

**REGISTERED POST**

18<sup>th</sup> December 2003

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Attorney General

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Colombo 12.

Dear Sirs,

**Criminal prosecution against K.N. Choksy P.C., M.P. and R. Paskaralingam  
for fraud perpetrated on the Government / cover-up thereof**

You are aware that a Special Presidential Commission was appointed by Her Excellency the President in terms of the Special Presidential Commission of Inquiry Law No. 7 of 1978, as amended, as per the Proclamation published in the Gazette Extraordinary No. 858/4 of 14.2.1995, to conduct in terms of the said Proclamation, investigations into the conduct of affairs of certain public bodies and matters pertaining thereto, itemised in the Schedule to the said Proclamation; wherein Item 2 stipulated was Hotel Developers (Lanka) Ltd., [HDL] the owning Company of the Hilton Hotel, a company majority owned by the Government and on whose behalf, State Guarantees had been given to the Japanese Collaborators thereof. *Copy of the Gazette Notification is annexed marked "A"*.

The Special Presidential Commission, comprised the then Supreme Court Judge, P.R.P. Perera, as its Chairman and the then Appeal Court Judge, present Supreme Court Judge, H.S. Yapa and late Appeal Court Judge, F.N.D. Jayasuriya. The then Solicitor General, P.L.D. Premaratne P.C., assisted the Special Presidential Commission on behalf of the then Attorney General in the conduct of its investigations. A team of CID Officers, headed by then Senior Superintendent of Police, Godfrey Gunasekera, was attached to the Special Presidential Commission to conduct investigations.

The Special Presidential Commission carried out investigations into the matter of the fraud perpetrated on HDL and the Government, recording statements of 24 Witnesses, who included Officers of the Ministry of Finance & Planning, UDA, Ceylon Tourist Board, Colombo Municipal Council, Ceylon Electricity Board, Fire Brigade and Fort Police. The Special Presidential Commission also obtained an Investigation Report from a panel of 3 Chartered Architects, headed by Prof. Nimal de Silva and comprising Upali Iddawela and Dudley Waas. The names of the said 24 Witnesses are set out on page 229 of the 4<sup>th</sup> Interim Report submitted by the Special Presidential Commission to Her Excellency the President in March 1997, *a copy of which page is annexed marked "B"*.

Upon the conclusion of its investigations, the Special Presidential Commission, assisted by the then Solicitor General, in December 1995, served Show Cause Notices on 4 persons, containing several charges on grounds of fraud, stating thus:

**"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 "

The 4 persons on whom the aforesaid Show Cause Notices were issued is set out on page 227 of the 4<sup>th</sup> Interim Report submitted by the Special Presidential Commission to Her Excellency the President in March 1997, a copy of which page is annexed marked "C".

Among the said 4 persons were K.N. Choksy P.C. M.P., present Finance Minister, and R. Paskaralingam, present Advisor to the Prime Minister, so appointed notwithstanding the foregoing. Copies of the said Show Cause Notices served on them are annexed marked "D1" and "D2", respectively.

The Japanese Collaborators were penalised with a write-off of Jap. Yen. 17,586 Million i.e. US \$ 207 Million in June 1995 on their alleged claims from the Government on the State Guarantees, whilst C.L. Perera / Cornel & Co. Ltd., has been penalised with the UDA Land leased to Cornel & Co. Ltd., being re-vested in the Government in July 1999 as per the Surrender of Special Grants Nos. 673 and 674.

F.G.N. Mendis, the other person charged co-operated with the Special Presidential Commission and his Counsel, R.K.W. Gunasekera declined to cross-examine me on the evidence placed by me before the Special Presidential Commission. L.C. Seneviratne P.C. appearing for the Japanese Architects, similarly, also declined to cross-examine me on my evidence, thereby admitting the same. K. Shanmugalingam, the then Deputy Secretary to the Treasury, who gave evidence had made a confession admitting the pressures and influences that had been brought to bear upon him to cover up the fraud.

At the time of issuance of the Show Cause Notices in December 1995, the **irrefutable evidence of fraud** disclosed on the Sheets of the Substituted Architectural Plans, had not been discovered. Such **irrefutable evidence of fraud** was discovered before the Special Presidential Commission only subsequently, during my cross-examination by the Special Presidential Commission.

Such **irrefutable evidence of fraud** revealed that the *floor elevations* given on the Cross-Sectional Sheets are not the *floor elevations* depicted on the corresponding Floor Sheets of the very same Architectural Plans. The 3<sup>rd</sup> and 4<sup>th</sup> Floors are depicted to be at the same *elevation* of 24.5 meters, whilst the 19<sup>th</sup> Floor and the Roof are depicted to be at *elevations* of 72.7 meters and 72.5 meters, respectively; with prima-facie evidence pertaining to the *absence of Basements*, corroborated by the Hand Written Note in a HDL File titled "*UDA Permits & Approvals*" revealing the Sheet Numbers of the Original Architectural Plans, all copies of which had been destroyed; and cannibalised Architectural Plans surreptitiously substituted thereafter, long after the construction of the Hotel had commenced.

The Floor Sheet *elevations* were reconciled by me with the assistance of a Chartered Architect, with the Cross-Sectional Sheet *elevations* of the Original Project Plan, based upon which I had previously instituted D.C. Colombo Case No. 3155/Spl, a derivative action in law by a Shareholder on *grounds of fraud in circumstances of wrong-doer control*, and such reconciliation by me was made available to the Special Presidential Commission.

In the context of the discovery of the such **irrefutable evidences of fraud**, the Special Presidential Commission observed the same to be *an inherent, intrinsic, impossibility*; raising the cogent question, **as to how the Urban Development Authority could ever have approved such an Architectural Plan, in the very first instance ?** R. Paskaralingam was the Chairman of the Urban Development Authority at the relevant times.

My aforesaid legal action prevented the fraudulent payment of monies under the State Guarantees by the Government utilising public funds to the Japanese Collaborators, who were thus compelled to write-off Jap. Yen. 17.586 Million i.e. US \$ 207 Million.

Prior to my instituting legal action, K.N. Choksy P.C. had prevented a correct engineering examination of the Hotel by his Letter dated 8.8.1988. Thereafter, notwithstanding my objections as a professional accountant, as per my Memorandum dated 13.12.1989 to making payment to the Japanese Contractors in the absence of Bills of Quantities and Final Measurements, K.N. Choksy P.C. M.P. by his Letter dated 28.2.1990. endorsed that the full payment be made to the Japanese Contactors. If not for my legal action this would have resulted in a loss of Jap. Yen 17,586 Million i.e. US \$ 207 Million to the Government i.e. the public. *Copies of the said Letters of K.N. Choksy P.C., M.P., are annexed marked "E1" and "E2", respectively and copies of my Memorandum is annexed marked "F"*

In my aforesaid legal action, wherein K.N. Choksy P.C., M.P., was a Defendant, the District Court issued interim injunctions, *inter-alia*, observing in its Order thus:

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

The District Court in its Order further observed thus:

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

*[Emphasis added]*

*Copy of the District Court Order of 28.10.1991 is annexed marked "G".*

After the issuance of the interim injunctions by the District Court, the collusion between K.N. Choksy P.C., M.P. and R. Paskaralingam, then Secretary, Ministry of Finance to cover up this fraud perpetrated on the Government i.e. the public, is borne out by the Finance Ministry Minutes dated 20/22/23/27.11.1991. *Copies of relevant Finance Ministry Minute Sheets are annexed marked "H".*

After I had instituted the aforesaid legal action and the District Court had issued enjoining orders, acting regardless thereof and my objections, K.N. Choksy P.C., M.P., in a further endeavour to cover-up the fraud, acting in concert with R. Paskaralingam, intervened to have a fraudulent set of Audited Accounts of HDL certified and adopted. This too, was prevented by me by instituting a further legal action, D.C. Colombo. Case No. 3231/Spl, wherein the said fraudulent Audited Accounts of HDL were enjoined by Court.

Subsequently, the Supreme Court upholding the issuance of the interim injunctions by the District Court, in its Judgment, inter-alia, stated thus:

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

*[Emphasis added]*

*A copy of the Supreme Court Judgment of 2.12.1992 is annexed marked "I"*

K.N. Choksy P.C., M.P., the 7<sup>th</sup> Defendant in my legal action was unable to file Objections and Answer. Nevertheless, he wrongfully intervened in the Leave to Appeal Application made by the Japanese Collaborators in the Court of Appeal, endeavouring to have by legal action dismissed, **he submitting that I had no legal right to institute such an action in my country**, which matter is dealt with at pages 6 and 7 of the Supreme Court Judgment, shown highlighted.

Whilst R. Paskaralingam absconded abroad from personally facing prosecution before the Special Presidential Commission, K.N. Choksy P.C., M.P. having being found out to make untrue, erroneous and false statements to mislead and deceive the Special Presidential Commission and the public, absconded thereafter from appearing before the Special Presidential Commission. The extracts of the obiter dicta in a Postscript made by the Special Presidential Commission in March 1996, on the Written Submissions made to the Special Presidential Commission by K.N. Choksy P.C., M.P., are given below:

"In the course of the proceedings of February 29, 1996 the Commission has adverted to the provisions of Rules 15, 50 and 51 of the Supreme Court (Conduct of and Etiquette for Attorneys-at-Law) and to two Dicta pronounced by two eminent Judges presiding over the Superior Courts of the Great Britain."

"A Court of Law, a Tribunal, or a Statutory Commission ought to, in the course of its Proceedings, apply and enforce such rules of Conduct and Etiquette. A Court must not only be concerned with punishing Counsel for breach of such rules, but must ensure that such rules are observed in proceedings conducted before it."

"In addition to the dicta of Lord Reid and Lord Esher to which the Commission has already referred to in the Proceedings, this Commission wishes to place on record certain decisions which lay down valuable pronouncements in regard to the paramount duty of Counsel to Court. Lord MacMillan on Ethics of Advocates, states thus: - '*In the discharge of his office, the Advocate has a duty to his Client, a duty to the State, and a duty to himself*'. This passage was cited with approval by Lord Justice Willmer in *Meek vs. Flemming*:"

"We are of the unanimous view that in this respect he [*reference being to K.N. Choksy P.C., M.P.*] has stated untrue, erroneous and false facts, which necessarily has the tendency to mislead and deceive the public in general, and the members of this Commission" - [*Emphasis added*]

The Special Presidential Commission in another Postscript, inter-alia, stated thus:

"Thus, the Supreme Court has in effect upheld the law as laid down the aforesaid English decisions and the law as set out in the Provisions of Article 106. This Commission is surprised to ascertain and note that Mr. K.N. Choksy P.C. was one of the Junior Counsel who appeared for the 2<sup>nd</sup>, 3<sup>rd</sup> and 7<sup>th</sup> respondents at the argument of this appeal before the Supreme Court. In these circumstances, it surprises and startles this Commission how Mr. Choksy with a conscience and consistent with his duties as Counsel to the Commission, making submissions to the effect that the Supreme Court refused to adopt the English law as laid down in these two English Cases and held that the English law did not coincide with the law of Sri Lanka."

*Copies of the above Postscripts of the Special Presidential Commission published in the Daily News of 30.3.1996 are annexed marked "J"*

The proceedings of the Special Presidential Commission on this matter was not concluded due to the sudden hospitalisation of late Justice F.N.D. Jayasuriya with a serious heart condition, he having been the Member of the Special Presidential Commission, who was actively involved in the conduct of the investigations into this fraud. Nevertheless, the record of the proceedings and copies of the productions / documents would be with Saleem Marsoof, Esqr., P.C., Addl. Solicitor General, who was assisting the Commission towards the end of its period. Hence, all recorded statements of evidence and other productions / documents would be in your custody and possession.

By Letter dated 6.8.2002, J. Charitha Ratwatte, present Secretary, Ministry of Finance, constituted a Committee in the context of a Letter dated 28.2.2001 from you, the Attorney General. Whilst I informed the said Committee and your representative, Nihal Jayawardene Esqr., Senior State Counsel, that whilst I would consent to a settlement of the commercial matters, I specifically refused to compromise on the matter of fraud and/or of the endeavour to cover-up the fraud, particularly by K.N. Choksy P.C. M.P. and R. Paskaralingam. This is confirmed by my Letter dated 26.7.2002 addressed to you, the Attorney General, consequent to a discussion had with you. Quote:

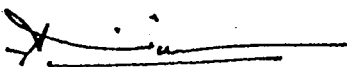
"At the last discussion had with you, together with my Counsel, Mr. Douglas Premaratne P.C., you confirmed to and assured us that, should there be any criminality, that you would be the first person to recommend that warranted action in that regard be taken."

I have witnessed the speed and zeal with which you have been directing the investigations into an alleged offence of aiding and abetting a person, who is alleged to have travelled on a forged Passport, with an alleged payment of U.K. Pounds 1500/- made to him from the Sri Lanka Cricket funds, by it President Thilanga Sumathipala. The concerted efforts made by the Officers of the Criminal Investigation Department, who have been conducting investigations, under your directions, into this alleged offence have been extensively publicised and is well known. The incredible haste, speed and zeal with which you have acted / caused matters to be reported to the Courts of law, including making questionable submissions to the Supreme Court, is well known.

In comparison with the above, in stark contrast thereto, you have intriguingly and questionably failed and neglected to take any action, whatsoever, in regard to the foregoing matter of a massive fraud perpetrated on the Government, the country and the public, and its cover-up, *notwithstanding your aforesaid assurance to me*. Such offence of fraud / crime is not prescribed, inasmuch as, I understand, that you recently indicted Rohan Perera, former Chairman of Pramuka Bank after its closure, for a transaction alleged to have been perpetrated in 1992 concerning another Bank.

In the context of the speed and zeal with which you have acted in the aforesaid matter, apparently deeming the same to be of grave importance and of utmost urgency, I urge you to take even more stronger, speedier and effective action, as is warranted, and cause such action to be taken, in regard to the foregoing matter of the massive fraud perpetrated on the Government and the public, and its cover-up, which you would concede is far more graver and of national and public importance; inasmuch as the former Solicitor General, acting on behalf of the Attorney General, having already caused charges of fraud to be made, as aforesaid, admittedly upon credible evidence, after investigations by the Criminal Investigations Department, subsequent to which the aforesaid further irrefutable evidence of fraud surfaced before the Special Presidential Commission.

Yours faithfully,



Nihal Sri Ameresekere

cc: Indra de Silva Esqr., Actg. Inspector General of Police  
Lionel Gunatilleke Esqr., Deputy Inspector General of Police / CID  
Sisira Mendis Esqr., Director, CID

Her Excellency the President Chandrika Bandaranike Kumaratunga