5, in lieu of the words

" (of conformity) issued by the Urban Development Authority"

the following words are substituted:

"dated 10.4.1987 and 25.08.1988 issued by the Architects Kanko Kikaku Sekkeiysha".

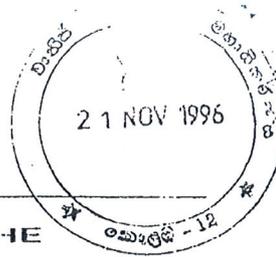
Count 5 of the said Notice in its corrected form is attached herewith.

BY ORDER OF THE COMMISSION

  
(N A Obadage)  
SECRETARY TO THE COMMISSION

- (5) Notwithstanding the serious discrepancies, shortcomings and queries that had surfaced and disregarding the objections raised at the Meetings of the Board of Directors of the said Company for the making of any payment to Mitsui & Taisei Corporation of Japan, issue a letter dated 28.02.1990 addressed to H. Ogami, representative of Mitsui & Taisei Corporation, inter-alia, stating that, the two Certificates dated 10.4.1987 and 25.8.1988 issued by the Architect Kanko Kikaku Sekkeiysha are "adequate coverage that the Hotel construction work is in conformity with all the stipulations of the Contract, and the owner will be justified in making the balance payment to the contractor" and thereby attempt to wrongfully and deliberately facilitate the making of the full payment to Mitsui & Taisei Corporation of Japan, which was detrimental to the interests of the said Company and/or the Government of Sri Lanka.

**DECREE**



**IN THE HIGH COURT OF THE  
WESTERN PROVINCE  
[SITTING IN COLOMBO]  
EXERCISING CIVIL JURISDICTION**

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

PLAINTIFF

Case No. H.C. (Civil) 134/96 (1)  
(D.C. Colombo Case N: 3231/spi.)

- VS -

HOTEL DEVELOPERS (LANKA) LTD.,  
formerly known as Lanka Japan Hotel Co.,  
No. 16, Alfred Place, Colombo 3.

DEFENDANT

THIS ACTION COMING ON FOR FINAL DISPOSAL before P. Wijayarathne, Esquire, Judge of the High Court of the Western Province sitting in Colombo exercising Civil Jurisdiction on the 23rd day of October 1996 in the presence of Mr. K. Kanag-Isvaran, President's Counsel with Mr. Harsha Cabral, Attorney-at-Law, instructed by Messers De Silva & Perera, Attorneys-at-Law on the part of the Plaintiff and Mr. A.S.M. Perera, President Counsel and Additional Solicitor General with Mr. Uditha Egodaheewa, State Counsel, instructed by Ms. Priyani Peiris, State Attorney on the part of the Defendant and having considered the joint Consent Motion dated 22nd October 1996 and filed on behalf of the Plaintiff and the Defendant and filed of record

**OF CONSENT IT IS ORDERED AND DECREED:-**

- (a) that the Plaintiff abovenamed instituted the above-styled Derivative Action in law, praying for reliefs against the Defendant and sought and obtained an Enjoining Order against the Defendant as prayed for in the Plaint
- (b) that the Plaintiff, the Defendant, other necessary parties and the Government of the Democratic Socialist Republic of Sri Lanka have entered into Agreements settling the several issues, including costs, pertaining to this Action
- (c) that the Defendant do appoint another firm of Chartered Accountants as the Auditors of the Defendant to have the Annual Accounts of March 1990 finalised and certified in the context of the aforesaid Agreements and the subject matter of this Action

IT IS FURTHER ORDERED AND DECREED OF CONSENT that the aforementioned Enjoining Order is hereby dissolved and this Action is hereby dismissed without costs

HIGH COURT JUDGE

Prepared by us:-

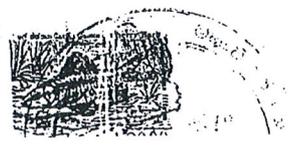
Attorneys-at-Law for Plaintiff

මෙහි දැන්වෙන්නේ කොළඹ වාණිජ මහාධිකරණ අංශ 134/96(1) අරඹ නඩුවේ මිනිදු

ප්‍රකාශයේ (සහල සහ ලංවිසි) සහ ජායාජීවිත පිටපතක් බව සහතික කරමි.

13.11.96

අත්සන:



අධිකරණ මුද්‍රා   
 අධිකරණ මහල

IN THE DISTRICT COURT OF COLOMBO

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

PLAINTIFF

No. 3231/Spl.

- VS -

HOTEL DEVELOPERS (LANKA) LIMITED, formerly known  
as LANKA JAPAN HOTELS LIMITED, and of No. 16 Alfred  
Place, Colombo 3.

DEFENDANT

AND

In the matter of an Application for addition of  
Parties under Section 18 of the Civil Procedure  
Code.

BETWEEN

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

PLAINTIFF-PETITIONER.

AND

1. Hotel Developers (Lanka) Limited, formerly known  
as Lanka Japan Hotels Limited and of No. 16 Alfred  
Place, Colombo 3 and presently of 1000, Echelon  
Square, Colombo 1.

DEFENDANT-RESPONDENT

2. Gamini Christopher Bernard Wijeyesinghe,  
of 8A, Gregory's Road, Colombo 7,
3. Rajanayagam Malliah Asirwatham,  
of 27/1, Unity Place, Colombo 3,
4. Anthony Nirmal Fernando,  
of 10/2, Gower Street, Colombo 5,
5. Ranjeevan Seevaratnam,  
of 17, Rheinland Place, Colombo 3,
6. Saravanapavan Sirikananathan,  
of 7, Ramakrishna Road, Colombo 6,
7. Mohamed Reyaz Mihular,  
of 7, St. Kilda's Lane, Colombo 3,
8. (Ms.) Marie Premila Senewiratne,  
of 102/5, Cotta Road, Colombo 8,
9. Pathinayage Yohan Srineth Perera,  
of 251, Kewalapitiya Road,  
Hendala, Wattala,

10. Chandranath Priyanka Jayatilake,  
of 15, Park Avenue, Colombo 8, and

all of whom are carrying on business in partnership  
under the name, style and firm of FORD, RHODES,  
THORNTON & CO., at 32 A, Sir Mohamed Macan Markar  
Mawatha, Colombo 3.

RESPONDENTS

On this 14th day of February 1994

The PETITION of the Plaintiff-Petitioner above-named appearing by  
J.W.D. Perera, practising under the name and style of DE SILVA & PERERA, with his  
Assistant Vernon St. Gooneratne, his Attorneys-at-Law, states as follows:

1. (a) The 2nd to the 10th Respondents above-named are the Partners of M/s  
Ford, Rhodes, Thornton & Co, Chartered Accountants of 32A, Sir Mohamed  
Macan Markar Mawatha, Colombo 3., which Company have been the Auditors  
of the Defendant-Respondent above-named from its inception,
- (b) The 2nd to 8th and 10th Respondents reside and the principal place of  
business of the said Ford, Rhodes, Thornton & Co. is also situate in  
Colombo within the jurisdiction of this Court,
- (c) The Defendant-Respondent above-named is the Owning Company of the  
Colombo Hilton Hotel and is owned in the majority by the Government,
- (d) The aforesaid 2nd to the 10th Respondents, hereinafter referred to as  
the Auditors were also the Reporting Auditors to the Prospectus issued  
by the Defendant-Respondent on 06.03.'84 in connection with the  
construction of the said Colombo Hilton Hotel, for which purpose the  
Government had issued State Guarantees.
- (e) The said Auditors have certified the Audited Accounts of the Defendant-  
Respondent for the Year ended 31.03.'90, (hereinafter sometimes called  
and referred to as the said Accounts), which Accounts is the subject  
matter of this Action and has been enjoined by Court.
2. The Plaintiff-Petitioner filed this Action against the above-named  
Defendant-Respondent and averred, inter-alia, that;
  - (a) The Defendant-Respondent was promoted, amongst others, by Mitsui & Co.  
Ltd., and Taisei Corporation, both of Japan (hereinafter sometimes  
called and referred to as "Mitsui/Taisei") to build and operate the  
Colombo Hilton Hotel, inter-alia, having 452 Guest Rooms, in two  
Towers going up to 22 floors, with covered car parking for 400  
Vehicles, as stipulated in its Prospectus dated 06.03.1984,
  - (b) Kanko Kikaku Sekkeisha Yozo Shibata & Associates of Japan (hereinafter  
sometimes called and referred to as "KKS") were the Architects, whilst  
Mitsui/Taisei undertook to build, equip and furnish the said Hotel, on  
a fixed price turn-key basis, as set out in the several Agreements/  
Contracts entered into in such regard,
  - (c) Since the said Mitsui/Taisei had failed to build, equip and furnish  
the said Hotel, as had been agreed upon, the Plaintiff-Petitioner  
filed D.C. Colombo Action No. 3155/Spl on 13.09.'90 against  
Mitsui/Taisei and KKS, in the form of a Derivative Action in Law,  
including the Defendant-Respondent and its Directors as Defendants in  
conformity with the form and style of such an Action. The said  
Derivative Action had been instituted on behalf of the Defendant-  
Respondent in its right, for its benefit and in its interest,

- (d) In the aforesaid Derivative Action the Plaintiff-Petitioner prayed, inter-alia, for Interim Injunctions against the said Mitsui/Taisei and KKS and the Defendant-Respondent and the Learned District Judge issued Enjoining Orders on 18.09.'90 preventing any payments, whatsoever, to Mitsui/Taisei and/or KKS, including also under the aforesaid State Guarantees,
- (e) After the issuance of the aforesaid Enjoining Orders, the matter of the said Accounts of the Defendant-Respondent for the year ended 31.03.1990 came up before its Board of Directors in October 1990 and the Plaintiff-Petitioner, drawing specific attention to the facts disclosed in the aforesaid D.C. Colombo Action No. 3155/Sp1, pointed out that the said Accounts had several serious and material errors and that they should be appropriately checked and verified with a full and factual disclosure to the Shareholders of the Defendant-Respondent,
- (f) As a consequence of the above, the Secretary Ministry of Finance had also intimated by his Letter dated 19.11.1990 that the Auditor General had advised that the said Accounts should disclose the factual position regarding the aforesaid Action filed by the Plaintiff-Petitioner,
- (g) The Plaintiff-Petitioner pointed out to the Board of Directors that he had instituted the aforesaid action as a Shareholder in the right of the Defendant-Respondent and on its behalf and that accordingly there is a conflict of interest between the Defendant-Respondent and Mitsui/Taisei and that it would be therefore improper for Mitsui/Taisei to participate in the deliberations into the said Accounts,
- (h) However, the Directors of the Defendant-Respondent, Mitsui/Taisei and the aforesaid Auditors, acting jointly and/or severally certified the said Accounts to be adopted by the Shareholders of the Defendant-Respondent, disregarding the Plaintiff-Petitioner's several objections thereto and rejection thereof, and acting further in contempt of the aforesaid Enjoining Orders that had been issued by Court in the aforesaid Action D.C. Colombo No. 3155/Sp1 and the opinion given by the Auditor-General as aforesaid,
- (i) The Plaintiff-Petitioner further stated that the said Accounts did not give a full and factual disclosure as aforesaid and that the Defendant-Respondent would not be able to continue operating with the obligation to service such over-stated debts, fraudulently claimed by Mitsui/Taisei, without compelling the Defendant-Respondent to go into liquidation,

and prayed, inter-alia, for the following relief;

For an Order directing the Defendant-Respondent to make a full and factual disclosure in the Directors' Report with respect to the state of the Company's affairs, particularly its inability to pay the liabilities as shown on the Balance Sheet, the true and correct financial position of the Company and the facts pertaining to the said D.C. Colombo Action No. 3155/Special

3. On 15.01.'91 the Learned District Judge granted and issued Enjoining Order in this Action preventing the tabling and adoption of the said Accounts at any Annual General Meeting as was also prayed for in the Plaint in this Action.
4. Thereafter the parties agreed that both the Inquiry into the Application for the issue of the Interim Injunction and the Trial in this Action be taken up together.

5. Plaintiff-Petitioner states that;

(a) In the aforesaid D.C. Colombo Action No. 3155/Spl, the Learned District Judge, after Inquiry, granted and issued on 28.10.'91 Interim Injunctions, as prayed for by the Plaintiff-Petitioner and further, inter-alia, made the following observations;

- *there is no acceptable basis, at present, for making payments to Mitsui/Taisei*
- *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*
- *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*
- *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 defeat the interests of the Shareholders of the Company*

(b) Though the Defendant-Respondent did not file Objections to the issuance of such Interim Injunction in the aforesaid D.C. Colombo Action No. 3155/Spl, the General Manager of the Defendant-Respondent in his Affidavit filed with the Objections in this Action, has expressly stated that the Defendant-Respondent had filed Objections in the aforesaid D.C. Colombo Action No. 3155/Spl, which is false to his knowledge. The Defendant-Respondent was only represented by Mr. Shibly Aziz P.C. the then Addl. Solicitor General, who was present throughout the said Inquiry without demur to the issue of the Interim Injunction against the Defendant-Respondent.

6. The Plaintiff-Petitioner states that;

(a) The Defendant-Respondent however did not seek to canvas the said Order granting such Interim Injunction in the Court of Appeal.

(b) Mitsui/Taisei and KKS thereafter made Applications to the Court of Appeal, seeking to set aside the said Order granting such Interim Injunctions mainly on the right of the Plaintiff to bring such an Action and Their Lordships of the Court of Appeal allowed the said Applications for Leave to Appeal against the said Order,

7. The Plaintiff-Petitioner states that;

(a) The Plaintiff-Petitioner thereupon filed an Application for Special Leave to Appeal to the Supreme Court against the said Order of the Court of Appeal and after Hearing, their Lordships of the Supreme Court presided by His Lordship the Chief Justice, upheld the aforesaid Order of the Learned District Judge granting the aforesaid Interim Injunctions and further, inter-alia, made the following observations in Their Judgment handed down on 02.12.'92;

- *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 - [One of the reliefs claimed being that Mitsui/Taisei and/or KKS 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 merely an arguable case*
- *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*
- *Interim Injunctions were granted to prevent the "syphoning out of money" from the Company and the Country*

A true copy of the Judgment of the Supreme Court dated 02.12.'92 is annexed hereto marked "X1" and pleaded as part and parcel of this Petition.

8. The Plaintiff-Petitioner states that;

In the meantime on 11th March 1991 the Defendant-Respondent filed its Answer in the aforesaid D.C. Colombo Action No.3155/Sp1 and, inter-alia, had expressly admitted;

(a) in paragraph 51 therein, that it did not have the original Architectural Plans, and

(b) in paragraph 54 therein, that it did not have an account, or a reconciled inventory of its fixed assets supplied by Mitsui,

and further stated without a prayer therein, that the Defendant-Respondent will take immediate action to protect its interest and that of its Shareholders, should the Court find that the averments made by the Plaintiff are legitimately entitled to succeed.

A true copy of the said Answer is annexed hereto marked "X2" and the relevant paragraphs therein are marked X2(a) and X2(b) respectively and the same are pleaded as part and parcel of this Petition.

9. (a) On or about 27.04.'92, the Plaintiff-Petitioner served Interrogatories on the Defendant-Respondent in this Action, who pursuant thereto filed Answers on 19.11.'93 to such Interrogatories by the Affidavit of its General Manager dated 22.04.'93.

(b) In such Answers the Defendant-Respondent further admitted that it did not have

- the original Architectural Plans,
- the original Inventory Schedule or a reconciled Account thereof
- and evades the question of Bills of Quantities & Final Measurements.

10. The Plaintiff-Petitioner states that;

(a) The said Interrogatories were served with a view to enabling the Court to ascertain upon what material propositions of fact or of Law, the Plaintiff-Petitioner and the Defendant-Respondent are at variance to enable issues to be recorded on which the right decision of the Action, appears to Court to depend,

(b) The Defendant-Respondent in its Answers to a number of such Interrogatories on several material matters has specifically stated that such matters had to be answered by the aforesaid Auditors.

11. The Plaintiff-Petitioner states that;

- (a) The said Auditors were present at material Board Meetings when the subject of the said Accounts was taken up for deliberation prior to its certification.
- (b) Prior to the certification of the said Accounts he, as a then Director of the Defendant-Respondent, wrote several Letters/Memoranda to the aforesaid Auditors,
- (c) Prior to the certification of the said Accounts the Defendant-Respondent addressed Letters dated 19.11.'90 and 20.11.'90 requiring the aforesaid Auditors to examine and report on the several material issues raised by the Plaintiff-Petitioner in relation to the verification of the Fixed Assets of the Defendant-Respondent and the said Accounts prior to its certification, whereas the said Auditors a few days thereafter on 28.11.'90 certified the said Accounts without carrying out any such examination and/or reporting,

True Copies of the said Letters dated 19.11.'90 and 20.11.'90 are annexed hereto marked X3(a) and X3(b) respectively and the same are pleaded as a part and parcel of this Petition,

- (d) After the certification of the said Accounts the Plaintiff-Petitioner addressed further Letters to the aforesaid Auditors,
- (e) After the institution of this Action the Plaintiff-Petitioner addressed further Letters to the aforesaid Auditors, more particularly Letters dated 06.02.'91 and 11.02.'91

True Copies of the said Letters dated 06.02.'91 and 11.02.'91 are annexed hereto marked X4(a) and X4(b) respectively and the same are pleaded as a part and parcel of this Petition,

- (f) The aforesaid Auditors deliberately failed and neglected to act on and/or to answer any of the aforesaid Letters,
- (g) Notwithstanding the fact that the Plaintiff-Petitioner had pointed out as aforesaid that there is a conflict of interest between the Defendant-Respondent and Mitsui/Taisei, the said Auditors deliberately failed and neglected to disclose that they were also the Auditors of Mitsui Construction Co. Ltd. at that time.

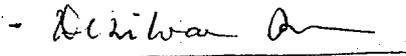
12. The Plaintiff-Petitioner states that;

- (a) In view of the Answers given by the Defendant-Respondent to the Interrogatories, asserting that the Auditors have all the relevant material necessary for the answers to very material Interrogatories relevant to the framing of the issues in this Action, it is fit and proper that the said Auditors be made a party to this Action,
- (b) Relevant documents, materials and informations that are necessary for the easy and expeditious disposal of all the matters involved in this Action are in the possession and control of the said Auditors and such matters and informations are of the personal knowledge of the aforesaid 2nd to 10th Respondents, being the Partners of the aforesaid Auditors,
- (c) It was and is the statutory duty, obligation and responsibility of the aforesaid Auditors, as had been required by the Companies Act No. 17 of 1982, the Securities Council Act No. 36 of 1987 (now amended as the Securities & Exchange Commission Act) and the prescribed Standards of the Institute of Chartered Accountants of Sri Lanka, to have audited and certified the said Accounts as stipulated therein,

- (d) The aforesaid Auditors by their aforesaid conduct and actions and by implication have deliberately failed and neglected to comply with such statutory duties, obligations and responsibilities as aforesaid,
- (e) The Plaintiff-Petitioner is entitled to seek an Order of Court directing the rectification of the said Accounts making a full and factual disclosure as aforesaid to the Shareholders of the Defendant-Respondent and the investing public and/or as to whether or not such Auditors should be allowed to continue as Auditors.
13. In the premises aforesaid, the Plaintiff-Petitioner states that the presence of the aforesaid Auditors before the Court is necessary in order to enable the Court to effectually and completely adjudicate upon and settle all the questions involved in this Action.
14. An Affidavit from the Plaintiff-Petitioner in support of the averments referred to herein is filed herewith and pleaded as part and parcel of this Petition.

WHEREFORE the Plaintiff-Petitioner prays;

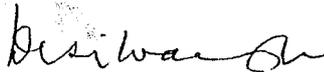
- (a) that the 2nd to the 10th Respondents, being Partners of the Firm of Auditors of M/s Ford, Rhodes, Thornton & Co., be added as Defendants to this Action,
- (b) that Notice of this Application be issued on the Respondents above-named,
- (c) for costs, and
- (d) for such other and further relief as to this Court shall seem meet.



Attorneys-at-Law for the Plaintiff-Petitioner.

Documents filed with the Petition

- i. Affidavit of the Plaintiff-Petitioner.
- ii. Judgment of the Supreme Court dated 02.12.'92 marked X1.
- iii. The Answer filed by the Defendant-Respondent on 11.03.'91 in D.C. Colombo Action No. 3155/Sp1 marked X2
- iv. Defendant-Respondent's Letters dated 19.11.'90 and 20.11.'90 marked X3(a) and X3(b) respectively.
- v. Plaintiff-Petitioner's Letters dated 06.02.'91 and 11.02.'91 marked X4(a) and X4(b) respectively.

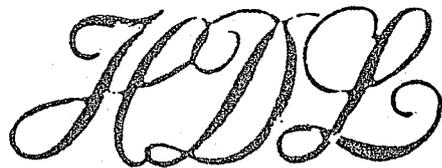


Attorneys-at-Law for the Plaintiff-Petitioner.

P 17

# SEVENTH ANNUAL REPORT

(for the year ended 31st March 1990)



Hotel Developers (Lanka) Ltd.



OWNERS OF COLOMBO HILTON

# Hotel Developers (Lanka) Ltd.

## REPORT OF THE AUDITORS

To The Members of Hotel Developers (Lanka) Limited

We have examined the balance sheet of Hotel Developers (Lanka) Limited, as at 31st March 1990 and the related statement of profit and loss for the period then ended. Our examination was made in accordance with Sri Lanka Auditing Standards. We have obtained all the information and explanations which to the best of our knowledge and belief were necessary for purposes of our audit.

In our opinion, so far as appears from our examination, proper books of accounts have been maintained by the company and to the best of our information and according to explanations given to us, the balance sheet and statement of profit and loss which are in agreement therewith read together with the notes referred, provided the information required by the Companies Act, No. 17 of 1982, and subject to note 19 to the Accounts, give a true and fair view of the state of affairs of the Company as at 31st March 1990 and of its loss for the year then ended in conformity with generally accepted accounting principles applied on a basis consistent with that of the previous year.

We further report that, according to information available to us, no Director of the company is directly or indirectly interested in a contract with the company other than those disclosed in Note 18 to the accounts.

Ford Rhodes, Thornton & Company  
Chartered Accountants  
28th November, 1990

# Hotel Developers (Lanka) Ltd.

BALANCE SHEET AS AT 31st MARCH 1990

	Notes	As at 31.3.90 Rs. '000	As at 31.3.89 Rs. '000
SHARE CAPITAL .. .. .	4	452,261	412,261
FOREIGN EXCHANGE EQUI. RESERVE ..	5	(134,769)	(137,084)
CAPITAL RESERVE .. .. .	6	5,837	4,228
REPLACEMENT & OTHER RESERVES ..	7	32,583	19,956
RETAINED LOSS .. .. .		(983,145)	(639,280)
LONGTERM LIABILITIES .. .. .	8	(627,233)	(339,919)
MITSUI & COMPANY LIMITED .. ..		2,200,919	2,053,810
TAISAI CORPORATION .. .. .		2,033,679	1,898,890
MITSUI TAISAI CONSORTIUM .. ..		347,347	319,486
		<u>3,954,712</u>	<u>3,932,267</u>
REPRESENTED BY			
FIXED ASSETS .. .. .	9	3,561,287	3,630,266
NET CURRENT ASSETS .. .. .	10	171,240	79,816
		<u>3,732,527</u>	<u>3,710,082</u>
DEBIT BALANCES TO BE WRITTEN OFF			
PRELIMINARY & PRE-OPERATING EXPENSES	11	194,491	194,491
PRE-OPENING EXPENSES .. .. .	12	27,694	27,694
		<u>3,954,712</u>	<u>3,932,267</u>

The above balance sheet is to be read in conjunction with notes to the accounts and the auditors report.

The notes on these accounts are annexed.

For and on behalf of the Board.

(Sgd.) CORNEL L. PERERA  
Director

(Sgd.) D. PETER S. PERERA  
Director

(Sgd.) KANAPATHIPILLAI SHANMUGALINGAM  
Director

**ENJOINING ORDER**

-----  
IN THE DISTRICT COURT OF COLOMBO  
-----

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

PLAINTIFF

No. 3231/Spl

- Vs -

HOTEL DEVELOPERS (LANKA) LIMITED, formerly  
known as LANKA JAPAN HOTELS LIMITED, and  
of No. 16, Alfred Place, Colombo 3.

DEFENDANT

TO :

THE DEFENDANT ABOVE NAMED

WHEREAS the Plaintiff abovenamed has made an application for an Interim Injunction as prayed for in prayer (d) of the Plaint dated 11th January 1991, a copy of which is annexed hereto together with the Copies of the Affidavit of the Plaintiff dated 11th January 1991 and documents marked 'P1' to 'P26' filed with the Plaint.

AND WHEREAS this matter coming up before P. WIJAYARATNE, ESQUIRE, District Judge of Colombo on 15 day of January 1991, in the presence of Mr. P. Navaratnarajah, Q.C. with Mr. P. Naguleswaran, Attorney-at-Law and Mr. A.A.M. Illiyas, Attorney-at-Law, instructed by Messrs De Silva & Perera, Attorneys-at-Law on the part of the Plaintiff and having considered the said Plaint, Affidavit and Documents marked 'P1' to 'P26' and heard Counsel in support, an Enjoining Order has been granted to the Plaintiff in terms of the said prayers (d) of the Plaint against you, the Defendant Company.

ACCORDINGLY IT IS NOW ORDERED AND THIS COURT DOETH HEREBY ORDER that YOU the DEFENDANT COMPANY is hereby enjoined and restrained by yourself and by your directors, shareholders, servants and agents or whomsoever on behalf of your Company from :

Tabling and adopting the said Accounts for the Year Ended 31st March, 1990 with Note 19 at Page 14 to the said Accounts, at the Adjourned Annual General Meeting on the 17th January 1991 or at any Meeting thereafter Until the Plaintiff's said application for Interim Injunctions is finally determined

YOU ARE HEREBY REQUIRED TO OBEY THIS ORDER AND ACT ACCORDINGLY.  
HENCE FAIL NOT UNDER THE PENALTY OF THE LAW THENCE ENSUING.

(Copies of the Complaint, Affidavit aforesaid and Documents marked 'P1' to P'26' are annexed hereto).



GIVEN UNDER my hand on this 18<sup>th</sup> day of January 1991.



*[Handwritten signature]*  
DISTRICT JUDGE, COLOMBO

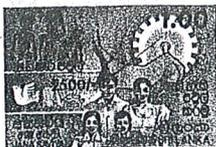
Prepared by us :

*[Handwritten signature]*  
Attorneys-at-law for Plaintiff.

*[Handwritten notes: S/S 915727, 91.01.15]*

ඉහත පදනමේ වගකීම්, කොළඹ දිසා අධිකරණයේ අංක 3231/එස්.පී.එල්. නඩුවේ වාරණ නියෝගයේ (ඉංග්‍රීසි) සහ පිටපතක් බව මෙහිින් සහතික කරමි.

*[Handwritten signature]*  
රෙජිස්ට්‍රාර්.



IN THE DISTRICT COURT OF COLOMBO

---

Nihal Sri Amerasekera of  
No.167/4, Sri Vipulasena Mawatha,  
Colombo 10.

PLAINTIFF

---

No:3231/Spl

Vs.

Hotel Developers (Lanka) Limited,  
formerly known as Lanka Japan  
Hotels Limited, and of No.16  
Alfred Place, Colombo 3.

DEFENDANT

---

AND

In the matter of an Application  
for addition of Parties under  
Section 18 of the Civil Procedure  
Code.

BETWEEN

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

PLAINTIFF-PETITIONER

---

AND

1. Hotel Developers (Lanka) Ltd,  
formerly known as Lanka Japan  
Hotels Limited and of No.16  
Alfred Place, Colombo 3 and  
presently of 1000, Echelon  
Square, Colombo 1.

DEFENDANT-RESPONDENT

---

2. Gamini Christopher Bernard  
Wijeyesinghe of 8A, Gregory's  
Road, Colombo 7.
3. Rajanayagam Nalliah Asirwatham,  
of 27/1, Unity Place, Colombo 3

(2)

4. Anthony Nirmal Fernando,  
of 10/2, Gower Street, Colombo 5.
5. Ranjeevan Seevaratnam,  
of 17, Rheinland Place,  
Colombo 3.
6. Sarayanapavan Sirikananathan,  
of 7, Ramakrishna Road,  
Colombo 6.
7. Mohamed Reyaz Mihular of  
7, St Kilda's Lane, Colombo 3.
8. (Ms) Marie Premila Senewiratne  
of 102/5, Cotta Road, Colombo 8.
9. Pathiranage Yohan Srineth Perera  
of 251, Kewalapitiya Road,  
Hendala, Wattala.
10. Chandranath Priyanka Jayatilaka,  
of 15, Park Avenue, Colombo 8 and

All of whom are carrying on business  
in partnership under the name, style  
and firm of FORD, RHODES THORNTON &  
CO. at 32A, Sir Mohamed Macan Markar  
Mawatha, Colombo 3.

RESPONDENTS

I RAJANAYAGAM NALLIAH ASIRWATHAM of 27/1, Unity Place,  
Colombo 3 being a Christian do hereby make oath and state as  
follows:-

1. I am a Partner of Messrs Ford Rhodes Thornton & Co. and  
the 3rd Respondent in the above case. I speak to the facts here-  
inafter set forth from my personal knowledge and from knowledge  
acquired from the documents and records of the said Company in  
my possession and at my disposal.

2. I deny all and singular the averments contained in the

(3)

Petition save and except those which are expressly admitted herein.

3. I admit the averments contained in paragraphs 1(a), (b), (c) and (d) of the Petition. Answering paragraph 1(e) of the Petition I state that I am unaware of the details in the pleadings and/or as to the exact enjoining order issued in this action and state that as auditors the 2nd and 4th to 10th Respondents and I have duly audited the accounts of the Company and issued the necessary endorsements (details contained in the pleadings of this action).

4. I am unaware of the details contained in the pleadings of this action and thus I am also unaware of the averments contained in paragraphs 2, 3, 4, 5, 6, 7, 8, 9, and 10 of the Petition.

5. Answering paragraph 11 of the Petition, I state that Ford Rhodes Thornton & Company:-

- (a) were invited to be present at several Board meetings of the 1st Respondent Company and consequent upon such invitation were present at the said meetings at which the Plaintiff as Director was also present;
- (b) received certain letters and/or memos from the Plaintiff; and
- (c) took necessary action and/or action that need be taken on the said letters.

(4)

(4).

6. Subject to the aforesaid, I deny the averments contained in paragraphs 12, 13 and 14 of the Petition.

7. I expressly deny that the 2nd and 4th to 10th Respondents and I are necessary parties to this action.

8. I state that this application has been made mala fide and for extraneous purposes.

Signed and Sworn to by )  
the declarant abovenamed )  
✓ at Colombo on this 24 )  
day of March 1994. )

*R. Arivatham*

Before me

*H.P.M. Mendis*

Justice of the Peace.

HERBERT P. M. MENDIS  
Justice of the Peace  
Colombo District  
175/8, Sri Gnanendra Mawatha  
NAWALA, RAJAGIRIYA

Mc/