

**IN THE SUPREME COURT OF THE  
DEMOCRATIC SOCIALIST REPUBLIC OF SRI LANKA**

*In the matter of an Application under Article 126,  
read with Articles 17, 3, 4, 105 and Chapters III and  
VI of the Constitution of the Democratic Socialist  
Republic of Sri Lanka, together with an Application  
under Article 132, read with Articles 118 and 123 of  
the Constitution*

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

**Petitioner**

**SC FR Application No. 534/2011**

**Vs**

1. Hon. Attorney General, as representing the  
Minister of Finance, Mahinda Rajapakse,  
in terms of Article 35 of the Constitution  
Attorney General's Department  
Colombo 12.
2. Basil Rajapaksa, M.P.  
Minister of Economic Development  
Ministry of Economic Development  
No. 464 A, T.B. Jayah Mawatha  
Colombo 10.
3. P.B. Jayasundera  
Secretary, Ministry of Finance &  
Secretary to the Treasury and Secretary Ministry of  
Economic Development  
The Secretariat  
Colombo 1.
4. G.L. Peiris, M.P.  
Minister of External Affairs  
Ministry of External Affairs  
Republic Building  
Colombo 7.
5. C.R. de Silva, P.C.  
Former Hon. Attorney General  
C 83, Gregory's Avenue  
Colombo 7.
6. Mohan Peiris, P.C.  
Former Hon. Attorney General,  
and now Advisor to the Cabinet of Ministers  
3/14 D, Kynsey Road  
Colombo 8.

7. Rauf Hakeem, M.P.  
Minister of Justice  
Superior Courts Complex  
Colombo 12.
8. Suhada Gamalath  
Secretary, Minister of Justice  
Superior Courts Complex  
Colombo 12.
9. Chamal Rajapaksa, M.P.  
Hon. Speaker of the Parliament  
Sri Jayewardenepura  
Kotte.
10. Hon. Attorney General,  
in terms of Article 134 of the Constitution  
Attorney General's Department  
Colombo 12.

**Respondents**

**TO: HER LADYSHIP THE CHIEF JUSTICE AND THEIR LORDSHIPS AND LADYSHIPS THE OTHER HONOURABLE JUSTICES OF THE SUPREME COURT OF THE DEMOCRATIC SOCIALIST REPUBLIC OF SRI LANKA**

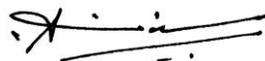
**WHEREAS** when I supported my Application dated 14.11.2011 before Your Ladyship's Court on 25.11.2011, Your Ladyship's Court granted me permission to file an Amended Petition, in the circumstances of the original Petition having been formulated in the belief that the Bill referred to therein had not become law, and that prior to making submissions on 25.11.2011, I had come to know that the Bill had become law.

**NOW THEREFORE** I tender herewith my Amended Petition, formulated accordingly, supported by my Affidavit, together with Documents marked "X1" to "X39", also adapting relevant averments from my other Petitions, which were annexed to the original Petition and from Notes tendered to Court on 25.11.2011, setting out the facts in a manner for the easy examination by Your Ladyship's Court.

**AND RESPECTFULLY MOVE** that I be permitted to support this Application on 24<sup>th</sup> or 25<sup>th</sup> or 26<sup>th</sup> January 2012

As directed by Your Ladyship's Court copies of my Amended Petition, Affidavit and marked Documents are being tendered to the Registrar of Your Ladyship's Court for the issuance of Notices on the Respondents.

On this 16<sup>th</sup> day of December 2011



Petitioner

**AMENDED PETITION**

**IN THE SUPREME COURT OF THE  
DEMOCRATIC SOCIALIST REPUBLIC OF SRI LANKA**

*In the matter of an Application under Article 126,  
read with Articles 17, 3, 4, 105 and Chapters III and  
VI of the Constitution of the Democratic Socialist  
Republic of Sri Lanka, together with an Application  
under Article 132, read with Articles 118 and 123 of  
the Constitution*

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

**Petitioner**

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Minister of Finance, Mahinda Rajapakse,  
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2. Basil Rajapaksa, M.P.  
Minister of Economic Development  
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3. P.B. Jayasundera  
Secretary, Ministry of Finance &  
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Hon. Speaker of the Parliament  
Sri Jayewardenepura  
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10. Hon. Attorney General,  
in terms of Article 134 of the Constitution  
Attorney General's Department  
Colombo 12.

**Respondents**

**TO: HER LADYSHIP THE CHIEF JUSTICE AND THEIR LORDSHIPS AND LADYSHIPS THE OTHER HONOURABLE JUSTICES OF THE SUPREME COURT OF THE DEMOCRATIC SOCIALIST REPUBLIC OF SRI LANKA**

On this 16<sup>th</sup> day of December 2011

The **Amended Petition** of the **Petitioner** above-named, appearing in person, states as follows:

1. The Petitioner is -

- a) a citizen of the Democratic Socialist Republic of Sri Lanka (hereinafter sometimes referred to as the "country")

*A true photostat copy of the National Identity Card of the Petitioner is annexed marked "XI", pleaded as part and parcel hereof.*

- b) a Member of the
  - Institute of Chartered Accountants, Sri Lanka,
  - Chartered Institute of Management Accountants, UK.
  - Institute of Certified Management Accountants, Australia
  - Association of Certified Fraud Examiners, USA
  - International Consortium on Governmental Financial Management
  - International Association of Anti-Corruption Authorities

- c) a Consultant exposed to both the private and public sectors
- d) a public interest activist, who has appeared in person and made submissions before Your Ladyships' Court, in Fundamental Rights Applications filed in the national and public interest, and likewise in Bill Challenges under Article 121 of the Constitution and a Reference made under Article 129 of the Constitution, viz;
- SC (SD) Nos. 22 & 23/2003 – challenges to Amendments to the 'Recovery of Loans by Banks (Special Provisions) Act No. 4 of 1990', and 'Debt Recovery (Special provisions) Act No. 2 of 1990', resulting in the said Amendments being struck down by Your Ladyships' Court, *inter-alia*, as **'harsh, oppressive and unconscionable'**, **denying equality guaranteed under Article 12(1) and also denying the right of access to the judiciary in contravention of Article 105(1) of the Constitution.**
  - SC Opinion No. 1/2004 – on Inland Revenue (Special Provisions) (Amendment) Acts Nos. 10 & 31 of 2003, *inter-alia*, as a consequence Your Ladyships' Court opined the said Laws, as **'inimical to the rule of law, violative of the 'Universal Declaration of Human Rights and International Covenant on Civil & Political Rights', and that it had defrauded public revenue, causing extensive loss to the State.'**
  - SC (FR) Application No. 158/2007 *re* – the privatisation of Sri Lanka Insurance Corporation Ltd., **annulled** by Your Lordships' Court, as **'wrongful, unlawful and illegal'**
  - SC (FR) Application No. 209/2007 *re* – the privatisation of Lanka Marine Services Ltd., **annulled** by Your Lordships' Court, as **'wrongful, unlawful, illegal and fraudulent'**
  - SC (SD) No. 3 of 2008 – challenge to the Appropriation Bill 2008, and which was **determined by Your Ladyships' Court to be inconsistent with the Constitution, directing that Rs. 738 Bn., debt service payments which had not been disclosed in the total expenditure of Rs. 980 Bn., be disclosed giving a separate Schedule to the Appropriation Bill; and further observing that the Secretary to the Treasury had been operating a 'budget of his own' expending 'Development Activities' monies for items of expenditure 'far removed' from 'Development Activities', resulting in Your Ladyships' Court directing that such expenditures be reported to Parliament deemed as Supplementary allocations.**

**Article 151 of the Constitution stipulates thus:**

- “ 151. (1) Notwithstanding any of the provisions of Article 149, Parliament may by law create a Contingencies Fund for the purpose of providing for urgent and unforeseen expenditure. Special provisions as to Bills affecting public revenue. Auditor-General.
- (2) The Minister in charge of the subject of Finance, if satisfied-
- (a) that there is need for any such expenditure, and
  - (b) that no provision for such expenditure exists, may, with the consent of the President, authorize provision to be made therefor by an advance from the Contingencies Fund.
- (3) As soon as possible after every such advance, a Supplementary Estimate shall be presented to Parliament for the purpose of replacing the amount so advanced.”

2.
  - a) 1<sup>st</sup> Respondent is the Hon. Attorney General, named in terms of Article 35 of the Constitution, as representing the Minister of Finance.
  - b) 2<sup>nd</sup> Respondent is the Minister of Economic Development.
  - c) 3<sup>rd</sup> Respondent
    - i) is the Secretary, Ministry of Finance & Secretary to the Treasury and Secretary, Ministry of Economic Development,
    - ii) was former Deputy Secretary to the Treasury
    - iii) was former Chairman of the Public Enterprises Reform Commission (PERC), responsible for several privatisation transactions carried out, including those annulled by Your Ladyships' Court in SC (FR) Application Nos. 158/2007 and 209/2007 referred to above.
  - d) 4<sup>th</sup> Respondent is the Minister of External Affairs, and former Minister of Justice & Deputy Minister of Finance.
  - e) 5<sup>th</sup> Respondent is a former Attorney General.
  - f) 6<sup>th</sup> Respondent is a former Attorney General, and now Advisor to the Cabinet of Ministers.
  - g) 7<sup>th</sup> Respondent is the Minister of Justice.
  - h) 8<sup>th</sup> Respondent is the Secretary, Minister of Justice.
  - i) 9<sup>th</sup> Respondent is the Hon. Speaker of Parliament.
  - j) 10<sup>th</sup> Respondent is the Hon. Attorney General, noticed in terms of Article 134 of the Constitution.
3.
  - a) Articles 53, 61 and 107 stipulate that selected public officers referred to therein **shall not enter upon such public office**, until the oath or affirmation set out in the Fourth Schedule to the Constitution *to uphold and defend the Constitution*, is subscribed to.
  - b) Article 63 stipulates that **no member shall sit or vote in Parliament**, until the oath or affirmation *to uphold and defend the Constitution*, is subscribed to.
  - c) In such context, the breach of such oath or affirmation by a person, who has on the foregoing premise **entered upon selected or elected public office**, *would render such person to have abdicated or vacated such public office*.
4. The Petitioner files this Application
  - a) for Your Ladyship the Chief Justice to consider, as to whether the questions involved are of general and public importance, warranting the matter to be heard by a Bench comprising 5 or more Judges of Your Ladyship's Court to review and consider, as to whether the **Determination ("X6(a)")** made by Your Ladyship's Court under Article 123 of the Constitution on an Application made under Article 122(1) of the Constitution, on an Urgent Bill titled –
 

"An Act to provide for the vesting in the Government identified Underperforming Enterprises and Underutilized Assets",

is *per-incuriam*, and **not in conformity with** and/or *ultra-vires* the stipulations in Article 123(3) of the Constitution.

- b) for himself and for and on behalf of and in the interest of the people of the country, exercising constitutional rights to oppose the *alienation* of the *sovereignty* of the people, which is *inalienable*, to secure and advance the fundamental rights of the people guaranteed by the Constitution, and to uphold and defend the Constitution, as a fundamental duty in terms of Article 28(a) of the Constitution, which *inter-alia* stipulates that the exercise and enjoyment of rights and freedoms, is *inseparable* from the performance of fundamental duties and obligations.
- c) as a Shareholder / Stakeholder of Hotel Developers (Lanka) PLC, described as the only 'Underperforming Enterprise' under Schedule 1 to the Bill titled

**“Revival of Underperforming Enterprises & Under-utilised Assets” (“X6(b)”) dated 8.11.2011 and tabled in Parliament on 8.11.2011,**

**together with Supreme Court Determination (“X6(a)”) on a Bill titled "An Act to provide for the vesting in the Government identified Underperforming Enterprises and Underutilized Assets", also tabled in Parliament on 8.11.2011.**

The aforesaid Bill with 15 Committee Stage Amendments, has been passed by Parliament on 9.11.2011, and certified into Law by the Speaker, 9<sup>th</sup> Respondent, expeditiously on 11.11.2011 and therefore the said Bill is hereinafter referred to as the ‘Law’.

5. The Petitioner states that

- a) the 2<sup>nd</sup> Respondent, Minister of Economic Development, as portrayed in the *media* and as per the proceedings in Parliament had espoused the enactment of the said Law, and is causing the implementation of the provisions thereof.
- b) the 7<sup>th</sup> Respondent, Minister of Justice, with the Departments of the Attorney General and Legal Draftsman, and the Sri Lanka Law Commission *coming under his purview*, would be responsible to ensure that due and proper procedure is adhered to in the enactment of legislation, without the *usurpation* of any duties and functions under such Departments, and/or *sans* the *subversion* of such process.
- c) i) the 7<sup>th</sup> Respondent, Secretary, Minister of Justice, with the Departments of the Attorney General and Legal Draftsman, and the Sri Lanka Law Commission *coming under his supervision ad direction*, would be responsible to ensure that due and proper procedure is adhered to in the enactment of legislation, without the *usurpation* of any duties and functions under such Departments, and/or *sans* the *subversion* of such process.
- ii) *As revealed* by the Determination (“X6(a)”) of your Ladyship’s Court there have been 13 *drafting errors* to be corrected in the Bill.
- iii) the 7<sup>th</sup> Respondent, Secretary, Minister of Justice, when queried by the Petitioner, made the Petitioner understand that he was *unaware*, as to how and by whom the said Law came to be enacted.

6. a) The Petitioner states that

- i) he is not against the policy and objective of the Government, that privatized public enterprises must be held responsible and accountable to achieve the objectives of such privatizations; and

- ii) lawful action ought be taken for any breaches thereof, including, *vis-à-vis*, any perverseness of privatisations, which have been detrimental to public interest and/or has caused losses to the people.
- b) In this regard, as PERC Chairman in 2004, the Petitioner initiated a 'review' of all privatizations carried out from 1986 to 2004, and identified to the extent possible, the 'post-privatization issues' and 'post-privatization litigations', as borne out by the PERC Annual Report 2004, submitted to Parliament. ***Nevertheless, PERC was closed thereafter in or about 2008.***

*True copy of the relevant pages of the PERC Annual Report 2004 submitted to Parliament is annexed marked X2, pleaded as part and parcel hereof*

- c) In fact, it is such investigations into the privatizations of SLIC and LMSL, which led to the adverse COPE Reports thereon in 2007, resulting in SC (FR) Application Nos. 158/2007 and 209/2007, wherein Your Ladyships' Court *annulled* these privatization as *wrongful, unlawful, illegal and fraudulent*, **after inter-partes Hearings.**
- d) Whereas '**certain**' institutions **have been arbitrarily** and **unilaterally listed** *sans* any evaluation and/or investigative evidence, *inter-alia*, as failed privatisations / transactions, 'Underutilised Assets' and/or 'Underperforming Enterprises', *violating norms of natural justice*, and the right to have been heard and denying equality enshrined under Article 12(1) of the Constitution, and denying access to the judiciary in terms of Article 105(1) of the Constitution.
- e) Such *arbitrary* and *unilateral listing* of '**certain**' institutions not founded on and far removed from '**intelligible differentia**' and without a proper evaluation process and/or survey **would have left out other similar institutions**, *thereby infringing upon the right to equality enshrined in the Constitution.*
- f) But those persons, who had perpetrated such privatisations and/or transactions and had failed to monitor their performance to protect the public interest had not been arraigned before the law and/or been dealt with, but permitted to continue to hold public office and/or be given further State Contracts.
- g) The very process aforesaid tantamounted to the *alienation* of the *sovereignty* of the people, which is *inalienable* as morefully set out herein.
- h) **Article 17 of the United Nations Universal Declaration of Human Rights, which entered into force in 1948, and to which Sri Lanka is a party, stipulates as follows:**

**"Article 17 (1)**

- (1) **Everyone has the right to own property alone as well as in association with others**
- (2) **No one shall be arbitrarily deprived of his property** "

**The aforesaid Article 17 has been blatantly and flagrantly breached.**

- 7. Petitioner having noted reference to certain parts only of the Directive Principles in Chapter VI of the Constitution, both in the aforesaid Bill and the aforesaid Determination, sets out below the Directive Principles of State Policy and Fundamental Duties in full, **respectfully stating that the entirety thereof ought be taken into reckoning**: (*Emphasis added*)

### Directive Principles of State Policy

- "27. (1) **The Directive Principles of State policy herein contained shall guide Parliament, the President and the Cabinet of Ministers in the enactment of laws and the governance of Sri Lanka for the establishment of a just and free society.**
- (2) **The State is pledged to establish in Sri Lanka a democratic socialist society, the objectives of which include-**
- (a) **the full realization of the fundamental rights and freedoms of all persons;**
  - (b) **the promotion of the welfare of the People by securing and protecting as effectively as it may, a social order in which justice (social, economic and political) shall guide all the institutions of the national life;**
  - (c) the realization by all citizens of an adequate standard of living for themselves and their families, including adequate food, clothing and housing, the continuous improvement of living conditions and the full enjoyment of leisure and social and cultural opportunities;
  - (d) **the rapid development of the whole country by means of public and private economic activity and by laws prescribing such planning and controls as may be expedient for directing and co-ordinating such public and private economic activity towards social objectives and the public weal;**
  - (e) the equitable distribution among all citizens of the material resources of the community and the social product, so as best to subserve the common good;
  - (f) **the establishment of a just social order in which the means of production, distribution and exchange are not concentrated and centralised in the State, State agencies or in the hands of a privileged few, but are dispersed among, and owned by, all the People of Sri Lanka;**
  - (g) raising the moral and cultural standards of the People, and ensuring the full development of human personality; and
  - (h) the complete eradication of illiteracy and the assurance to all persons of the right to universal and equal access to education at all levels.
- (3) The State shall safeguard the independence, sovereignty, unity and the territorial integrity of Sri Lanka.
- (4) **The State shall strengthen and broaden the democratic structure of government and the democratic rights of the People by decentralising the administration and by affording all possible opportunities to the People to participate at every level in national life and in government.**
- (5) The State shall strengthen national unity by promoting co-operation and mutual confidence among all sections of the People of Sri Lanka, including the racial, religious, linguistic and other groups, and shall take effective steps in the fields of teaching, education and information in order to eliminate discrimination and prejudice.

- (6) **The State shall ensure equality of opportunity to citizens, so that no citizen shall suffer any disability on the ground of race, religion, language, caste, sex, political opinion or occupation.**
- (7) The State shall eliminate economic and social privilege and disparity, and the exploitation of man by man or by the State.
- (8) The State shall ensure that the operation of the economic system does not result in the concentration of wealth and the means of production to the common detriment.
- (9) The State shall ensure social security and welfare.
- (10) The State shall assist the development of the cultures and the languages of the People.
- (11) The State shall create the necessary economic and social environment to enable people of all religious faiths to make a reality of their religious principles.
- (12) The State shall recognize and protect the family as the basic unit of society.
- (13) The State shall promote with special care the interests of children and youth, so as to ensure their full development, physical, mental, moral, religious and social, and to protect them from exploitation and discrimination.
- (14) The State shall protect, preserve and improve the environment for the benefit of the community.
- (15) **The State shall promote international peace, security and co-operation, and the establishment of a just and equitable international economic and social order, and shall endeavour to foster respect for international law and treaty obligations in dealings among nations.**

#### Fundamental Duties

- "28. **The exercise and enjoyment of rights and freedoms is inseparable from the performance of duties and obligations, and accordingly it is the duty of every person in Sri Lanka-**
- (a) **to uphold and defend the Constitution and the law;**
  - (b) to further the national interest and to foster national unity;
  - (c) to work conscientiously in his chosen occupation;
  - (d) **to preserve and protect public property, and to combat misuse and waste of public property;**
  - (e) **to respect the rights and freedoms of others;** and
  - (f) to protect nature and conserve its riches."

#### Principles of State Policy and Fundamental Duties *not justiciable*

- "29. **The provisions of this Chapter do not confer or impose legal rights or obligations, and are not enforceable in any court or tribunal. No question of inconsistency with such provisions shall be raised in any court or tribunal.**"

8. The Petitioner relies on the following ‘*dicta*’ cited from the Judgment dated 3.8.2009 delivered in SC (FR) Application No. 352/2007 by His Lordship the former Chief Justice J.A.N. De Silva, with Her Ladyship Justice Shiranee Tilakawardene and His Lordship Justice K. Sripavan agreeing. (*Emphasis added*)

“As is made amply clear by subsection (4) of Article 126, inherent to the effective supervision of matters pertaining to Fundamental Rights is the ability and power of the Supreme Court to administer relief and make directions **so long as such relief and directions are “just and equitable”** - a simple and unqualified two-word threshold clearly meant **to give the broad discretion and power required of the Supreme Court to effectively address the infinitely myriad ways in which fundamental rights can be violated.**

It is important to recognize, then, that the **Supreme Court's broad powers over matters of Fundamental Rights stem, not from an overzealous interpretation of judicial power, but from an understanding of the very nature of these matters for which the Court has been empowered to protect.**

Fundamental Rights applications are **qualitatively different** from other types of appeals heard before this Court and **warrant greater latitude in their consideration** and to grant redress in order **to encompass the equitable jurisdiction** exercised in these applications.”

9. A 7 Member Bench of Your Ladyships’ Court, presided by His Lordship then Chief Justice, Sarath N. Silva, and His Lordship former Chief Justice J.A.N. De Silva, and Your Ladyship the Chief Justice Shirani Bandaranayake, and Their Lordships Justices S.W.B. Wadugodapitiya, A. Ismail, P. Edussuriya and H.S. Yapa, on the aborted 18<sup>th</sup> and 19<sup>th</sup> Amendments to the Constitution, *inter-alia*, determined in October 2002, as follows: (*Emphasis added*)

- **“If there is one principle which runs through the entire fabric of the Constitution, it is the principle of the Rule of Law and under the Constitution, it is the judiciary which is entrusted with the task of keeping every organ of the State within the limits of the law and thereby making the Rule of Law meaningful and effective - (Cited from Indian Judgment)”**
- **“It had been firmly stated in several judgments of this Court that ‘rule of law’ is the basis of our Constitution”.**
- **“A.V. Dicey in Law of the Constitution postulates that ‘rule of law’ which forms a fundamental principle of the Constitution has three meanings one of which is described as follows:-**  

**‘It means, in the first place, the absolute supremacy or predominance of regular law as opposed to the influence of arbitrary power, and excludes the existence of arbitrariness or prerogative, or even of wide discretionary authority on the part of the government. Englishmen are ruled by the law, and by the law alone ....’**
- **“The Constitution does not attribute any unfettered discretion or authority to any organ or body established under the Constitution”**
- **“We have to give effect to this provision according to the solemn declaration made in terms of the Fourth Schedule to the Constitution to “uphold and defend the Constitution”**”

10. The Petitioner reiterates

- a) Articles 3 and 4 of the Constitution of the country enshrining that the **sovereignty is in the people**, and is ***inalienable*** and that the ***sovereignty*** of the people shall be exercised by the
- legislative power **of the people**,
  - executive power **of the people**, and
  - the judicial power **of the people**

- b) Article 4(d) mandates that fundamental rights shall be respected, secured and advanced by **all organs of Government** i.e. legislature, executive and judiciary, (i.e. *including all those who had taken an Oath to uphold and defend the Constitution*), and **shall not be abridged, restricted or denied, except as provided for in Article 14 of the Constitution.**
- c) The interpretation of the foregoing Articles 3 and 4 of the Constitution had been comprehensively dealt with in the Determinations made in October 2002 by the aforesaid 7 Judge Bench of Your Ladyships' Court, on the aborted 18<sup>th</sup> and 19<sup>th</sup> Amendments to the Constitution, and the following further *extracts* are cited therefrom: (*Emphasis added*)
- "Therefore, shorn of all flourishes of Constitutional Law and of political theory, on a plain interpretation of the relevant Articles of the Constitution, it could be stated that **any power that is attributed by the Constitution to one organ of government cannot be transferred to another organ of government or relinquished or removed from that organ of government; and any such transfer, relinquishment or removal would be an "alienation" of sovereignty which is inconsistent with Article 3 read together with Article 4 of the Constitution**".
  - "It necessarily follows that the balance that had been struck between the three organs of government in relation to the **power that is attributed to each such organ, has to be preserved if the Constitution itself is to be sustained**"
  - "**The transfer of a power which attributed by the Constitution to one organ of government to another; or the relinquishment or removal of such power, would be an alienation of sovereignty inconsistent with Article 3 read with Article 4 of the Constitution**"
  - "**The power that constitutes a check, attributed to one organ of government in relation to another, has to be seen at all times and exercised, where necessary, in trust for the People.** This is not a novel concept. The basic premise of Public Law is that power is held in trust. From the perspective of Administrative Law in England, the 'trust' that is implicit in the conferment of power has been stated as follows:

**'Statutory power conferred for public purposes is conferred as it were upon trust, not absolutely – that is to say, it can validly be used only in the right and proper way with Parliament when conferring it is presumed to have intended' – (Administrative Law 8<sup>th</sup> Ed. 2000 – H.W.R. Wade and C.F. Forsyth p, 356) ` "**

11. Attention of Your Ladyships' Court is very respectfully drawn to the following:

- a) **It is the judiciary which is entrusted with the task of keeping every organ of the State within the limits of the law, and thereby making the 'rule of law', the very basis of the Constitution, meaningful and effective**
- b) **Thus its stands to logical reason, that the judiciary, itself, must in the first instance, strictly operate within the limits of the law, upholding the 'rule of law'.**
- c) The Constitution does not attribute any ***unfettered* discretion or authority** to any organ or body established under the Constitution.
- d) The foregoing would apply with equal force to the **Cabinet of Ministers**, a body established under the Constitution, and also to public functionaries, **including the Respondents.**

*True copies of the Determinations on the aborted 19<sup>th</sup> & 18<sup>th</sup> Amendments to the Constitution made in October 2002 by a 7 Judge Bench of Your Ladyships Court are annexed marked "X3(a)" and "X3(b)", pleaded as part and parcel hereof*

12. a) The Petitioner in 2003, as a citizen, was denied being heard in a challenge to an *all-encompassing* amnesty granted by Inland Revenue (Special Provisions) Act No. 10 of 2003, since he had not filed his challenge, *within the narrow period of 7 days stipulated in Article 121 of the Constitution*, during which period the Bill was not available to the public, whereby it was *impossible* to have been so challenged.
- b) Subsequently the Petitioner, *within the stipulated period of 7 days*, challenged under and in terms of Article 121 of the Constitution, the Inland Revenue (Special Provisions) (Amendment) Bill gazetted on 11.7.2003, which sought to **re-enact** the same provisions of the Inland Revenue (Special provisions Act No. 10 of 2003, to be applicable for a further period of time and for a another group of people. A 3 Judge Bench of Your Ladyships' Court in SC (SD) Nos. 20 & 21/2003 made the Determination on 7.8.2003, *assisted by the Attorney General, who supported such position*, that **none of the provisions of the Bill were inconsistent with any provisions of the Constitution.**
- c) Subsequently, before the said Bill became Law, the Petitioner made an Application for a review and re-examination by a Fuller Bench of Your Ladyships' Court, and the said Application was referred to Their Lordships the 3 Judges, who delivered the aforesaid Determination, who had minuted the view that ***'no useful purpose would be served in a further hearing'***.
- d) Consequently, the Petitioner persuaded President Chandrika Bandaranaike Kumaratunga to refer the said Law under Article 129 of the Constitution, for an Opinion of Your Ladyships' Court.

At a public hearing thereon, *the Petitioner appearing in person made extensive submissions*. Consequently, the foregoing Determination by the 3 Judge Bench, *that none of the provisions of the Bill were inconsistent with the Constitution* **was completely overturned**, with a 5 Judge Bench of Your Ladyships' Court, presided by His Lordship then Chief Justice Sarath N. Silva and comprising His Lordship former Chief Justice J.A..N. De Silva, and Your Ladyship, Chief Justice Shirani A Bandaranayake, and Their Lordships Justices H.S. Yapa, and Nihal Jayasinghe, pronounced the provisions of the said Act , *inter-alia*, (*Emphasis added*)

- to be **'inimical to the rule of law'**, and
  - to have **'violated the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights'**, and
  - in terms of which **'amnesties had been granted to those who had contravened laws, and thereby defrauded public revenue causing extensive loss to the State'**.
- e) On the wave of public opinion on the foregoing, the People's Alliance having won the General Election of April 2004, promptly presented a Bill to repeal the obnoxious features of the foregoing perverse Law. A 3 Judge Bench of Your Ladyships' Court in SC (SD) No. 26 of 2004, *assisted by the Attorney General, who took a diametrically opposite stance to what was taken before*, endorsed the aforesaid castigations made by the 5 Judge Bench.

*True copies of the Opinion dated 17.3.2004 in SC Reference No. 1/2004 pronounced by the 5 Judge Bench of Your Ladyships Court, Determination dated 7.8.2003 in SC (SD) Nos. 20 & 21/2003 by a 3 Judge Bench of Your Ladyships' Court, and Determination dated 23.8.2004 in SC (SD) No. 26 of 2004 by 3 Judge Bench of Your Ladyships' Court are annexed marked "X4(a)", "X4(b)" and "X4(c)", pleaded as part and parcel hereof*

13. In SC (SD) Nos. 22 & 23 of 2003 challenging the Amendments to the 'Recovery of Loans by Banks (Special Provisions) Act No. 4 of 1990', and 'Debt Recovery (Special provisions) Act No. 2 of 1990', in which the Petitioner appeared in person and made submissions, a 5-Judge Bench of Your Ladyships' Court, presided by His Lordship then Chief Justice Sarath N. Silva, and comprising His Lordship former Chief Justice J.A.N. de Silva and Their Lordships Justices P. Edussuriya, H.S. Yapa, and T.B. Weerasuriya, *inter-alia*, giving reference to the *dicta* in the several Judgments of the Indian Supreme Court, determined, *inter-alia*, that -

- “the principle therefore is that the **Court will strike down harsh, oppressive and unconscionable law prescribing a procedure other than the ordinary procedure**” – H.M. Seervai ‘Constitutional Law of India’ 4<sup>th</sup> Edition – Vol 1, Page 532 (*Emphasis added*)
- the said Amendments had '**denied the right to equality enshrined in Article 12(1) of the Constitution**' and had '**denied the right to access the judiciary in terms of Article 105(1) of the Constitution**'.

*True copies of Determinations made in SC (SD) 22 & 23 of 2003 by a 5 Judge Bench of Your Ladyship's Court are annexed marked “X5(a)” and “X5(b)”, pleaded as part and parcel hereof*

14. a) The exercise of the constitutional right by a citizen to be heard by Your Ladyships' Court cannot be *deprived* by a *side wind* by merely arbitrarily '**rubber stamping**' a Bill, as an 'Urgent Bill', by the Cabinet of Ministers, **who do not have unfettered powers**.
- b) The foregoing had consciously, intentionally and deliberately *alienated* the *sovereignty* of the people in the exercise of the **judicial power of the people**, and precluding Your Ladyships' Court from hearing the people in the enactment of laws, as provided for in the Constitution; and further **denying natural justice to parties affected denying them their right to have been heard**.
- c) The procedure in terms of Article 122 of the Constitution is *solely* for an urgent *exception* and not the rule, and hence such *intriguingly* questionable and *hasty* procedure, had been caused to be adopted, thereby intentionally keeping the people, whose *sovereignty* is *inalienable*, in the dark, and thereby *precluding* the people from being heard by Your Ladyships' Court, in making the aforesaid Determination, exercising the judicial power of the people, and of *none other*.
- d) The stipulations in Article 123(3) of the Constitution govern a Determination by Your Ladyship's Court on a Bill referred to Your Ladyship's Court under Article 122, as an 'Urgent Bill'.
- e) The foregoing gives rise to the *cogent question*, as to whether there was *apprehension* that the Determination of Your Ladyships' Court would have been otherwise, had the people and/or affected parties had been heard, **as was amply demonstrated by**
- i) **SC Reference 1/2004** referred to aforesaid; and **more particularly by**
  - ii) **the recent Determination in SC (SD) No. 3/2011 by Your Ladyships' Court on the Bill titled 'Town & Country Planning (Amendment)'** referred to at paragraph 17 hereinafter, wherein the people and/or affected parties had been given the opportunity to be heard, since the said Bill had been gazetted in terms of Article 78(1) of the Constitution, **as a normal Bill**, and not as an 'Urgent Bill', *whereby such opportunity is denied*.

15. a) The foregoing procedure of an ‘Urgent Bill’ *deprived and denied* the Petitioner and the people of the country and/or the affected parties, their constitutional right to have been heard by Your Ladyships’ Court on such matter of national and public importance, thereby *alienating* their sovereignty, which is *inalienable* and *alienating* their constitutional rights, and infringing upon their fundamental rights; and denied them the constitutional right in terms of Article 105 of the Constitution to access the judiciary, *obnoxiously denying natural justice to the affected parties of their right to have been heard.*
- b) The Petitioner was able to obtain copies only on 9.11.2011 of the Bill “**Revival of Underperforming Enterprises and Under-utilised Assets**” and the aforesaid Determination by a 3-Judge Bench of Your Ladyships’ Court on a Bill titled “**An Act to provide for the vesting in the Government identified Underperforming Enterprises and Underutilized Assets**”, *inasmuch as both Documents had been tabled by the Speaker, 9<sup>th</sup> Respondent in Parliament only on the previous day 8.11.2011, and it was only thereafter the said two Documents were available to the public.*
- c) Hence, it was an **impossibility** for any citizen, including the Petitioner, to have appeared in Your Ladyships’ Court to have intervened to be heard, inasmuch as the Bill was not publicly available until it was tabled in Parliament on **8.11.2011**, whereas Your Ladyships’ Court had already had an Hearing on **24.10.2011**, *with the Bill being available secretly only a coterie of a few.*

*True copies of the Determination on the Bill titled "An Act to provide for the vesting in the Government identified Underperforming Enterprises and Underutilized Assets", and the Bill titled “Revival of Underperforming Enterprises & Under-utilised Assets” both tabled in Parliament on 8.11.2011 are annexed respectively marked “X6(a)” and “X6(b)”, pleaded as part and parcel hereof*

16. a) The Petitioner most respectfully submits that Your Ladyship the Chief Justice’s following Minute made on 22.11.2011 in respect of the Petitioner’s Application SC (SD) No. 2/2011 filed on 17.11.2011, with His Lordship Justice P.A. Ratnayake and Her Ladyship Chandra Ekanayake agreeing, *viz:*

“The Determination by this Court was with regard to the Bill and any party that had wanted to intervene should have done so at the time, it was taken before the Supreme Court.”

was **per-incuriam**

- b) When a Bill is referred to Your Ladyships’ Court, as an Urgent Bill, under Article 122(1) of the Constitution, such Bill is not gazetted in terms of Article 78(1) of the Constitution, and the aforesaid Bill was not gazetted under Article 78(1) of the Constitution at least 7 days before it was placed on the Order Paper of Parliament. The Bill itself bears the date **8.11.2011** and was passed by Parliament on **9.11.2011**.
- c) With utmost respect the Petitioner submits that Your Ladyships’ Court had been under the mistaken belief, that the Bill was publicly available *for anyone to have intervened*, **when it was not the case.**
- d) Hence, it was an **impossibility** for the Petitioner or any other citizen to have intervened to have been heard by Your Ladyships’ Court, as per the facts set out in paragraph 16(a) hereinbelow.

- e) *If ‘any party could have intervened’, then as amply evidenced by the several Petitions filed subsequently in Your Ladyships’ Court, and the several Letters addressed by certain affected parties published in the media, **then such parties most certainly would have intervened in Your Ladyships’ Court.***
- f) At the said Hearing, Your Ladyships’ Court had been assisted only by the Deputy Solicitor General, representing the Attorney General.
17. a) The *haste* and *secrecy* in which this Bill had been processed to be enacted into law is revealed by the following;
- i) Certified by the Cabinet of Ministers, as an Urgent Bill under Article 122(1) of the Constitution on **Wednesday, 19.10.2011** (*Cabinet Meeting generally are held late evenings*) and referred to Your Ladyship’s Court
  - ii) As per the Minutes of the Record in Your Ladyship’s Court the said ‘Urgent Bill’ had been received on **Friday, 21.10.2011.**
  - iii) Hearing by Your Ladyship’s Court on the matter of the said ‘Urgent Bill’ had been had on **Monday, 24.10.2011** assisted only by the Attorney General.
  - iv) The aforesaid Hearing numbered SC (SD) 2/2011 *had not been listed* in the list of Cases published in the *media* to be heard by Your Ladyship’s Court on Monday, 24.10.2011.
- True copies of the Reports in the Daily News and Daily Mirror of Monday 24.10.2011 are annexed marked together as “X7” pleaded as part and parcel hereof*
- v) Even if the matter had been listed, the public would not know that the said specific ‘Urgent Bill’ was being heard into by Your Ladyship’s Court, and the provisions thereof unknown to the public.
  - vi) Speaker, 9<sup>th</sup> Respondent, tabled in Parliament the aforesaid Determination SC (SD) No. 2/2011 only on **8.11.2011**
  - vii) Speaker 9<sup>th</sup> Respondent, tabled in Parliament the aforesaid Bill only on **8.11.2011**
  - viii) On the basis of the aforesaid Determination in SC (SD) No. 2/2011, the Bill, with 15 Committee Stage Amendments, was passed by Parliament on **9.11.2011,**
  - ix) Speaker, 9<sup>th</sup> Respondent had certified the Bill into law on **11.11.2011,** (*just two days after the Bill with 15 Committee Stage Amendments, was passed by the Parliament on 9.11.2011*)
  - x) Speaker, 9<sup>th</sup> Respondent’s aforesaid certification had been announced to Parliament only on **22.11.2011,** as per Hansard Column 203 of that date.
- b) The Petitioner had assisted in formulating and processing the enactment of Bills into law, interacting with the Departments of the Attorney General and Legal Draftsman. Two such instances were the enactment of the Companies Act No. 7 of 2007 and the Inland Revenue (Regulation of Amnesty) Act No. 10 of 2004.

- c) The Inland Revenue (Regulation of Amnesty) Act No. 10 of 2004 on a matter of national and public importance had been processed as follows:
- i) Certified by the Cabinet of Ministers, as an Urgent Bill under Article 122(1) of the Constitution on **16.8.2004** and referred to Your Ladyships' Court
  - ii) Hearing thereinto was had by Your Ladyships' Court on **23.8.2004** assisted only by the Attorney General.
  - iii) Bill was presented to Parliament on **7.9.2004**
  - iv) Parliament debated and with 14 Committee Stage Amendments passed the Bill on **22.9.2004**
  - v) Bill was certified into law by the Speaker on **20.10.2004**
18. a) Recently a Bill titled – “**Town & Country Planning (Amendment)**” was gazetted on 14.10.2011 in terms of Article 78(1) of the Constitution, as a normal Bill and placed on the Order Paper of Parliament on 8.11.2011.
- b) This enabled citizens to intervene and make submissions at the Hearing before Your Ladyships' Court on 21.11.2011.
- c) Your Ladyships' Court in SC (SD) No. 3/2011 Determined that the Bill was *inconsistent* with the Constitution, and further determined that, as the Bill had been placed in the Order Paper of Parliament, without compliance with provisions of Article 154(G)(3) of the Constitution, that no Determination would be made on the other grounds of challenge, which Determination communicated to the Speaker, 9<sup>th</sup> Respondent on 2.12.2011, had been tabled in Parliament on the next day 3.12.2011.
- d) In the aforesaid Determination in SC (SD) No. 3/2011, Your Ladyship's Court in respect of the subject of Land specifically, *inter-alia*, determined as follows: (*Emphasis added*)
- “There was no submissions made by the Learned Deputy Solicitor General to the effect that the Bill under reference has been referred by His Excellency the President to the Provincial Councils, as stipulated in Article 154(G)(3) of the Constitution.**
- Since such procedure has not been complied with, we make a Determination in terms of Article 120, read with Article 123, of the Constitution that Bill in question is in respect of a matter set out in the Provincial Council List and shall not become law unless it had been referred by His Excellency the President to every Provincial Council as required by Article 154(G)(3) of the Constitution.
- As the Bill has been placed in the Order Paper of Parliament without compliance with provisions of Article 154(G)(3) of the Constitution no Determination would be made at this stage on the other grounds of challenge, which were referred to earlier.”**
- A true copy of the aforesaid Determination in SC (SD) No. 3/2011 is annexed marked “X8(a)”, pleaded as part and parcel hereof*
- e) As a consequence the Bill withdrawn by the Government announcing same in Parliament, as was reported in the media.

- f) In SC (FR) Application No. 209/2007 Your Ladyship's Court delivered Judgment on 21.7.2008 analysing clearly on pages 46 to 50 thereof the constitutional mandate under Article 154 of the Constitution in respect of the alienation or disposition of State Land within a Province specifically holding that –

**“alienation or disposition of State Land within a Province shall be done in terms of the applicable law only on the advice of the Provincial Council.”**

*A true copy of the relevant pages from the a certified copy of the aforesaid Judgment is annexed marked “X8(b)”, pleaded as part and parcel hereof*

19. a) The statements made that in view of ‘national interest’ of protecting public property, that the Bill was *secretively* and *expeditiously* enacted into Law, even denying the right of the people and/or affected parties to have been heard thereon, is a *puerile hollow argument*, in that, the Law as in the instance of a winding-up of a company, could have provided, that any *alienation* of property, within a certain past period of time would be null, void and fraudulent, even providing penal provisions, if such *alienation* had taken place.
- b) The Fundamental Duties stipulated in Article 28(d) of the Constitution to preserve and protect public property and to combat misuse and waste of public property had been articulated, but this could not be mere *pontification* or a *selective* process; *all being equal before the law*.
- c) Whereas, there are several instances Your Ladyship's Court had *annulled* and *reversed* major transactions of the pillage and plunder of public property, such as in the cases of SLIC SC (FR) Application No. Case 158/2007, LMSL SC (FR) Application No. 209/2007 and Water's Edge SC (FR) Application No. 352/2007, **after inter-partes inquiries in conformity with norms of natural justice.**
20. a) Nevertheless, **contrary to such pontification** *vis-à-vis*, action to protect public property **no actions, whatsoever, have been taken, as was warranted**, under and in terms of the Offences Against Public Property Act No. 12 of 1982 against the *miscreants*.
- b) In SC (FR) Applications Nos. 404 & 481/2009 filed by the Petitioner on the *controversial* Hedging deals by Ceylon Petroleum Corporation, it was assertedly admitted by the Attorney General that the said transactions were *ultra-vires* and *illegal*, **nevertheless no action, as warranted, had been taken against those who were responsible and accountable**, *unlike in the instance of poor villagers, who are arraigned before Courts of Law for betting and gambling*.
- c) i) Offences Against Public Property Act No. 12 of 1982 is a very potent law, but regrettably not enforced. Offences Against Public Property Act No. 12 of 1982, stipulates that any person, whether public servant **or otherwise**, is liable for the following Offences:
1. Mischief to public property.
  2. Theft of public property
  3. Robbery of public property
  4. Misappropriation or criminal breach of trust of public property
  5. Cheating, forgery or falsification in relation to public property
  6. Attempting to commit any one of the above offences
- ii) Punishment for any one of the above Offences is a fine of 3 times (i.e. 300%) the value of the public property in respect of which such offence was committed and imprisonment not exceeding 20 years.

- iii) “Public property” is defined in the said Act No. 12 of 1982 thus – “ *‘Public property’ means the property of the Government, any department, statutory board, public corporation, bank, co-operative society or co-operate union.* ”
  - d) The ‘rule of law’ not having been enforced against the *miscreants*, the Petitioner also cites Section 214 of the Penal Code;
 

“214. Whoever, being a public servant, knowingly disobeys any direction of the law as to the way in which he is to conduct himself as such public servant, intending thereby to save, or knowing it to be likely that he will thereby save, any person from legal punishment or subject him to a less punishment than that to which he is liable, or with intent to save, or knowing that he is likely thereby to save, any property from forfeiture or any charge to which it is liable by law, shall be punished with imprisonment of either description for a term which may extend to two years, or with fine, or with both.”
  - e) *On the contrary*, persons who ought to have been arraigned before the law, have been appointed to further public office, *making a mockery of the rule of law*.
  - f) *On the contrary*, those who had been involved, not only have not been arraigned before the law, but have been given further valuable State Contracts, *making a mockery of the rule of law*.
21. a) In the context of the fundamental duties relied upon, the Petitioner refers to his CA (Writ) Application No. 1661/2003 filed seeking to have the provisions of the Inland Revenue Acts enforced for the due and proper revenue administration and the enforcement of the ‘rule of law’.
- b) Then Attorney General, K.C. Kamalabayson, P.C., readily agreeing, a settlement was suggested in the Court of Appeal on 10.10.2005.
- c) Subsequently, settlement terms were finalised for the due and proper enforcement of certain specific provisions in the Inland Revenue Acts mandating the Commissioner General of Inland Revenue to report to the

Controller of Exchange or  
Director General, Customs or  
the Attorney General,

where he suspects from information available instances of violations of the respective laws enforced by the Controller of Exchange or Director General, Customs or the Attorney General in the instance of any suspicion of bribery.

- d) The terms of settlement for reasons set out in the Settlement Motion had been finalised for quite sometime, but as set out in the Schedule annexed the case has been mentioned for well over the last 5 years for settlement.
- e) Letters addressed by the Petitioner’s Attorneys-at-Law to former Attorney Generals, C.R. de Silva, P.C., 5<sup>th</sup> Respondent and Mohan Peiris, P.C., 6<sup>th</sup> Respondent had been of no avail, demonstrating that fundamental duties are in the breach.

*True copies of the finalised Settlement Motion, with Schedule setting out the number of dates the matter has been mentioned in the Court of Appeal from 2005 to 2011, together with 2 Letters dated 2.4.2008 and 11.2.2011 respectively addressed to the former Attorney Generals, C.R. de Silva, P.C., 5<sup>th</sup> Respondent and Mohan Peiris, P.C., 6<sup>th</sup> Respondent are annexed compendiously marked (“X9”), pleaded as part and parcel hereof*

22. a) In terms of Article 82(3) of the Constitution it is the *onus* of the Speaker, 9<sup>th</sup> Respondent, to ensure that Bills presented to Parliament are in conformity with Articles 82(1) and 82(2) of the Constitution, **prior to Bills being placed on the Order Paper of Parliament and/or proceeded with.**

"82. (1) No Bill for the amendment of any provision of the Constitution shall be placed on the Order Paper of Parliament, unless the provision to be repealed, altered or added, and consequential amendments, if any, are expressly specified in the Bill and is described in the long title thereof as being an Act for the amendment of the Constitution.

(2) No Bill for the repeal of the Constitution shall be placed on the Order Paper of Parliament unless the Bill contains provisions replacing the Constitution and is described in the long title thereof as being an Act for the repeal and replacement of the Constitution.

(3) **If in the opinion of the Speaker, a Bill does not comply with the requirements of paragraph (1) or paragraph (2) of this Article, he shall direct that such Bill be not proceeded with unless it is amended so as to comply with those requirements."**

(4) Notwithstanding anything in the preceding provisions of this Article, it shall be lawful for a Bill which complies with the requirements of paragraph (1) or paragraph (2) of this Article to be amended by Parliament provided that the Bill as so amended shall comply with those requirements.

(5) A Bill for the amendment of any provision of the Constitution or for the repeal and replacement of the Constitution, shall become law if the number of votes cast in favour thereof amounts to not less than two-thirds of the whole number of Members (including those not present) and upon a certificate by the President or the Speaker, as the case may be, being endorsed thereon in accordance with the provisions of Article 80 or 79.

(6) **No provision in any law shall, or shall be deemed to, amend, repeal or replace the Constitution or any provision thereof, or be so interpreted or construed, unless enacted in accordance with the requirements of the preceding provisions of this Article.**

- b) **Speaker, 9<sup>th</sup> Respondent also stands mandatorily bounden in duty, in upholding and defending the Constitution, to ensure that fundamental rights shall be respected, secured and advanced and shall not be breached, restricted or denied, as enshrined in Article 4(d) of the Constitution.**

- c) Determination made by Your Ladyships' Court in SC (SD) No. 3/2011 referred to at paragraph 17 hereinbefore gives rise to the question, as to whether such act of placing the Bill under reference in the Order Paper of Parliament was without due consideration, as warranted, under the Constitution.

- d) In the instant Case, the Petitioner by Letter dated 8.11.2011 (*faxed and hand delivered*) had delivered on 8.11.2011 before the debate in Parliament on the aforesaid Bill (“**X6(b)**”) on 9.11.2011, putting the Speaker, 9<sup>th</sup> Respondent, on notice of the constitutional limitations, particularly give reference to the aforesaid two Determinations made in October 2002 by a 7 Judge Bench of Your Ladyships’ Court.

*True copy of the Petitioner’s Letter dated 8.11.2011 addressed to the Speaker is annexed hereto marked “X10”, pleaded as part and parcel hereof*

- e) Article 84 of the Constitution deals with Bills inconsistent with the Constitution as follows:

“ 84. (1) A Bill which is not for the amendment of any provision of the Constitution or for the repeal and replacement of the Constitution, but which is inconsistent with any provision of the Constitution may be placed on the Order Paper of Parliament without complying with the requirements of paragraph (1) or paragraph (2) of Article 82.

(2) Where the Cabinet of Ministers has certified that a Bill is intended to be passed by the special majority required by this Article or where the Supreme Court has determined that a Bill requires to be passed by such special majority, such Bill shall become law only if the number of votes cast in favour thereof amounts to not less than two-thirds of the whole number of Members (including those not present) and a certificate by the President or the Speaker, as the case may be, is endorsed thereon in accordance with the provisions of Article 80 or 79.

(3) **Such a Bill when enacted into law, shall not, and shall not be deemed to, amend, repeal or replace the Constitution or any provision thereof, and shall not be so interpreted or construed, and may thereafter be repealed by a majority of the votes of the Members present and voting.”**

- f) The fact that **judicial power was being exercised** to adjudicate upon a Winding-up Application filed 5 years ago by the Petitioner to wind-up Hotel Developers (Lanka) PLC, itemised under Schedule 1 to the Law, as the only ‘Underperforming Enterprise’, *inter-alia*, had been brought to the attention of the Speaker, 9<sup>th</sup> Respondent, by Member of Parliament, M.A. Sumanthiran, Attorney-at-Law, as per Hansard Column 1055 of 9.11.2011, and as a Member of Parliament stating that this Bill, as an ‘Urgent Bill’, had been hurriedly and secretly dealt with, as borne out in Hansard Column 1056.

"There was a Ruling given by the Hon. Speaker with regard to the rule of *sub judice*, citing a previous Ruling by one of his predecessors, the Hon. M.H. Mohamed, in which he says it is possible for somebody, merely to stall the debate in this House, to file a plaint the previous day. That is true. There has been a plaint filed, even in this case, yesterday. But, I am not talking about what was filed yesterday; I am talking about what was filed five years ago. What is pertinent to the matter under discussion is that what was filed five years ago is a matter of winding up of a company on the basis that the company has failed. So, if the task of judicial determination has been given to the Judiciary and if we respect the rule, if we respect the separation of powers in our Constitution, then this House ought not to take this up and pronounce upon a matter that is entirely within the competence of the court.

Sir, I would also urge you to look at the definitions of underutilized assets and an underperforming enterprise. These have been designed, these have been tailored to suit what later appears in the Schedule. That is why I said this is an *ad hominem* legislation. In previous instances, Sir, you will be aware that even the Privy Council has ruled out as bad, any legislation that was recognized to be *ad hominem* and *ad hoc*. This is a classic example of what an *ad hominem* legislation is because it even spells out by name, the enterprises that are said to have underutilized the assets and the enterprises that are underperforming. It is outside the competence of the Legislature to pass laws like this. Now, one might cite the Determination given by the Supreme Court hurriedly when the matter was referred as an urgent Bill. I do not want to talk about the decision to refer it as an urgent Bill. The less said of that, the better. I do not think anybody can argue and justify this matter being referred as an urgent Bill. The only argument that can be put forward is that it is a matter for the Cabinet. Yes, we know it is a matter for the Cabinet but the Cabinet has abused that power in referring this matter as an urgent Bill to the Supreme Court. When one reads this Determination, one is said for the Supreme Court; for what the Supreme Court has been reduced to, at how they have pronounced upon this Bill without any material whatsoever placed before them. How can the Supreme Court like this Legislature, rule on whether a particular enterprise is underperforming or not without examining the accounts of that enterprise, without examining other material? In one hearing, at which only the Attorney-General appears and is said to have assisted it, the Court has come to a ruling that 37 enterprises have, in fact, underutilized assets and one of them is an underperforming enterprise. It is a sad indictment on the highest court of the land. I am saddened by the fact that I am also an officer of that Court and have been prevented from assisting it in the determination of this because it was an urgent Bill and hurriedly and secretly taken up for hearing. "

*True copies of Hansard Columns 1055 and 1056 are annexed together marked "XII", pleaded as part and parcel hereof*

- g) The Speaker, 9<sup>th</sup> Respondent had failed and neglected to make a ruling on the material fact that judicial power was being exercised by the judiciary adjudicating upon the Application filed by the Petitioner 5 years back on 17.11.2006 to wind-up Hotel Developers (Lanka) PLC.
- h) M.A. Sumanthiran, Attorney-at-Law had appeared for a Petitioner in Your Ladyships' Court in SC (SD) No. 3/2011 referred to at paragraph 17 hereinbefore, where Your Ladyship's Court Determined that the Bill referred to therein was inconsistent with the Constitution.

23. a) Article 77 (1) of the Constitution stipulates that –

"It is the duty of the Attorney-General to examine every Bill for any contravention of the requirements of paragraphs (1) and (2) of Article 82 and for any provision which cannot be validly passed except by the special majority prescribed by the Constitution; ..."

- b) The Bar Association Law Journal Vol. 1 Part IV 1984 on the Centenary of the Attorney-General in Sri Lanka 1884 - 1984, *inter-alia*, had stated as follows:

**"In civil proceedings also, the Attorney General's function is to assist the Court to reach the correct decision and not to endeavour to somehow obtain a judgment in favour of the State. When appropriate, it is his duty to promote conciliation of disputes between government department and citizens if that would meet the ends of justice.**

In advising the government, he has to form his opinion after considering the legal principles as well as the practical effect of his advice. This does not mean that his advice should besides being correct be somehow favourable to the government. Thus where any question in respect of which his advice is sought has arisen out of political, controversy or has political overtones, his opinion should be objective and fair to the parties affected. No doubt he must have due regard to the desire of any government to realise its legitimate aspirations and the political problems ministers have to contend with. However, it is his duty to advise the government to act within the law in implementing its policies.”

- c) Article 134 of the Constitution mandates that the Attorney General be noticed and be heard in the Supreme Court in the exercise of its jurisdiction under Articles 120, 121, 122, 125, 126, 129(1) and 131 of the Constitution, presumably as *amicus curiae*.
  - d) It is respectfully submitted that an issue arises, as to whether the Attorney General could **play a role of duality** in such instances ?
  - e) In SC (FR) Applications Nos. 158 & 209/2007 wherein the Supreme Court *annulled* the privatizations of SLIC & LMSL as wrongful, unlawful, illegal and fraudulent, the Attorney General, having been noticed as constitutionally mandated as aforesaid, appeared for the *miscreants* and opposed the said Applications, whilst in the instant matter, the Attorney General, had made submissions ironically to support the impugned Law targeting alleged wrongful privatisations / transactions and parties, who had been denied the right of being heard, as mandated by natural justice !
  - f) In SC (FR) Applications Nos. 404/ & 481/2009 the Attorney General, opposed the Petitioner’s Applications on the *ultra-vires* and *illegal* purported Oil Hedging Deals, and consequently the Petitioner understands that the State has incurred costs of around Rs. 300 Mn., in foreign legal costs, air travel, etc. The Current Expenditure Budgets for 2012 for Judges of the Superior Courts is Rs. 146.5 Mn., (2009 - Rs. 46.5 Mn.) and for the Attorney General’s Department Rs. 371.7 Mn. (2009 - Rs. 380.9 Mn.)
24. a) Article 80(3) of the Constitution stipulates thus:
- “80(3) Where a Bill becomes law upon the certificate of the President or the Speaker, as the case may be, being endorsed thereon, no court or tribunal shall inquire into, pronounce upon or in any manner calling question, the validity of such Act on any ground whatsoever”
- b) The Petitioner very respectfully submits that the foregoing Article 80(3) of the Constitution does not preclude or *ousts* the jurisdiction for Your Ladyships’ Court to correct a *per-incuriam* Determination of Your Ladyships’ Court, should it be deemed to be the case.
25. a) Article 123(3) of the Constitution stipulates thus: (*Emphasis added*)
- “123.(3) In the case of a Bill endorsed as provided in Article 122, **if the Supreme Court entertains a doubt whether the Bill or any provision thereof is inconsistent with the Constitution, it shall be deemed to have been determined that the Bill or such provision of the Bill is inconsistent with the Constitution,** and the Supreme Court shall comply with the provisions of paragraphs (1) and (2) of this Article.”

- b) Article 123(3) is specifically in relation to Bills endorsed as ‘Urgent Bills’ by the Cabinet of Ministers as per Article 122 of the Constitution.
  - c) Hence, whilst providing for an emergency / urgency, the Constitution has stipulated a check put in place, that **if the Supreme Court entertains a doubt** whether the Bill or any provision thereof is inconsistent with the Constitution, that **it shall be deemed to have been determined that the Bill or such provisions of the Bill is inconsistent with the Constitution.**
  - d) It is most respectfully submitted that **the threshold therefore is the question or whether there is in fact any ‘doubt’** when considering an Urgent Bill submitted under Article 122 of the Constitution.
  - e) The Petitioner with utmost respect submits that the Determination by Your Ladyship’s Court marked (“X6(a)”) is *per-incuriam* and not in conformity with and/or is *ultra-vires* the stipulations in Article 123(3) of the Constitution.
  - f) Specific submissions in respect of the foregoing, with reference to Determination marked (“X6(a)”) would be made by the Petitioner at the time of supporting this Application before Your Ladyship’s Court.
26. a) Notwithstanding Article 80(3), Article 129 of the Constitution confers jurisdiction of Your Ladyships’ Court to even express an opinion on a Law if the President refers the same to Your Ladyships’ Court, when a question of law or fact has arisen or is likely to arise, which is of such nature and/or such public importance, that it is expedient to obtain the opinion of Your Ladyships’ Court.
- b) The Petitioner respectfully states that like in the aforesaid instance of the perverse Inland Revenue (Special Provisions) Act Nos. 10 and 31 of 2003, which were referred to Your Ladyships’ Court by the President under Article 129 of the Constitution this Law too having given rise to questions of law and fact of public importance warrant such reference by the President for the exercise of the judicial power of the people, if the sovereignty of the people which is *inalienable*, is to be

## **HOTEL DEVELOPERS (LANKA) PLC (HDL)**

### **The only ‘Underperforming Enterprise’ itemised under Schedule 1 to the Law**

27. a) In the context of HDL, the owning Company of Hilton Hotel, having been categorized, **as the only ‘Underperforming Enterprise’ under Schedule 1 to the Law**, the Petitioner sets out hereinbelow in outline the salient facts pertaining to HDL, respectfully reserving the right to submit such facts more fully and comprehensively by way of an **Addendum** hereto, together with any further Documents, which may be necessary, to be read and construed, as a part and parcel hereof.
- b) “Underperforming Enterprise” has been defined in the Law

**‘as a Company or authority, institution or body established under any written law in which the Government owns Shares and where the Government has paid contingent liabilities of such Enterprise and the Government is engaged in protracted litigation with regard to such Enterprise, which is prejudicial to the national economy and public interest’.**

- c) *It is lucidly clear*, that the foregoing definition has been specifically constructed, solely and exclusively targeting HDL, without the warranted disclosure of the totality of the facts; with the Schedule 1 ‘Heading’ i.e. “Underperforming Enterprise” *defying* known interpretation of the English language !
  - d) HDL was and is a separate corporate entity. The Government's status was that of a Shareholder and Guarantor-Creditor.
  - e) **HDL continues to be a Company coming under the ambit of the Companies Act No. 7 of 2007, and is governed by the provisions of the said Act.**
28. a) Hilton Hotel Project was mooted in or about 1979 by C.L. Perera of Cornel & Co. Ltd., who signed on **31.1.1980** the Management Agreement with Hilton International for 752 Room Hotel.
- b) In July **1980** C.L. Perera got the Japanese Architects, Kanko Kikaku Sekkeisha Yozo Shibata & Associates (hereinafter sometimes referred to as ‘KKS’) to formulate the Project Plans for the Hilton Hotel, sited at the same Echelon Square location, the perspective of which is given below.



- c) Your Ladyship’s Court in SC Appeals Nos. 33 & 34/1992 in delivering Judgment in December 1992, relied on the aforesaid two Documents.
  - d) Special Presidential Commission, which commenced investigations in March 1995, also relied on the said two Documents.
29. a) Several endeavours were pursued to finalize a financial package between the years 1980 to 1983.
- b) A Preliminary Agreement was signed between Cornel & Co. Ltd., Mitsui & Co. Ltd., and Taisei Corporation (hereinafter sometimes referred to as ‘Mitsui & Taisei’) on 30.3.1983 for the development of the Hilton Hotel, subject to finalizing the financial package.
- c) A Company was incorporated on 15.3.1983 to be the owning Company, later named as HDL.
- d) The Project was approved by the then Foreign Investment Advisory Committee.

- 30.a) The Hilton Hotel Project was *propelled* into implementation by the Government, immediately after the ethnic riots of July 1983, to clear the tarnished international image of Sri Lanka, by securing the collaboration of Hilton International, an American Company, and Japanese Companies Mitsui & Taisei.
- b) For such purpose, as approved by the Cabinet the Government afforded Leases of 2 portions of Land at Echelon Square to the main promoter Cornel & Co. Ltd., and to raise the necessary funding, offered the issuance of State Guarantees to develop the Hilton Hotel, as a private sector project, with funding arranged by Mitsui & Taisei, through EXIM Bank of Japan.
- c) The financial package was finalised in agreement with the Ministry of Finance, represented by then Director General, Economic Affairs, S. Rajalingam and M.T.L. Fernando, Precedent Partner, Ernst & Young.
- d) The Government was assisted by then Attorney General and by a Japanese Law Firm, Hamada & Matsumoto *vis-à-vis* finalising of the Agreements.
- e) The salient facts were publicly disclosed in the Prospectus, which included a Report from the Auditors, Ford Rhodes Thornton & Co., Chartered Accountants.
31. a) The construction of the Hilton Hotel by Mitsui & Taisei was to be on a ‘*turn-key fixed price basis*’, as per Architectural Plans developed by Japanese Architects, KKS.
- b) Construction commenced in March 1984, and the Hilton Hotel opened for operation in July 1987, with the formal opening in September 1987, being graced by President J.R. Jayawardene and Prime Minister R. Premadasa, thereby endorsing the Government’s interest and support.
32. a) After the Hotel opened for operations, the Petitioner entertained certain *apprehensions* on the correctness of the construction of the Hilton Hotel, and having discovered adequate evidence of fraud, the Petitioner, as a Shareholder of HDL, instituted on 13.9.1990 a commercial litigation in the style of a derivative action in law, D.C. Colombo Case No. 3155/Spl, *on the premise of fraud on HDL and the Government, in the circumstances of the Board and the Government being indifferent*.
- b) District Court of Colombo promptly issued enjoining orders on 17.9.1990, and interim injunctions on 28.10.1991, restraining payments to Mitsui & Taisei and KKS by HDL and/or by the Government, as its Guarantor, in terms of the following prayers to the Petitioner’s Plaint.
- “(g) for an Interim Injunction restraining the said Mitsui/Taisei Consortium and the said Architects, the 1st, 2nd and 3rd Defendants respectively, by themselves their representatives, servants and agents or otherwise howsoever, from demanding, claiming, drawing, receiving and/or collecting any monies, whatsoever in any manner howsoever, under the said Contracts and Agreements, namely; the Construction Agreement, Supplies Contract, Design & Supervision Contract, Loan Agreement and the said two Guarantees referred to in the plaint, until the final determination of this action.”
- “(h) for an Interim Injunction restraining the 4th Defendant Company (i.e. HDL) by itself, its Directors, Servants and Agents or otherwise, howsoever, from entertaining any demand and/or claim from the 1st and/or the 2nd and/or the 3rd Defendants abovenamed in relation to the said claims and payments allegedly due to the 1st and/or the 2nd and/or the 3rd Defendants and/or paying any monies, whatsoever in any manner, howsoever, under the said Construction Agreement, Supplies Contract, Design & Supervision Contract and Loan Agreement referred to in the plaint until the final determination of this action.”

33. a) Notwithstanding the enjoining orders issued on 17.9.1990, and disregarding the Petitioner's objections, the Board and the Ministry of Finance, acting in concert with HDL's Auditors, Ford Rhodes Thornton & Co., Chartered Accountants, endeavoured to adopt in January 1991 the HDL Accounts for the year ended 31.3.1990, to cover-up the aforesaid fraud.
- b) This compelled the Petitioner to file another derivative action in law, D.C. Colombo Case No. 3231/Spl, and the District Court on 15.1.1991 enjoined the adoption of the said HDL Annual Accounts.
34. a) Sri Lanka's gross official foreign reserves as reported in the Central Bank Annual Reports stood at only US \$ 291.4 Mn., as at December 1989, whereas the Claims under the aforesaid State Guarantees as at March 1990 were equivalent to about US \$ 160 Mn.
- b) The restraining orders obtained by the Petitioner prevented the precipitation of an *international cross default* on country's foreign borrowings, *which assisted the Government*.
35. Subsequently in SC Appeals Nos. 33 & 34/1992 on 2.12.1992, Your Ladyship's Court delivered Judgment, upholding a strong *prima-facie* case of fraud as disclosed in D.C. Colombo Case No. 3155/Spl observing , *inter-alia*, that the Petitioner had real prospects of proving the fraud, and affirmed the interim injunctions issued by the District Court.
36. a) Even prior to the Judgment of Your Ladyships' Court of 2.12.1992, Mitsui & Taisei being unable to answer interrogatories served in March 1992, had required the Government to initiate a settlement with the Petitioner.
- b) Hence in April 1992, then Secretary, Ministry of Finance & Secretary to the Treasury, R. Paskaralingam and then Attorney General, Tilak Marapana, P.C., implored upon the Petitioner to have discussions to reach a settlement, in view of the importance of Japanese Aid to Sri Lanka at that time.
- c) Consequently several rounds of discussions were had by the Petitioner and his Counsel, with the then Attorney General, Tilak Marapana, P.C., with the participation of Secretary, Ministry of Finance & Secretary to the Treasury, R. Paskaralingam, with the attendance of Officers of the Attorney General's Department and Ministry of Finance.
- d) The foregoing led to then Attorney General formulating, and the Ministry of Finance forwarding, draft Settlement Agreements in June 1993 to Mitsui & Taisei and to the Petitioner, for consideration
- True copies of Letters dated 3.6.1993 and 21.6.1993 are annexed marked together as "X12", pleaded as part and parcel hereof*
37. a) The Petitioner's stance was to proceed with the litigation, having obtained an Order from the District Court for Mitsui & Taisei and HDL to answer interrogatories, since he was confident in proving the fraud, as had been observed by Your Ladyships' Court, in the aforesaid Judgment.
- b) The Petitioner suggested that in the meantime the construction of the 3<sup>rd</sup> Tower of Hotel Rooms be completed as had been provided for in the main Hotel construction, utilising monies accumulating in HDL, by reason of the interim injunctions, which had been obtained by the Petitioner.

- c) This would have increased the number of Hotel Rooms from 408 to 612, and enhanced the profitability and debt-service ability of HDL, and it is thereafter that a settlement with Mitsui & Taisei could have been negotiated in the context of unjust enrichment, with the balance unwritten-off Claims re-scheduled to be within such enhanced profitability and debt service ability of HDL.
38. a) However, Secretary, Ministry of Finance & Secretary to the Treasury, R. Paskaralingam and then Attorney General, Tilak Marapana, P.C., did not agree to the foregoing, and insisted upon an immediate settlement, *asserting the importance of the goodwill of the Japanese Government.*
- b) The Petitioner suggested a 40% write-off of Capital and write-off of all accrued Interest, and with a 4% p.a. Interest on the unwritten-off balance Claims of Mitsui & Taisei, to be re-scheduled within the debt-service ability of HDL

*True copies of two Notes dated 5.9.1992 submitted by the Petitioner at the aforesaid discussions is annexed together marked "X13", pleaded as part and parcel hereof*

- c) Nevertheless, R. Paskaralingam, Secretary Ministry of Finance & Secretary to the Treasury and then Attorney General, Tilak Marapana, P.C., *stressing that the Japanese Government was the biggest aid donor to Sri Lanka*, prevailed upon the Petitioner to accept the offer by Mitsui & Taisei to write-off 30% of Capital, and all accrued Interest and a rate of Interest of 5.9% p.a. for the re-scheduled unwritten-off balance; *agreeing to indemnify the Petitioner from any consequences arising therefrom.*
39. In such circumstances, the Petitioner at the very outset insisted on further financial re-structuring of HDL, as borne out by the Note dated 4.1.1993 sent by the Ministry of Finance to the Attorney General's Department for the formulation of the Settlement Agreements.

*True copy of one of the Finance Ministry Notes sent to the Attorney General's Department of a Memorandum of Agreement between the Government, Mitsui, Taisei and HDL is annexed marked "(X14)", pleaded as part and parcel hereof*

**MEMORANDUM OF AGREEMENT BETWEEN GOVERNMENT, MITSUI  
AND TAISEI, AND HDL.**

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1. Govt., Mitsui and Taisei and HDL agree that funds required to build a 3rd Tower of Hotel Rooms would be raised from a Rights - issue, at an appropriate premium, if considered feasible, in the then prevalent share market.
2. In the event of such a Rights Issue as foresaid, Mitsui/Taisei agree to convert that portion of their Capital Debt in to equity shares, to subscribe to them portion of such Rights - Issue, that would be applicable to their present shareholding thereafter Mitsui/Taisei would be free to dispose of such shares in the share market and repatriate such funds.
3. GOSL agrees to support such Rights - Issue and assist in its functions
4. Mitsui and Taisei agree to extend all co-operation and assistance for the construction of the 3rd Tower of Hotel Rooms, as provided for in the original planning and referred to in the Prospectus of HDL.

40. a) The Settlement did not get concluded in 1993 / 1994 since Mitsui & Taisei insisted on receiving Promissory Notes from the Government for the balance unwritten-off Claims, **instead of receiving Promissory Notes from HDL, who was the Debtor.** Petitioner resisted this.
- b) In 1993 / 1994 the Hilton Hotel litigations became a major issue on the Election Platform of the People's Alliance, and among other exposures, the December 1993 *Counterpoint Magazine* published an extensive analytical politically slanted exposure.

*True copy of the relevant pages of the Counterpoint Magazine is annexed marked "X15", pleaded as part and parcel hereof*

- c) The Speaker, 9<sup>th</sup> Respondent, as a then Member of Parliament, was one among many, who paid written tribute the Petitioner for his endeavours, *inter-alia*, stating that:

*"Nation's tribute should be paid to you for exposing for the knowledge of the public, the fraud in the construction of the Hilton Hotel and the fraudulent attempt to siphon out public monies from the country"*

*True copy of Letter dated 6.2.1992 from Chamal Rajapaksa, M.P. is annexed marked "X16", pleaded as part and parcel hereof*

- d) A desperate endeavour by President D.B. Wijetunga intervening with the Petitioner in June 1994 to have the settlement concluded before the General Elections of August 1994 proved futile.
41. a) Consequently in 1995 Mitsui & Taisei agreed to receive Promissory Notes for the balance unwritten-off Claims from HDL, and not from the Government.
- b) Accordingly, Settlement Agreements, *with improved financial terms for HDL and the Government*, than those in the 1993 draft Agreements, were finalised by the Solicitor General, Douglas Premaratne P.C., who obtained the consent therefor from the Special Presidential Commission inquiring into the matter of HDL, with copies thereof having been placed, through the Petitioner before the Commission, which was assisted by the Solicitor General.
- c) Settlement Agreements were executed on 28.6.1995, after approval from the HDL Board and the Cabinet.

*True copies of the Settlement Agreements are annexed compendiously marked "X17", pleaded as part and parcel hereof*

42. a) In accordance with the foregoing stance of the Petitioner, **for further re-structuring of HDL**, the following Conditions were contained in the Settlement Agreements.

- "HDL shall and will explore the feasibility of building the 3rd Tower of Hotel Rooms at the Hotel and consider financing the cost of same, through a Rights and/or a new Issue of its Shares or otherwise, as considered feasible, to enhance HDL's profitability and debt service ability, to enable the repayment of the said Loans to Mitsui and Taisei and/or to the Government as aforesaid."
- "HDL shall and will cause its profitability and cash flow projections required for the purpose of this Agreement and the said Agreement No. 1 to be formulated by Hilton International, the Managers of the Hotel and/or the Auditors of HDL."

- b) Secretary Ministry of Finance & Secretary to the Treasury A.S. Jayawardene after discussions had with the Petitioner and others addressed Letter dated 19.10.1994 to the Attorney General authorising the finalising of an early resolution with Mitsui & Taisei, subject to financial restructuring and debt re-scheduling of HDL, facilitating Loan repayments by HDL.

*A true copy of Letter dated 19.10.1994 is annexed marked "X18", pleaded as part and parcel hereof*

- c) The Settlement Agreements, *inter-alia*, also contained the following Conditions, *vis-à-vis*, the two Lands.

➤ "The Government shall and will,

(a) assist the UDA in taking steps to have the Echelon Square Land Leases pertaining to the Colombo Hilton Hotel, cancelled and/or terminated and given directly to HDL, including the balance portion of Land, containing the Sports Complex/Recreation Area, at present not underleased to HDL, for consideration to be settled by the allotment of Shares in HDL to the UDA"

➤ "HDL shall and will promptly obtain for itself directly from the UDA, the leasehold rights to the Echelon Square Lands pertaining to the Hotel, including the balance portion of Land containing the Sports Complex/Recreation Area at present not underleased to HDL, for consideration to be settled by the allotment of Shares in HDL to the UDA."

- d) Accordingly, on the advice of then, Attorney General, Sarath N. Silva, P.C., with the concurrence of President Chandrika Bandaranaike Kumaratunga, Secretary, Ministry of Finance & Secretary to the Treasury, B.C. Perera, caused the UDA to surrender the aforesaid Lands to be absolutely owned and vested in the Government, by the execution of Surrender of Special Grants Instrument Nos. 673 and 674 on 26.7.1999, in terms of the State Lands Ordinance.

*True copies of the Surrender of Special Grants Instruments Nos. 673 and 674 are annexed together marked "X19", pleaded as part and parcel hereof*

- e) Prior to pursuing the conclusion of such settlement the Petitioner reiterated that he could proceed with the litigations since he was confident in proving the fraud, which had been upheld by Your Ladyship's Court on 2.12.1992, also upholding the interim injunctions, and that as a consequence monies had accumulated and further monies would accumulate with HDL, enabling HDL to complete the construction of the planned 3<sup>rd</sup> Tower increasing the number of Hotel Rooms from 408 to 612, thereby enhancing the profitability and debt-service ability of HDL, and then negotiate with settle Mitsui & Taisei for what had been actually constructed.

43. a) By the Settlement Agreements, Mitsui & Taisei wrote-off Jap. Yen 17,586 Mn. (then equivalent to US \$ 207 Mn., i.e. SL Rs. 10,200 Mn.) on their stated Claims as at 30.6.1995 from HDL and the Government, as its Guarantor, which comprised 30% write-off of Capital and 10 Years' accrued Interest; amounting to a 63.3% write-off of their stated claims.

- b) **The aforesaid write-off obtained by the Petitioner by his sole sustained efforts over several years, amidst obstructions and pressures, amounting to Rs. 10,200 Mn., in June 1995, at 12% p. a. interest would today amount to over Rs. 73,500 Mn.**

- c) The Government has advanced to HDL Rs. 4,435,986,893 Mn., over the years 1997 to 2010, claiming together with compound interest thereon at varying rates given at paragraph 63 hereinbelow, at a simple average interest of **13% p. a**, amounting to a total of Rs. 12,098 Mn., as at 10.5.2011 and together with the 7 Acres of Land provided by the Government to HDL in the Colombo City valued at Rs. 10 Mn. per perch would amount to **Rs. 11,200 Mn.** Therefore in total the Government's contribution to HDL would be around **Rs. 23,298 Mn.**, as at today.
- d) Therefore, **the Petitioner well and truly stood and stands to be a greater Stakeholder of HDL than the Government.**
- e) Mitsui & Taisei agreed to re-schedule the unwritten-off balance Claims for a further period of 15-years up to 2010, with a *grace period of one year to further financially restructure HDL, (originally fully payable by 1999)* at a reduced rate of 5.25% p.a interest (*originally 6% p.a*),

*A true copy of the Note on the financial terms of Settlement tabled at the HDL Board Meeting on 28.6.1995 is annexed marked "X20", pleaded as part and parcel hereof*

- f) **The foregoing was immensely beneficial to HDL and the Government, as its Guarantor.**
- g) The crux and the main cornerstone of the Settlement Agreements was that the immense benefit, which was to be derived by HDL, and more importantly by the Government, as its Guarantor, as a consequence of the write-off of 30% of the Capital and all accrued Interests by Mitsui & Taisei and re-scheduling the balance unwritten-off Claims for a further period of 15 years, with a grace period of one year, were to accrue to the Government **and none other.**
44. a) After having chaired a Media Conference on **28.6.1995**, *pompously* applauding the Settlement and endeavouring to take credit therefor, **when he had played no role, whatsoever, in the finalisation of the Settlement**, Justice Minister & Deputy Minister of Finance, G.L. Peiris, 4<sup>th</sup> Respondent, having discovered a Condition, *which personally affected him*, **precipitating a perverse baseless controversy, unilaterally and arbitrarily** caused the Settlement Agreements to be suspended on **24.7.1995**

*True copies of Letters dated 24.7.1995 sent to Mitsui & Taisei by Secretary Ministry of Finance & Secretary to the Treasury, A.S. Jayawardene are annexed marked together "X21", pleaded as part and parcel hereof*

- b) The Condition which personally affected Justice Minister & Deputy Minister of Finance, G.L. Peiris, 4<sup>th</sup> Respondent was the following, since he had been a Member of the Securities & Exchange Commission of Sri Lanka at the relevant time:
- "The Government shall and will take appropriate independent actions on the conduct and actions of the Securities and Exchange Commission of Sri Lanka and/or Members of its Commission and the Colombo Stock Exchange and/or of its Directors, in relation to the representations made by Mr. Ameresekere to the said institutions on matters pertaining to HDL, which matters Mr. Ameresekere also reserves the right to pursue."
- c) Justice Minister & Deputy Minister of Finance, G.L. Peiris, 4<sup>th</sup> Respondent also made a baseless and false Statement in Parliament on 8.8.1995 *vide* Hansard Columns 704 – 707 (*4 Columns*) **but could not refute** the fallacy thereof exposed by a comprehensive Statement made on 15.12.1995 in Parliament by Rajitha Senaratne, M.P. *vide* Hansard Columns 2954 – 2965 (*12 Columns*).

*True copy of Hansard Columns 2954 – 2695 of 15.12.1995 is annexed marked together "X22", pleaded as part and parcel hereof*

- d) Acting in a vicious manner, Justice Minister & Deputy Minister of Finance, G.L. Peiris, 4<sup>th</sup> Respondent forced the resignation of Secretary Ministry of Finance & Secretary to the Treasury, A.S. Jayawardene, who was as a result appointed as Governor, Central Bank of Sri Lanka.
  - e) However, in complete contrast to the aforesaid conduct, Justice Minister & Deputy Minister of Finance, G.L. Peiris, 4<sup>th</sup> Respondent, now Minister of External Affairs, has been **significantly silent** on the conduct and actions of Secretary Ministry of Finance & Secretary to the Treasury P.B. Jayasundera, 3<sup>rd</sup> Respondent, whose conduct and actions had been castigated by Your Ladyship's Court in SC (FR) Nos. 209 and 158/2007 and in Reports to Parliament by the Committee on Public Enterprises and by the Auditor General.
45. a) Thereafter, with the oncoming Sri Lanka Aid-Group Meeting in November 1996, at which the Government expected the Japanese Government to pledge US \$ 245 Mn., as Aid, the Japanese Governmental Authorities exerted pressure on the Government, on the foregoing *unilateral* and *arbitrary* suspension of the Settlement Agreements, which had been signed, as had been finalized by the Attorney General.
- b) Petitioner once again *reiterated* that he could pursue with the litigation, since he was confident in proving the fraud, which had been upheld by the Supreme Court on 2.12.1992, also affirming the interim injunctions, and that as a consequence monies over US \$ 30 Mn., had accumulated with HDL by March 1996, and that further monies would accumulate with HDL, enabling HDL to complete the construction of the planned 3<sup>rd</sup> Tower, increasing the number of Hotel Rooms from 408 to 612, thereby enhancing the profitability and debt-service ability of HDL, and thereafter to negotiate and settle with Mitsui & Taisei for just and equitable basis.
46. a) Nevertheless in the given circumstances, President Chandrika Bandaranaike Kumaratunga, Attorney General, Sarath N. Silva P.C., Secretary Ministry of Finance & Secretary to the Treasury, B.C. Perera., and Deputy Secretary to the Treasury, P.B. Jayasundera, 3<sup>rd</sup> Respondent, *prevailed* upon the Petitioner to agree to immediately give effect to the Settlement Agreements signed in June 1995, **without the fulfillment of certain 'conditions precedents', which had been agreed to have been fulfilled, prior to the settlement and withdrawal of the Petitioner's litigations, which had prevented any payments, whatsoever, to Mitsui & Taisei.**
- b) In such circumstances, an Addendum was signed in October 1996 to the Settlement Agreements, by and between the Government, the Petitioner, Mitsui & Taisei, **only excluding** the aforesaid Condition, which affected Justice Minister & Deputy Minister of Finance, G.L. Peiris, 4<sup>th</sup> Respondent.

*True copy of the Addendum, with attachments thereto is annexed marked "X23", pleaded as part and parcel hereof*

- c) The Petitioner *acquiesced* to the foregoing at the behest of then Attorney General, Sarath N. Silva, P.C., Secretary, Ministry of Finance, B.C. Perera and Deputy Secretary to the Treasury P.B. Jayasundera, 3<sup>rd</sup> Respondent, *who intimated that this condition was an embarrassment to their own Minister !*

47. a) In deference to the requirement of the Government, to enable the payments to be made to Mitsui & Taisei, the Petitioner by the said Addendum, **acting in utmost good faith** agreed to convert certain ‘*conditions precedent*’ to ‘*conditions subsequent*’, which had to be performed prior to the withdrawal of the two derivative actions in law, D.C. Colombo Cases Nos. 3155/Spl and 3231/Spl, as had been agreed in June 1995; **which were promised to be fulfilled subsequently as per the said Addendum.**
- b) On Petitioner’s insistence, as per the said Addendum, voting power of the Shares of Mitsui & Taisei were *irrevocably* given to the Secretary to the Treasury, for the fulfillment of the said ‘*conditions precedent*’, as ‘*conditions subsequent*’.
48. a) Accordingly, D.C. Colombo Cases Nos. 3155/Spl and 3231/Spl were settled and withdrawn on **23.10.1996**, and the Commercial High Court entered Decrees, on the basis of the terms of the Settlement Agreements

*True copies of the Commercial High Court Decrees are annexed marked together as “X24”, pleaded as part and parcel hereof*

- b) Deputy Secretary to the Treasury P.B. Jayasundera, 3<sup>rd</sup> Respondent, chaired the immediate HDL Board Meeting on **25.10.1996** to give effect to such Settlement and to issue to Mitsui & Taisei Promissory Notes from HDL, *inter-alia*, stating:

“The Chairman, Dr. P.B. Jayasundera, informed that this Board Meeting was convened as a matter of national importance in the interest of Sri Lanka Japan relationship and that he was acting at the request of the Government and urged the Directors to proceed with the Meeting on the Agenda placed before them.”

“Dr. P.B. Jayasundera informed the Board that the payment due to Mitsui & Co. Ltd., and Taisei Corporation is contingent liability on the Government and that the payments due to Mitsui & Co. Ltd and Taisei Corporation should now be made as per the Settlement Agreements, since legal actions have now been settled and withdrawn and that the company should authorize the Deputy Secretary to the Treasury to make the payments due to Mitsui & Co., Ltd and Taisei Corporation from the funds of the company held by him and/or by transferring from funds of the company as may be required.”

*A true copy of HDL Board Minutes dated 25.10.1996 is annexed marked “X25”, pleaded as part and parcel hereof*

- c) Promissory Notes were issued to Mitsui & Taisei by HDL on 25.10.1996 for the re-scheduled 15 installment payments of the unwritten-off balance Claims, first of which was to have been paid on **1.7.1996**.

49. The accumulation of funds in HDL from 31.3.1993 to 31.3.1996 by reasons of the interim injunctions obtained by the Petitioner is borne out by the following data from the HDL Annual Accounts:

<b>1993</b>	<b>Rs. Mn.</b>	<b>Rate</b>	<b>US \$ Mn.</b>
Current Assets	774,056	47.16	16,413
Fixed Deposit	50,004	47.16	1,060
Treasury Bills	455,241	47.16	9,653
<b>1994</b>			
Current Assets	1,111,129	48.72	22,806
Fixed Deposit	572,507	48.72	11,751
Treasury Bills	307,840	48.72	6,319
<b>1995</b>			
Current Assets	1,532,046	49.80	30,764
Fixed Deposit	991,008	49.80	19,900
Treasury Bills	259,031	49.80	5,201
<b>1996</b>			
Current Assets	1,786,645	54.00	33,086
Fixed Deposit	924,044	54.00	17,112
Treasury Bills	654,568	54.00	12,122

*True copies of the HDL Balance Sheets as at 31.3.1994 and 31.3.1996 giving the comparative figures for the previous years and the respective Notes on Current Assets are annexed marked together as "X26", pleaded as part and parcel hereof*

50. a) Consequently on 15.11.1996, the following payments were made to Mitsui & Taisei **from funds accumulated in HDL**, prior to then Deputy Secretary to the Treasury, P.B. Jayasundera, 3<sup>rd</sup> Respondent and others, proceeding for the Sri Lanka Aid-Group Meeting in November 1996.
- i) Initial Lump-sum Payment Jap.Yen 2312 Mn., i.e. SL Rs. 1341 Mn., (US \$ 23.6 Mn.)
  - ii) First Installment due on 1.7.1996 Yap.Yen 933.7 Mn., i.e. SL Rs. 479.8 Mn., (US \$ 8.4 Mn.)
- b) Thus on the insistence of the Government , a total payment of approximately **US \$ 32 Mn.**, was paid to Mitsui & Taisei on 15.11.1996 **from funds accumulated in HDL** by reason of the interim injunctions the Petitioner had obtained.
- c) Additional Interest cost of approximately Rs. 80 Mn., had to be paid to Mitsui & Taisei by HDL for the foregoing delayed payments, which were to have been paid, as per the Settlement Agreements of June 1995.

- d) The grace period of one year from 1.7.1995 to 30.6.1996 was wasted and the *further restructuring of HDL during such grace period was frustrated* by the suspension of the Settlement Agreements by Justice Minister & Deputy Minister of Finance, G.L. Peiris, 4<sup>th</sup> Respondent.
51. a) To have built the 3<sup>rd</sup> Tower increasing the number of Hotel Rooms of the Hilton Hotel from 408 to 612 i.e. and addition of 204 Rooms, for which all provisions had already been made in the main Hotel construction, the cost estimate in 1994 was only around US \$ 14 Mn.
- b) Hence the 3<sup>rd</sup> Tower which could have been easily built with the funds accumulated with HDL, *thereby enhancing the profitability and debt-service ability of HDL.*
- c) Thereafter, a just and equitable settlement could have been negotiated and concluded with Mitsui & Taisei.
- d) **The foregoing was the correct business strategy as was suggested by the Petitioner.**
- e) **Nevertheless, the Government insisted otherwise, and therefore the Government stands responsible for the plight the Government put HDL into, due to external pressures or otherwise.**
52. a) Relying on the foregoing wrongful and unlawful conduct, and baseless and false statements of Justice Minister & Deputy Minister of Finance, G.L. Peiris, 4<sup>th</sup> Respondent, the Court of Appeal in CA Revision No. 721/98 and CA (LA) No. 177/98, taken together with other connected Applications, on 30.3.1999 made a *perverse* prejudicial interim order, detrimental to the interests of HDL and the Government.
- b) The Court of Appeal by the said interim order, *questionably* directed the continuation of the reduced unwritten-off balance Claims instalments be made to Mitsui & Taisei, in terms of the aforesaid Settlement Agreements, but restraining all other Conditions in the Settlement Agreements, without having taken cognisance of the fact that the Commercial High Court had already entered Decrees on the basis of the conditions in the Settlement Agreements.
- c) The foregoing *perverse* interim order of the Court of Appeal resulted in all the balance 14 payments to be made to Mitsui & Taisei, causing grave loss and jeopardy to HDL and the Government, and resulting in HDL's present financial predicament.
- d) Significantly in the said Court of Appeal Judgment directing payments to be made to Mitsui & Taisei the following had been recorded:

“Mr. Sivarasa, President's Counsel, during the course of this Court exploring possibilities of a settlement did mention to Court that he would not have any objections to the Japanese receiving their dues provided his client's rights under P6, P12 and P13 were protected. “

There was no settlement, but an unilateral arbitrary *questionable* direction by the Court of Appeal, resulting in the plight HDL was plunged into, **even preventing HDL from publishing its Annual Accounts for 20 years on the advice of successive Attorney Generals on the basis of such Judgment**, but published for the 20 years recently, the Petitioner believes upon the Attorney General renegeing on the earlier advice.

- e) This was notwithstanding that HDL and the Petitioner had tendered a comprehensive Statement of Objections, adducing relevant documents. Intriguingly, no reference, whatsoever, had been made to the said Objections in the Court of Appeal Judgment, notwithstanding that the said matter was concerning the grant of interim relief.
  - f) The Government, represented by the Ministry of Finance, continued to make such payments to Mitsui & Taisei, in terms of the aforesaid direction of the Court of Appeal.
  - g) **The Petitioner consistently objected to such payments being made to Mitsui & Taisei in the absence of the totality of a Settlement, and disassociated himself from the said payments being made to Mitsui & Taisei.**
53. On the foregoing Judgment of the Court of Appeal, Special Leave to Appeal was granted by Your Ladyships' Court on 16.12.1999 in SC (LA) Nos. 116 and 177/99 on the following questions.
- i) Had the Court of Appeal erred in law by dismissing the Applications at the conclusion of the Hearing into the grant of interim relief ?
  - ii) Had the Court of Appeal misdirected itself by dealing with the main Applications, **when the records clearly shows that it was only the Application for interim relief which was being considered ?** (*Emphasis added*)
  - iii) Had the Court of Appeal misdirected itself in presuming that one Order would be made in the Revision Application and the Leave to Appeal Application, and that the said Order would be applicable to other Applications, when in fact it had only been agreed, that Order in respect of interim relief in one Revision Application would apply to other Revision Applications ?
54. a) A Special Presidential Commission was appointed by President Chandrika Bandaranaike Kumaratunga to investigate, *inter-alia*, into the aforesaid fraud on HDL and the Government, on the advice of the Justice Minister & Deputy Minister of Finance, G.L. Peiris, 4<sup>th</sup> Respondent, who supervised the drafting of the Warrant.
- b) After investigations by the CID, assisted by the Solicitor General and a Report by a Panel of 3 Chartered Architects, the Commission issued Show Cause Notices, framed by the Solicitor General, on 4 persons setting out several charges, *inter-alia*, stating as follows;
- "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 commission of fraudulent acts in terms of Section 9 of the Special Presidential Commission of Inquiry Law No. 7 of 1978, as amended "
- True copies of the said Show Cause Notices are annexed marked together as "X27", pleaded as part and parcel hereof*
- c) Thereafter, ***irrefutable evidence of criminality*** was disclosed before the Commission, in that, it was discovered that the original Architectural Plans of the Hilton Hotel prepared by KKS had been ***cannibalised, with some sheets replaced and some sheets tampered with and falsified.***

- d) Intriguingly the Warrant of the Commission was not extended to have the matter concluded, the Petitioner verily believes for reasons best known to Justice Minister & Deputy Minister of Finance, G.L. Peiris, 4<sup>th</sup> Respondent.
- 55 a) Subsequently, by Letter dated 5.3.2004 President Chandrika Bandaranaike Kumaratunga directed the Inspector General of Police to forthwith investigate into the aforesaid **fraud perpetrated on the Government** and the **cover-up thereof**.
- b) CID recorded Petitioner's Statement on 12.3.2004 and acknowledged that *ex-facie* this appeared to be one of the major frauds in this country.
- c) Thereafter, the CID sought to locate the original documents, which had been lodged by the Special Presidential Commission with the Department of National Archives.
- d) The Petitioner is unaware as to whether Statements of other persons were recorded by the CID or as to whether a 'B Report' was filed in the Magistrate's Court on the conduct of investigations.
- e) Secretary to the President, Lalith Weeratunga in terms of the National Archives Law granted permission to the CID to *retrieve* the documents from the Department of National Archives, but *intriguingly* the CID requested for photocopies of such *voluminous* documents, as per their Letter dated 19.10.2006.
- f) On a Complaint made by the Petitioner, by Letter dated 8.3.2007 the National Police Commission called for a Report from the IGP.
- g) On representations made by the Petitioner on the *tardiness* of the investigations, Secretary to the President, Lalith Weeratunga addressed Letter dated 15.3.2007 to then Attorney General, C.R. de Silva, P.C., 5<sup>th</sup> Respondent.
- h) CID Officers showing a Letter from the Attorney General's Department intimated to the Petitioner that it appeared that the Attorney General's Department was more interested in not having this fraud investigated into, than causing investigations to be pursued.
- i) By Letter dated 4.4.2008 the CID finally informed the Petitioner that the investigations could not be proceeded with, on the basis of the advice of then Attorney General, C.R. de Silva, P.C., 5<sup>th</sup> Respondent, **which the Petitioner refuted**.
- j) Such advice had been on the pretext that the original Architectural Plans of the Hilton Hotel were not available when in fact the **Solicitor General assisting the Special Presidential Commission had framed Charges** against 4 persons for the Commission to have issued Show Cause Notices.
- k) In assisting the Special Presidential Commission, **the Attorney General's Department was well and truly possessed of copies of all documents placed before the Commission and the proceedings recorded thereat**.
- l) The foregoing are only a few of the correspondence in relation to this *intriguingly questionable* non-enforcement of the 'rule of law', by former Attorney General, C.R. de Silva, P.C., 5<sup>th</sup> Respondent

*True copies of the aforesaid Letters dated 5.3.2004, 19.10.2006, 8.3.2007, 15.3.2007 and 4.4.2008 are annexed marked together as "X28", pleaded as part and parcel hereof*

56. a) Special Leave to Appeal having been granted by Your Ladyship's Court against the aforesaid perverse Judgment of the Court of Appeal, Your Ladyships' Court endeavoured to bring about a settlement.
- b) In such circumstances Reports had been furnished through the Attorney General to Your Ladyship's Court prepared by a Committee appointed by the Secretary, Ministry of Finance, which Committee was reconstituted at the request of the Petitioner by the Secretary Ministry of Finance & Secretary to the Treasury, P.B. Jayasundera, 3<sup>rd</sup> Respondent by Letter date 23.8.2004.

*A true copy of the said Letter dated 23.8.2004 is annexed marked "X29", pleaded as part and parcel hereof*

- c) Consequently, upon a Cabinet Appointed Negotiating Committee (CANC) having been appointed, Proposal for re-structuring HDL, submitted on 11.7.2005 to the Secretary, Ministry of Finance & Secretary to the Treasury, P.B. Jayasundera, 3<sup>rd</sup> Respondent, the same had been forwarded by Letter dated 14.7.2005 to then Attorney General, K.C. Kamalabayson, P.C., in conformity with suggestions made by Your Ladyship's Court.

*True copies of the said Letters dated 11.7.2005 and 14.7.2005 and the said Proposal of the CANC are annexed together marked "X30", pleaded as part and parcel hereof*

- d) The aforesaid CANC Proposal in July 2005 had, *inter-alia*, stated thus:
- i) Without the proposed financial re-structuring, HDL as per projections made, would continue to operate at cognisable Losses, accumulating an estimated Defaulted Debt to the Government of Rs. 9,300,000,000/- by 31.3.2010.
- ii) **If, Settlement of pending Litigations cannot be concluded, and the proposed Financial Restructuring on the lines given above not given effect to immediately; then there would be no other option, but to wind-up HDL, transferring the Hotel Building to the Government, which owns the Land, and the Government settling Mitsui & Taisei the balance Loans under the State Guarantees; and setting-off the value of the Hotel Buildings against the defaulted owings by HDL to the Government.**
- iii) The foregoing has been set out without prejudice to the rights of the Government to take warranted action.
- e) Consequently, Secretary, Ministry of Finance & Secretary to the Treasury, P.B. Jayasundera, 3<sup>rd</sup> Respondent caused the Cabinet Memorandum titled 'Resolution of disputes relating to Hilton Hotel Project' dated 5.10.2005 to be submitted through the then Minister of Finance, Sarath Amunugama, M.P., which was approved by the Cabinet on 13.10.2005.

*True copies of the Cabinet Memorandums dated 5.10.2005 and 13.10.2005 are annexed together marked "X31", pleaded as part and parcel hereof*

57. a) Your Ladyship's Court on 16.1.2006 having suggested that settlement be effected taking into reckoning the interests of all parties, including the Petitioner, Secretary, Ministry of Finance & Secretary to the Treasury, P.B. Jayasundera, 3<sup>rd</sup> Respondent on 24.4.2006 intimated to Your Ladyship's Court that as regards of the Petitioner the matter has already resolved on the basis of an independent assessment.

- b) In conformity therewith Secretary, Ministry of Finance & Secretary to the Treasury, P.B. Jayasundera, 3<sup>rd</sup> Respondent obtained the Report dated 19.7.2006 from Merchant Bank of Sri Lanka Ltd., who had been intimately engaged.
- c) The following paragraphs are cited from a said Report prepared by the Merchant Bank of Sri Lanka Ltd., on the services rendered by the Petitioner.

“NSA (reference being the Petitioner) was removed from the Board of Directors of HDL in December 1990 but was re-appointed as a Director of HDL in October 1994 by the Govt. Whilst NSA’s derivative actions were pending in Courts, the Govt. initiated discussions with a view of having the said litigations withdrawn, upon reaching a settlement with Mitsui & Taisei. In June 1995 Settlement Agreements were finalized and executed by the Govt., Mitsui & Taisei, HDL and NSA.”

“4.3. In terms of the Settlement Agreements entered in June 1995, as amended in October 1996, Mitsui & Taisei had written off **Jap Yen 17,586 Mn (then US \$ 207 Mn / LKR 10,200 Mn)** which was a write off of **63.3%** of their total claim as at **30.6.1995** in respect of the loan granted to HDL and after paying **Jap. Yen 2,312 Mn (then US \$ 27 Mn / LKR 1,341 Mn)**, the balance has been further re-scheduled over a period of **15 Years** up to **2010 (previously fully payable by 1999)** at a **reduced rate of interest of 5.25% p.a. (previously 6% p.a.)**. The fact has been confirmed by HDL by their letter dated 19<sup>th</sup> June 2006 addressed to Mr. V Kanagasabapathy, Director General of Public Enterprises.”

“However, Minister G L Peiris wrongfully suspended the implementation of the Settlement Agreements upon the discovery of a “certain condition” therein affecting him personally. As such, in October 1998 NSA instituted a further derivative action in the interest of HDL in addition to the personal action filed against Min G L Peiris in July 1997 claiming damages, which are still pending in Courts. By then in May 1996, the Govt. had started discussions with NSA, with a view to persuade him to co-operate to implement the Settlement Agreements and accordingly the Settlement Agreements signed in June 1995 were given effect to with an Addendum signed thereto in September/October 1996 by and between the Govt., Mitsui & Taisei and NSA. The said Addendum endorsed all the conditions contained in the Settlement Agreements save and except the condition, which personally affected Mr. G L Peiris.”

“On the basis of the aforesaid Settlement Agreements and the Addendum NSA’s Legal actions (DC Col Case Nos. 3155/Spl and 3231.Spl) have been settled and withdrawn in October 1996 in the Commercial High Court and the Commercial High Court had entered Decrees accordingly.”

- d) The Petitioner, as a stakeholder of HDL had been actively involved in the promotion of the Hilton Hotel, and also in probing and prosecuting the fraud amidst obstructions and pressures, and obtaining the aforesaid write-off deriving immense benefit to HDL and the Government, and also in assisting in defending the interest of HDL and the Government in several vexatious litigations, incurring valuable time, considerable costs and efforts.

*True copies of the Proceedings dated 16.1.2006 and 24.4.2006 of Your Ladyship’s Court, together with copy of the said Report of the Merchant Bank of Sri Lanka Ltd., are annexed compendiously marked “X32(a)”, pleaded as part and parcel hereof*

- e) i) There was a bomb explosion in October 1997, whereby several buildings in the City, including Hilton Hotel, were extensively damaged.
- ii) Consequently, under a 'business interruption insurance policy', Hilton International negotiated a payment of US \$ 10 Mn. from the overseas insurers for the re-instatement of the Hilton Hotel.
- iii) By Letter dated 16.1.1998, Roy Coxon, Group Risk Manager, Hilton International claimed title to these insurance monies of US \$ 10 Mn., paid to HDL for the re-instatement of Hilton Hotel
- iv) On such hypothesis, Hilton International required additional new Shares of HDL to the value of US \$ 7 Mn., to be allotted to Hilton International, and the balance US \$ 3 Mn., to be repaid over 30 months, as an increase in the subsequent insurance *premia*, to the Insurer.
- v) **Petitioner refuted such stance of Hilton International**, by Petitioner's Memo dated 28.3.1998 to the HDL Board, with copies to among others, then Deputy Secretary to the Treasury, P.B. Jayasundera, 3<sup>rd</sup> Respondent.
- vi) Petitioner successfully established, that such insurance monies of US \$ 10 Mn., paid to HDL, rightfully and lawfully, belonged to HDL, and not to Hilton International.
- vii) Had it not been for the Petitioner's such *defiant stance*, the US Dollar at that time having been equivalent to SL Rs. 61/-, for US \$ 7 Mn., Hilton International would have got additional new Shares of HDL to the value of Rs. 427 Mn., against the nominal Share Capital of HDL of Rs. 452.3 Mn., thereby increasing the nominal Share Capital of HDL to Rs. 879.3 Mn.
- viii) Had Hilton International been given additional new Shares, as had been required, to the value of 427 Mn., this would have vested in Hilton International, an ownership of 48.5% of the increased new nominal Share Capital of HDL.
- ix) The foregoing fraudulent *manoeuvre* by Hilton International to acquire a 48.5% of the increased new nominal Share Capital of HDL, together with the Shareholdings of Mitsui & Taisei, reduced to 14.2%, would have given a total '*controlling*' Shareholding of 62.7% in HDL to Hilton International and Mitsui & Taisei, ***compared against the Government's Shareholding being reduced to 33.4% !***

*True copies of the Hilton International's Letter dated 16.1.1998 and Petitioner's Memo dated 28.3.1998 are annexed together marked "X32(b)", pleaded as part and parcel hereof*

- 58. a) Since the aforesaid settlement suggested by Your Ladyship's Court did not materialise, the Petitioner, as warranted, on 17.11.2006 filed an Application in D.C. Colombo Case No. 217/CO to wind-up HDL, in view of its bankrupt position.

*A true copy of the Winding-up Petition, without the Documents annexed thereto is annexed marked "X33", pleaded as part and parcel hereof*

- b) Then Chairman HDL, Nawaz Rajabdeen appointed by the Minister of Finance, 1<sup>st</sup> Respondent, by Affidavit dated 8.12.2006 opposed the winding-up of HDL.

- c) In the given facts and circumstances of HDL, Section 219 of the Companies Act No. 7 of 2007, which came into force on 3.5.2007 mandated the winding-up of HDL, and **made the Directors personally liable for the debts of HDL**, for having opposed the winding-up of HDL.
- d) In addition, Section 375 of the Companies Act No. 7 of 2007 prohibits the fraudulent trading by a Company, **making Directors personally liable for its debts**.
- e) Section 382 of the Companies Act No. 7 of 2007 empowers the Attorney General **to criminally prosecute Directors of a Company** in such circumstances.
- f) Directors of HDL appointed by the Minister of Finance, 1<sup>st</sup> Respondent, who held Office after the winding-up Petition was filed on 17.11.2006, and **who exercised the management control of the HDL Board, with the Government being a 64% Shareholder of HDL** have been as follows:
- T. Nadesan, Chairman, from 12.5.2010
  - N. Rajabdeen, Chairman, resigned on 21.5.2010
  - V. Kanagasabapathy
  - K.V.N. Jayawardene
  - T. Wickramasuriya
  - N. Warusuvitharana
  - K. Wickramanayake
- g) As per the definition of Directors specified in Section 529 of the Companies Act No. 7 of 2007 in respect of certain specific provisions therein, particularly Sections 187, 188, 189, 190, 197, 374, 375, including also Sections 191 to 195, persons in accordance with whose directions or instructions, Directors of a Company would act, are also deemed to be Directors of a Company.
- h) Hence, the Government Directors of HDL, appointed by the Minister of Finance, 1<sup>st</sup> Respondent, **who exercised the management control of the HDL Board, with the Government being a 64% Shareholder of HDL**, who opposed the Winding-up of HDL and acted in blatant violation of the Companies Act No. 7 of 2007 are personally liable for the debts of HDL, which is to the Government i.e the public.
- i) Thus and thereby the aforesaid Directors of HDL are not fit and proper persons to be Directors of HDL and/or any other public Company.
- j) **It is indeed appalling that the statutory law of the land had been blatantly violated by Government Nominee Directors.**
59. a) In circumstances of serious loss of capital, where 50% of the Share Capital of a Company is eroded, in terms of Section 220 of the Companies Act No. 7 of 2007, the Directors are bounden in duty to call for an Extra-ordinary General Meeting, to *inter-alia* explain the extent of losses, causes therefor, and steps being taken to recoup the losses.
- b) In the case of HDL, the entire Share Capital had been eroded, but nevertheless its Directors had failed to comply with the mandatory provisions of Section 220 of the Companies Act No. 7 of 2007.
- c) Section 187 to 190 of the Companies Act No. 7 of 2007 stipulates the ‘Duties of Directors’ and Section 188 thereof **prohibits a Director from acting or agreeing to act in contravention of any provisions of the said Act.**

- d) Hence, the Government Directors of HDL, appointed by the Minister of Finance, 1<sup>st</sup> Respondent, who were in control of HDL are guilty of having acted blatantly in violation the provisions of the Companies Act No. 7 of 2007 and thereby they are not fit and proper persons to be Directors of HDL and/or any other public Company.
- e) **It is indeed appalling that the statutory law of the land had been blatantly violated by Government Nominee Directors**

60. a) Cabinet Memorandum dated 5.10.2005 approved on 13.10.2005 (X31) had given approval to a CANC Report, which had, *inter-alia*, recommended that if HDL was not restructured, it should be wound-up.
- b) Suppressing the foregoing, Secretary, Ministry of Finance & Secretary to the Treasury, P.B. Jayasundera, 3<sup>rd</sup> Respondent, had caused the Minister of Finance, 1<sup>st</sup> Respondent, to submit Cabinet Memorandum dated 21.1.2007 to oppose the winding-up of HDL and to indicate to Court, as an option, to re-structure HDL. Cabinet Approval was granted on 26.1.2007

*True copies of the Cabinet Memorandum dated 21.1.2007 and Cabinet Approval dated 26.1.2007 are annexed together marked "X34", pleaded as part and parcel hereof*

- c) Secretary, Ministry of Finance & Secretary to the Treasury, P.B. Jayasundera 3<sup>rd</sup> Respondent wrongfully and unlawfully intervened by Motions dated 10.5.2007 and 7.12.2007 through State Attorney, as an '**Interventient-Party**', without having first had and obtained the permission of Court to have done so, to oppose the winding-up of HDL, blatantly contravening the provisions of the Companies Act, admittedly as advised by the then Attorney General C.R. de Silva P.C., 5<sup>th</sup> Respondent.

*True copies of the Motions dated 10.5.2007 and 7.12.2007 are annexed together marked "X35", pleaded as part and parcel hereof*

- d) Former Attorney Generals C.R. de Silva P.C. 5<sup>th</sup> Respondent and Mohan Peiris P.C., 6<sup>th</sup> Respondent, appearing for the State continued to oppose the aforesaid Winding-up, contravening the mandatory provisions of the Companies Act No. 7 of 2007, which came into force on 3.5.2007.

*In terms of Rule 11 of the Supreme Court (Conduct of and Etiquette for Attorneys-at-Law) Rules 1988, an Attorney-at-Law is prohibited from accepting any professional matter, which would involve him in the commission or in the furtherance of the commission of an offence.*

- e) Then Attorney General Mohan Peris, P.C., 6<sup>th</sup> Respondent by Letter dated 16.9.2010 called for a Meeting to explore the possibility of a Settlement. Nevertheless, no such discussion took place.
- f) In the given facts and circumstances, it is indeed appallingly that HDL is Scheduled as an 'Underperforming Enterprise' **due to protracted litigation** prejudicial to the national economy and public interest. If such be the case, then the former Attorney Generals C.R. de Silva, P.C., 5<sup>th</sup> Respondent and Mohan Peiris, P.C., 6<sup>th</sup> Respondent, appearing for the State, stand responsible and liable for having continuously opposed the aforesaid Winding-up of HDL contravening the provisions of the Companies Act No. 7 of 2007 and having caused the judiciary to have kept the Winding-up Application pending now for 5 years; **with intimation of a possible settlement.**

g) Had the former Attorney General Mohan Peiris, P.C., 6<sup>th</sup> Respondent been instrumental, in any manner, whatsoever or howsoever, in the act of including HDL under Schedule 1 to the Law, for the Shares of HDL to be vested in the State **then it would be a great travesty of justice.**

61. a) The Balance Sheet of HDL as at **31.3.2005** as had been disclosed in the Winding-up Petition filed on 17.11.2006 was given to be as follows:

	Rs. Mn
Fixed Assets	2,139.2
Current Assets	744.6
Current Liabilities	<u>271.6</u>
	473.0
	-----
Net Assets	<u>2,612.2</u>
Share Capital	452.2
Reserves	860.7
(Accumulated Loss)	<u>(6,351.5)</u>
	(5,038.6)
Long Term Liabilities	7,650.8
	-----
Sources of Funds	<u>2,612.2</u>

b) The Balance Sheet of HDL as at **31.3.2010** as recently circulated is set out below, **disclosing the further erosion of the Capital of HDL and further accumulation of Losses and Liabilities by HDL**

	Rs.Mn.		Rs.Mn.
Shareholders' Equity		Non-Current Assets	
Stated Capital	452	Property, Plant & Equipment	6,127
Revaluation Reserve	4,706	Pre-paid Lease Rental	<u>185</u>
FF&E Reserve	371		6,312
Accumulated Loss	<u>(10,302)</u>		
Deficit	(4,773)		
Non-Current Liabilities		Current Assets	
Interest bearing Loans	10,268	Inventories	49
Retiring Benefit Obligations	<u>69</u>	Receivables	208
	10,337	Short Term Investments	
Current Liabilities		- Treasury Bills	688
Trade and Other Payables	371	- Bank Deposits	<u>114</u>
Interest bearing Loans (1 Year)	1,457	Cash & Bank	<u>24</u>
Bank Overdraft	<u>3</u>		1,083
	1,831		
Total Liabilities	<u>12,168</u>		
Liabilities Less Deficit	<u>7,395</u>	Total Assets	<u>7,395</u>

62. a) By Letter dated **3.5.2011** the Government had required HDL to repay the Loans advanced to HDL, stated to amount to Rs. 12,098,634,769/77 to have made payments to Mitsui & Taisei.
- b) By Letter dated **6.5.2011** HDL had forwarded a proposal to repay the Loans to the Government **over a period of 18 years.**
- c) By Letter dated **10.5.2011** the Government had refused to accept the repayment proposal by HDL and had required HDL repay the outstanding amount claimed of Rs. 12,098,634,769/77, **within a period of 2 years on a monthly instalment basis.**
- d) With the Government Directors having been in full management control of HDL, *the above exchange of correspondence is indeed a tragi-comedy.*

*True copies of Letters dated 3.5.2011, 6.5.2011 and 10.5.2011 are annexed together marked as 'X36', pleaded as part and parcel hereof*

63. a) The **Capital of the Loans** advanced by the Government to HDL, as disclosed in the Petition in H.C. (Civil) W.P. Application No. 52/2011/CO as set out below, **had amounted to only Rs. 4,435,986,893/-**

Date of Loan	Amount Rs.	Int. Rate
01.07.97	288,567,631	12.50%
07.07.99	469,742,070	12.50%
03.07.00	464,427,826	12.50%
03.07.01	360,618,876	18.56%
03.07.02	446,803,874	12.50%
01.07.03	340,024,378	9.40%
01.07.04	395,658,959	8.59%
30.06.05	225,639,338	10.28%
30.06.06	157,555,617	11.61%
30.06.07	344,772,738	18.77%
30.06.08	456,077,609	20.59%
28.12.10	<u>486,097,977</u>	8.39%
Total	<u>4,435,986,893</u>	

- b) No re-payments, whatsoever, have been made to the Government by HDL on account of either any Interest or Capital.
- c) The aforesaid Balance Sheet of HDL as at 31.3.2010 had included interest at the aforesaid rates, ***compounded annually. (i.e. at a simple average interest of 13.0% p.a.)***
- d) **Section 5 of the Civil Law Ordinance mandates that the Interest shall not exceed the Capital.**
64. a) In terms of Section 364, read with Section 277 of the Companies Act No. 7 of 2007, no interest is payable by and/or chargeable from HDL, *after the Petition for Winding-up of HDL had been presented on 17.11.2006.*
- b) In terms of Section 277 of the Companies Act No. 7 of 2007, the winding-up of a Company shall be deemed to have commenced at the time of presentation of the Petition for winding-up.

- c) **Hence, no interest is chargeable by or payable to the Government by HDL after 17.11.2006.**
65. Therefore, the interest stated in the HDL Accounts of 31.3.2010 is *wrongfully* and *unlawfully overstated*.
66. **Those persons, who have transgressed the law and have caused the foregoing losses to the Government i.e. the public, ought to be held accountable and responsible therefor.**
67. a) The foregoing reveals that HDL, had been recklessly mismanaged by the Government Directors, who controlled HDL, and were nominated by the Minister of Finance, 1<sup>st</sup> Respondent.
- b) They have been paying themselves emoluments, allowances and enjoying other perquisites, whilst HDL has been *languishing* in losses and has been in dire financial straits.
- c) Just prior to the aforesaid Bill tabled in Parliament on 8.11.2011, the draft Board Minutes of HDL of 6.9.2011 and 24.10.2011 have recorded approval for payment of Rs. 400,000/- per month and the purchase of a BMW SUV reckoned to cost over Rs. 25 Mn., for the Chairman of HDL, a kinsman of the 1<sup>st</sup>, 2<sup>nd</sup> and 9<sup>th</sup> Respondents.

*True copies of the said HDL draft Board Minutes of HDL are annexed together marked "X37", pleaded as part and parcel hereof*

68. a) Just prior to the aforesaid Bill tabled in Parliament on 8.11.2011, the Deputy Secretary to the Treasury, obviously with the concurrence and agreement of the Secretary, Ministry of Finance & Secretary to the Treasury, P.B. Jayasundera, 3<sup>rd</sup> Respondent, had issued a Letter dated 10.5.2011 (included in **X36**) to HDL requiring the outstanding payments, wrongfully and unlawfully claimed to be Rs. 12,098 Mn., **to be paid within a period of preferably 2 years.**
- b) Hence, HDL and/or any one or more of its Shareholders were entitled to raise investments and to repay the Government its lawful dues, as demanded to be paid **within the period of 2 years.**
- c) Had the Secretary, Ministry of Finance & Secretary to the Treasury, P.B. Jayasundera, 3<sup>rd</sup> Respondent been instrumental, in any manner, whatsoever or howsoever, in the act of including HDL under Schedule 1 to the Law, for the Shares of HDL to be vested in the Secretary to the Treasury **then it would be a great travesty of justice.**
69. a) Upon having been informed that HDL of which the Petitioner is a Shareholder / Stakeholder, had been included in the Schedule to the aforesaid Bill, the Petitioner having returned to the island on Friday, 4.11.2011 filed on the very next working day 8.11.2011 (*7.11.2011 being a public holiday*) an Application No. 52/2011/CO to be made by his Company, Consultants 21 Ltd., under and in terms of Part X of the Companies Act No. 7 of 2007 in the High Court (Civil) of the Western Province, Colombo, **demonstrating that there was prevalent ordinary and regular law for a rearrangement and compromise of HDL.**

*A true copy of the Petition filed in the said H.C. (C) W.P. Application No. 52/2011/CO without the Documents attached thereto is annexed marked "X38", pleaded as part and parcel hereof*

- b) Upon the Cabinet Spokesman, Minister Keheliya Rabukwella addressing a formal Press Conference announcing that the existing owners of ‘Underperforming Enterprises’ could give proposals for the revival and/or restructuring of such enterprises, the Petitioner forwarded Letter dated 18.11.2011 to him, exhorting him to promptly make known the specific provisions in the Law, which provides for and/or enable the foregoing, specifically forwarding the aforesaid Application made to the Commercial High Court for re-arrangement and re-structuring of HDL, *for which the Petitioner received no reply from the said Minister.*

*A true copy of Letter dated 18.11.2011 is annexed marked "X39", pleaded as part and parcel hereof*

- c) **HDL being governed by the Companies Act No. 7 of 2007 ought be restructured and developed in terms of the ordinary and regular law viz the provisions of the Companies Act No. 7 of 2007, under the supervision of the judiciary, as per the aforesaid Application No. 52/2011/CO made to the Commercial High Court (“X38”), and not secretly away from the public glare, behind closed doors**

70. In the premises the Petitioner very respectfully states that;

- a) he has good, sufficient and valid right, reasons and grounds to invoke the jurisdiction of Your Ladyship’s Court to seek just and equitable reliefs constitutionally warranted as prayed for herein including to have the *per-incuriam* Determination (“X6(a)”) not in conformity with and/or *ultra-vires* the stipulations in Article 123(3) of the Constitution reviewed by a Fuller Bench of Your Ladyship’s Court in terms of Article 132, read with Article 118 of the Constitution.
- b) in so urging Your Ladyship’s Court, the Petitioner cites the *dicta* by Bhagawati J in *State of Rajasthan v Union of India, AIR 1977 SC 1361, 1413;*

**“... So long as a question arises whether an authority under the Constitution has acted within the limits of its power or exceeded it, it can certainly be decided by the Court. In deed, it would be its constitutional obligation to do so .... No one howsoever highly placed and no authority howsoever lofty can claim that it shall be the sole judge of the extent of its power under the Constitution or whether its action is within the confines of such power laid down by the Constitution. This Court is the ultimate interpreter of the Constitution .... It is for this Court to uphold the constitutional values and to enforce the constitutional limitations. That is the essence of the Rule of Law ....”**

- c) Your Ladyships’ Court in S.C. FR No. 431/2001 has held thus;

**“It is now firmly established that all powers and discretions conferred upon public authorities and functionaries are held upon trust for the public, to be used reasonably, in good faith, and upon lawful and relevant grounds of public interest; that they are not unfettered, absolute or unreviewable; and that the legality and propriety of their exercise must be judged by reference to the purposes for which they were conferred”**

and held that – ‘Your Ladyships’ Court **did have jurisdiction** to consider whether a Proclamation and the Referendum Proposal was in conformity with the Constitution ....’  
(*Emphasis added*)

- d) In the context of the advent of the Government into commercial business, the following citations from Judgements of Lord Denning MR are cited,. (1977) 1 All ER @ 892

**“If the dispute brings into question, for instance, the legislative or international transactions of a foreign government, or the policy of its executive, the court should grant immunity if asked to do so, because it does offend the dignity of a foreign sovereign to have the merits of such a dispute canvassed in the domestic courts of another country; but if the disputes concerns, for instance, the commercial transactions of a foreign government (whether carried on by its own departments or agencies or by setting up separate legal entities), and it arises properly within the territorial jurisdiction of our court, there is no ground for granting immunity” – Rahimtoola v Nizam of Hyderabad**

**“..... a foreign sovereign has no immunity when it enters into a commercial transaction with a trader here and a dispute arises which is properly within the territorial jurisdiction of our courts. If a foreign government incorporates a legal entity which buys commodities on the London market, or if it has a state department which charter ships on the Baltic Exchange it thereby enters into the market places of the world, and international comity requires that it should abide by the rules of the market” – Thai-Europe Tapioca Service Ltd. v Government of Pakistan “**

- e) In SC Appeals 33 & 34 of 1992 Your Ladyships’ Court, *inter-alia*, **succinctly** pointed out – viz (CLR (Comm) 1992 @ 636)

**“it could not entirely be a matter of indifference to the Government .....”**

The foregoing well and truly demonstrated the true independence of the judiciary, *as a separate organ of the State*, and its right to state that - **‘the Government can do no wrong’**

- f) On assumption of Office, former Chief Justice J.A.N. De Silva, in his *Ceremonial Address*, though not a Buddhist, *adverted* to the following *Dhammapada*.

**“Not by passing arbitrary judgments does a man become just; a wise man is he who investigates both right and wrong”**

**“He who does not judge others arbitrarily, but passes judgment impartially according to the truth, that sagacious man is a guardian of law and is called just”**

71. a) The Petitioner has not invoked the jurisdiction of Your Lordships’ Court on this matter except SC (SD) 2/2011 and that in the case of HDL certain Cases SC (Spl) LA Nos. 49 & 114/96, which had been concluded and SC Appeal Nos. 99-103/99 which have been pending before Your Ladyship’s Court including SC Leave to Appeal Nos. 32/2001 and 33/2001 in relation to D.C. Colombo Cases Nos. 21819/MR and 19849/MR against the 4<sup>th</sup> Respondent. Which have been laid by due to the Winding-up Application D.C. Colombo Case No. 217/CO.

- b) The Petitioner respectfully reserve the right to tender any further requisite documents to Your Ladyships’ Court as may be necessary

72. The Affidavit of the Petitioner is annexed hereto in support of the averments herein contained.

**WHEREFORE** the Petitioner respectfully prays that Your Ladyship’s Court be pleased to:

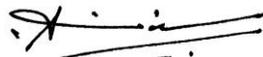
- a) issue Notice on the Respondents
- b) grant Leave to Proceed with this Application in the first instance
- c) make Order declaring that the fundamental rights of the Petitioner and the citizens of Sri Lanka enshrined and guaranteed in Articles 12(1) and 12(2) of the Constitution have been infringed
- d) call for the examination any one or more of the following records, should the Supreme Court so deem necessary to adjudicate upon this matter
  - h) Record in D.C. Colombo Case No. 217/CO
  - ii) Records of the Departments of the Legal Draftsman
  - iii) Records from the Criminal Investigation Department
  - iv) Record in CA (Writ) Application No. 1661/2003
  - v) Records from the Attorney General’s Department
- e) make Order declaring that a Determination by the Supreme Court, on a Bill referred to the Supreme Court, as an ‘Urgent Bill’ under Article 122 of the Constitution, is specifically governed by the stipulations in Article 123(3) of the Constitution
- f) make Order declaring that the test or threshold for a Bill endorsed as an ‘Urgent Bill’ in terms of Article 122 of the Constitution to be consistent with the Constitution, is as to whether a doubt is entertained by the Supreme Court, that the Bill or any provision thereof is inconsistent with the Constitution
- g) make Order declaring that a Bill or any provision of a Bill, endorsed as an ‘Urgent Bill’ under Article 122 of the Constitution, shall be deemed to have been determined to be inconsistent with the Constitution, if the Supreme Court entertains a doubt, as to whether the Bill or any provision thereof is inconsistent with the Constitution, in terms of Article 123(3) of the Constitution.
- h) review and re-examine the Determination (“**X6(a)**”) made by the Supreme Court under Article 123 of the Constitution on the Bill marked (“**X6(b)**”) referred to the Supreme Court under Article 122 of the Constitution, as an ‘Urgent Bill’, and consider, as to whether the said Determination is in conformity with and/or *ultra-vires* the stipulations in Article 123(3) of the Constitution
- i) make Order rectifying the said Determination (“**X6(a)**”) made by the Supreme Court, as a *per-incuriam* Determination, should the Supreme Court, after such review and re-examination, deems the said Determination to be not in conformity with and/or *ultra-vires* the stipulations in Article 123(3) of the Constitution
- j) make Order directing that the 9<sup>th</sup> Respondent, Speaker of Parliament, be notified of any rectification of Determination (“**X6(a)**”) made by the Supreme Court, should the Supreme Court, after a review and re-examination thereof, make any such rectifications thereto, as a *per-incuriam* Determination
- k) make Order declaring that the 9<sup>th</sup> Respondent, Speaker of Parliament, in terms of Article 82(3) of the Constitution, read with Articles 82(1) and 82(2) of the Constitution, ought not have proceeded with the Bill titled “Town & Country Planning Amendment” on which the Supreme Court made a Determination (“**X8(a)**”) in SC (SD) No. 3/2011, Determining the said Bill to be inconsistent with the Constitution.

- l) make Order declaring that the 9<sup>th</sup> Respondent, Speaker of Parliament, in terms of Article 82(3), read with Articles 82(1) and 82(2) of the Constitution, ought not have proceeded with the Bill (“**X6(b)**”) should the Supreme Court rectify the Determination (“**X6(a)**”), after a review and examination thereof, as a *per-incuriam* Determination.
- m) make Order declaring that as per Article 84(3) of the Constitution, read with other Sub-Articles of Article 84 of the Constitution, that a Bill when enacted into law, shall not, and shall not be deemed to, amend, repeal or replace the Constitution or any provision thereof, and shall not be so interpreted or construed, and may thereafter be repealed by a majority of the votes of the Members present and voting
- n) make Order declaring that the 9<sup>th</sup> Respondent, Speaker of Parliament, had failed to respect, secure and advance the fundamental rights of the Petitioner and the citizens of Sri Lanka, in terms of Article 4(d) of the Constitution, notwithstanding Petitioner’s Letter dated 8.11.2011 (“**X10**”)
- o) make Order declaring that the 7<sup>th</sup> Respondent, Minister of Justice, Rauf Hakeem and/or the 8<sup>th</sup> Respondent, Secretary, Ministry of Justice, Suhada Gamalath had permitted the functions of the respective Departments coming under their Ministry, to be usurped and/or subverted
- p) make Order declaring that the 3<sup>rd</sup> Respondent, Secretary, Ministry of Finance & Secretary to the Treasury, P.B. Jayasundera and/or the 6<sup>th</sup> Respondent, former Attorney General, Mohan Peiris, P.C., among others, had misled the 2<sup>nd</sup> Respondent, Minister of Economic Development, Basil Rajapaksa, to include Hotel Developers (Lanka) PLC under Schedule 1 to the Bill (“**X6(b)**”), without the 2<sup>nd</sup> Respondent, Minister of Economic Development having been correctly apprised of the totality of the facts pertaining to Hotel Developers (Lanka) PLC, and regardless of the Letter dated 10.5.2011 (**part of “X36”**) addressed to Hotel Developers (Lanka) PLC by the Treasury **affording Hotel Developers (Lanka) PLC 2 years time to re-pay the debts to the Government (i.e. by May 2013)**.
- q) make Order declaring that the Supreme Court had not been correctly apprised of the totality of the facts pertaining to Hotel Developers (Lanka) PLC, at the Hearing into SC (SD) No. 2/2011
- r) make Order declaring that 3<sup>rd</sup> Respondent, Secretary, Ministry of Finance & Secretary to the Treasury, P.B. Jayasundera and the former Attorney Generals, 5<sup>th</sup> Respondent, C.R. de Silva P.C., and 6<sup>th</sup> Respondent, Mohan Peiris, P.C., had caused and stand responsible for the protracted litigation of Hotel Developers (Lanka) PLC, by opposing the Petitioner’s Winding-up Application in D.C. Colombo Case No. 217/CO, made 5 years back on 17.11.2006 to wind-up Hotel Developers (Lanka) PLC.
- s) make Order declaring that the former Attorney General, 5<sup>th</sup> Respondent, C.R. de Silva P.C., had failed and neglected to cause warranted criminal investigations to be carried out into the fraud perpetrated on Hotel Developers (Lanka) PLC and the Government, notwithstanding the findings thereon in the Judgment dated 2.12.1992 of the Supreme Court in SC (Appeal) Nos. 33 & 34/1992, and regardless of the findings after investigations by the CID and charges framed against certain persons by a Special Presidential Commission, assisted by the Solicitor General.
- t) make Order declaring that 3<sup>rd</sup> Respondent, Secretary, Ministry of Finance & Secretary to the Treasury, P.B. Jayasundera and the former Attorney Generals, 5<sup>th</sup> Respondent, C.R. de Silva P.C., and 6<sup>th</sup> Respondent, Mohan Peiris, P.C., by opposing the Petitioner’s Winding-up Application in D.C. Colombo Case No. 217/CO, made 5 years back on 17.11.2006 to wind-up Hotel Developers (Lanka) PLC, had acted in contravention of the mandatory provisions of the Companies Act No. 7 of 2007, which came into force on 3.5.2007

- u) make Order declaring that the 3<sup>rd</sup> Respondent Secretary, Ministry of Finance & Secretary to the Treasury, P.B. Jayasundera had misled and caused the 1<sup>st</sup> Respondent, Minister of Finance, Mahinda Rajapaksa to submit Cabinet Memorandum dated 21.1.2007 (“X34”) and which was approved by the Cabinet on 26.1.2007 (“X34”), to oppose the winding-up of Hotel Developers (Lanka) PLC, knowingly suppressing the fact that the 3<sup>rd</sup> Respondent, Secretary, Ministry of Finance & Secretary to the Treasury, P.B. Jayasundera, himself, had previously caused Minister of Finance, Sarath Amunugama to submit Cabinet Memorandum dated 5.10.2005 (“X31”), which had been approved by the Cabinet on 13.10.2005 (“X31”), approving the Cabinet Appointed Negotiating Committee recommendations to restructure Hotel Developers (Lanka) PLC, and failing which, to wind-up Hotel Developers (Lanka) PLC (“X30”); thereby causing the 1<sup>st</sup> Respondent, Minister of Finance and the Cabinet of Ministers to have acted to continue to cause the contravention of the provisions of the Companies Act No. 7 of 2007, which came into force on 3.5.2007.
- v) make Order declaring that the Directors of Hotel Developers (Lanka) PLC, who held such Office after 3.5.2007 had acted in contravention of the mandatory provisions of the Companies Act No. 7 of 2007, by opposing the Petitioner’s Winding-up Application in D.C. Colombo Case No. 217/CO, made 5 years back on 17.11.2006 to wind-up Hotel Developers (Lanka) PLC
- w) make Order declaring that the Directors of Hotel Developers (Lanka) PLC, who held such Office after 3.5.2007 are not fit and proper persons to hold Office, as Directors of Hotel Developers (Lanka) PLC or any other public company, for having continuously contravened for several years the provisions of the Companies Act No. 7 of 2007
- x) make Order declaring that the Directors of Hotel Developers (Lanka) PLC, who held such Office after 3.5.2007 stand personally liable for the debts incurred by Hotel Developers (Lanka) PLC, in excess of its Assets, in terms of Sections 219 and 375 of the Companies Act No. 7 of 2007, in this instance, such debts being to the Government, which is the public
- y) make Order declaring that the Directors of Hotel Developers (Lanka) PLC, who held such Office after 3.5.2007 stand personally liable for any interest paid and/or agreed to be paid by Hotel Developers (Lanka) PLC in excess of its Assets, in terms of Section 364, read with Section 277 of the Companies Act No. 7 of 2007, in this instance such interest mainly being to the Government, which is the public
- z) make Order declaring that the Attorney General under Section 382 of the Companies Act No. 7 of 2007 is empowered to criminally prosecute Directors of Companies, and directing the Attorney General to consider, whether Directors of Hotel Developers (Lanka) PLC, who held Office after 3.5.2007 are liable to be so prosecuted, and if so, to so prosecute.
- aa) make Order declaring that it was the Government, acting through several Secretaries to the Ministry of Finance & Secretaries to the Treasury and Attorney Generals, and the 3<sup>rd</sup> Respondent, Secretary, Ministry of Finance & Secretary to the Treasury, P.B. Jayasundera, who had prevailed upon the Petitioner to enter into terms of Settlement in D.C. Colombo Cases Nos. 3155/Spl and 3231/Spl with Mitsui & Co. Ltd., and Taisei Corporation, together with the Government and Hotel Developers (Lanka) PLC, as per Settlement Agreements (“X17”) & Addendum (“X23”)

- bb) make Order declaring that Hotel Developers (Lanka) PLC, by reason of the interim injunctions obtained by the Petitioner in D.C. Colombo Case No. 3155/Spl and affirmed by the Supreme Court, had adequate funds accumulated with it to have completed the construction of the 3<sup>rd</sup> Tower, which had been provided for, increasing the number of Hotel Rooms, and thereby enhancing the profitability and debt-service ability of Hotel Developers (Lanka) PLC, to have been able to thereafter settle and pay Mitsui & Co. Ltd., and Taisei Corporation, from the own funds of Hotel Developers (Lanka) PLC, without the Government having to advance monies under the State Guarantees for such purpose, using public funds
- cc) make order declaring that 3<sup>rd</sup> Respondent, Secretary, Ministry of Finance & Secretary to the Treasury, P.B. Jayasundera, was primarily responsible for causing Hotel Developers (Lanka) PLC to pay Mitsui & Co. Ltd., and Taisei Corporation from funds, which had accumulated in Hotel Developers (Lanka) PLC, by reason of the interim injunctions obtained by the Petitioner in D.C. Colombo Case No. 3155/Spl, and affirmed by the Supreme Court, restraining any such payments being made to them, by prevailing upon the Petitioner to enter into Addendum (“X23”), and thereby causing cognisable loss and jeopardy to Hotel Developers (Lanka) PLC and the Government, which is the public
- dd) make Order declaring that the 3<sup>rd</sup> Respondent, Secretary, Ministry of Finance & Secretary to the Treasury, P.B. Jayasundera, is not a fit and proper person to hold Office, as a Secretary, Ministry of Finance & Secretary to the Treasury and/or any other Public Office, directly or indirectly
- ee) make Order declaring that cognisable loss and jeopardy have been caused to Hotel Developers (Lanka) PLC and the Government, which is the public, by the 4<sup>th</sup> Respondent, Minister of External Affairs, G.L. Peiris, as the former Minister of Justice & Deputy Minister of Finance, wrongfully and unlawfully suspending the Settlement Agreements (“X17”), entered into by the Petitioner at the behest of the Government, and by such suspension frustrating the further restructuring of Hotel Developers (Lanka) PLC, which had been specifically provided for in the said Settlement Agreements, as had been insisted upon by the Petitioner
- ff) make Order declaring that the 4<sup>th</sup> Respondent, Minister of External Affairs, G.L. Peiris, is not a fit and proper person to hold the Office, as a Minister of Cabinet of the Government, and/or any other Public Office, directly or indirectly
- gg) make Order declaring that the Order made by the Court of Appeal in CA Revision No. 721/98 and CA (LA) No. 177/98, taken together with other connected Applications, directing that payments be made to Mitsui & Co. Ltd., and Taisei Corporation, as per the Settlement Agreements (“X17”), whilst at the same time restraining all other Conditions of the said Settlement Agreements, had caused cognisable loss and jeopardy to Hotel Developers (Lanka) PLC and the Government, which is the public; and that this had resulted in the present financial predicament of Hotel Developers (Lanka) PLC, with considerable debts to the Government, which is the public.
- hh) make Order declaring that the write-off of Jap.Yen. 17,586 Mn., equivalent to **SL Rs. 10,200 Mn.**, obtained by the Petitioner in June 1995, amidst pressures and obstructions, solely through his sustained efforts, from Mitsui & Co. Ltd., and Taisei Corporation on their stated Claims from Hotel Developers (Lanka) PLC and from the Government, under the State Guarantees amounted as at November 2011 to a value of over **SL Rs. 73,500 Mn.**, at **12% p.a. Interest**, and this had been of immense value and benefit to Hotel Developers (Lanka) PLC and the Government.

- ii) make Order declaring that the Government had advanced to Hotel Developers (Lanka) PLC **SL Rs. 4,436 Mn.**, between 1997 and 2010, which together with simple average **13% p.a.** Interest thereon, had accumulated by May 2011 to **SL Rs. 12,098 Mn.**, and that the Government had provided to Hotel Developers (Lanka) PLC **Seven (7) Acres of Land** in the City of Colombo, reckoned to be of a value as at November 2011 around Rs. 10 Mn., per perch, amounting to a total value of **SL Rs. 11,200 Mn.**, thereby making the Government's total contribution to Hotel Developers (Lanka) PLC to be around **SL Rs. 23,500 Mn.**
- jj) make Order declaring that under and by virtue of the aforesaid contribution made by the Petitioner to Hotel Developers (Lanka) PLC, **being well and truly of a far greater value**, than the contribution made by the Government to Hotel Developers (Lanka) PLC, that the Petitioner stood and stands, as a greater Stakeholder of Hotel Developers (Lanka) PLC, than the Government
- kk) make Order declaring that Hotel Developers (Lanka) PLC, being governed by the Companies Act No. 7 of 2007, ought be restructured, taking into cognisance the suggestion made by the Supreme Court on 16.1.2006 to take into reckoning the interests of all Stakeholders, which was agreed to by he 3<sup>rd</sup> Respondent, Secretary Ministry of Finance & Secretary to the Treasury, P.B. Jayasundera (**"X32(a)"**), and developed in terms of the ordinary and regular law *viz* the provisions of the Companies Act No. 7 of 2007, under the supervision of the judiciary, as per the Application No. 52/2011/CO made to the Commercial High Court (**"X38"**), and not secretly away from the public glare, behind closed doors, by non-Stakeholders
- ll) make Order declaring that the former Attorney Generals, 5<sup>th</sup> Respondent, C.R. de Silva, P.C., and 6<sup>th</sup> Respondent, Mohan Peiris, P.C., **regardless of the public interest**, had failed and neglected to have the provisions of the Inland Revenue Act enforced, to protect public revenue and uphold the 'rule of law', in Petitioner's Court of Appeal (Writ) Application No. 1661/2003(**"X9"**)
- mm) grant such other and further reliefs as Your Ladyship's' Court shall seem meet



Petitioner