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BY COURIER

22nd June 2012

President Mahinda Rajapaksa
Minister of Finance
Temple Trees
Colombo 3.

Your Excellency,

Hotel Developers (Lanka) PLC (HDL)

I refer to certain *assertions, morefully* dealt with hereinbelow, made in the Speech, *vis-à-vis*, HDL, the owning Company of the Hilton Hotel, at the Budget Debate in Parliament on 21.12.2011 *vide - Hansard Columns 3223 and 3224 (Copies attached for easy reference)*

1. 'HDL has to pay the Treasury Rs. 12,099 Mn.'

- a) The Capital of the Loans advanced by the Treasury to HDL had amounted to only **Rs. 4,435,986,893/-** viz:

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	486,097,977	8.39%
Total	<u>4,435,986,893</u>	

- b) By Letter dated 3.5.2011, the Treasury had required HDL to repay these Loans, together with Interest, claiming an amount of **Rs. 12,098,634,769/77**.
- c) Section 5 of the Civil Law Ordinance mandates that the Interest *shall not exceed* the Capital.
- d) In terms of Section 364, read with Section 277, of the Companies Act No. 7 of 2007, no Interest was chargeable from HDL, after the Petition for Winding-up of HDL was presented by me on 17.11.2006. Notice of this pending legal action was given to the Speaker of Parliament under and by virtue of Notice given referred to at paragraph (f) hereinbelow.
- e) The Treasury by Letter dated 10.5.2011 addressed to HDL had requested HDL to **re-pay** the aforesaid Claims **in two years time**,

- f) In such circumstances, as I lawfully might, I filed an Application in the Commercial High Court to *re-structure* HDL, in terms of the provisions of the Companies Act No. 7 of 2007, and gave timeous notice thereof to the Speaker of Parliament, which also included reference to the aforesaid Winding-up Application, *which was pending since 17.11.2006, the Treasury having opposed the same.*
- g) *Whilst the aforesaid two year period commencing on 10.5.2011 had been pending, in breach thereof,* shortly thereafter, HDL had been *surreptitiously* included, as the only Underperforming Enterprise, Scheduled to Act No. 43 of 2011, on *alleged grounds of protracted litigation, suppressing* the totality of facts pertaining to HDL.
- h) Notwithstanding my *objections*, the Treasury was *anxious* and *insistent* in October 1996 to pay Mitsui & Co. Ltd., and Taisei Corporation, from the funds accumulated in HDL, as a consequence of the Interim Injunctions, which I had obtained, with HDL then having its own funds amounting to US \$ 30 Mn.
- i) Accordingly in October 1996, a lump-sum payment of Jap. Yen. 2,138,082,192 and in November 1996 the first installment of Jap. Yen 971,969,460 i.e. a total of Jap. Yen 3,110,051,652, then US \$ 27.5 Mn., was paid. The balance 14 Installments over the years 1997 to 2010 had been paid to Mitsui & Co. Ltd., and Taisei Corporation. Even though, the Lawyers of Mitsui & Co. Ltd., and Taisei Corporation had confirmed to the Supreme Court on 15.5.2006, that they *would waive one more installment, that too, had been paid by the Treasury.*
- j) The *dire* financial straits HDL was plunged into, was as a result of the *perverse conduct and actions* of the Minister of External Affairs, then Minister of Justice and Deputy Minister of Finance, who ought to have been *arraigned before the law for the colossal losses caused to the State and the public.*
- k) *As a result of my endeavours,* Mitsui & Co. Ltd., and Taisei Corporation, *on my insistence,* wrote-off on 30.6.1995 Jap Yen. 17,586 Mn., then equivalent to US \$ 207 Mn., i.e. then **Rs. 10,200 Mn.**, on their stated Claims on the Government Guarantees, and *re-scheduled* the balance agreed debt over a further period of 15 years (*originally fully payable by 1999*), with a one year grace period, at a reduced rate of interest of 5.25% p.a., (*originally 6% p.a.*), which had been *immensely beneficial to the Government, as the Guarantor. This was notwithstanding the then Attorney General and Secretary, Ministry of Finance having opposed my actions.*
- l) At an average 13% p.a. interest, which rate is comparable to the interest charged as aforesaid by the Government on Loans to HDL, the said write-off obtained by me on 30.6.1995 would amount to Rs. 81,450 Mn., as at 30.6.2012.
- m) Hence, as opposed to the Government's aforesaid Claim of **Rs. 12,099 Mn.**, (*and 7 acres of Land at Rs. 10 Mn., per perch – a total value of Rs. 11,200 Mn.*) my contribution to HDL *is far greater*, and now stands at Rs. 81,450 Mn.

2. **'On the Lease payment for the Land of Rs. 136.8 Mn., only Rs. 27.3 Mn., had been paid'**

a) In such circumstances, in Settlement Agreement No. 3 entered into on 28.6.1995 between the Government and me, the following Condition was included:

"1. 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."

b) Accordingly, then Attorney General, as authorized by the President of the Republic, in terms of Section 3 of the State Lands Ordinance, caused the execution on **26.7.1999** of Surrender of Special Grants Instruments Nos. 673 and 674, **vesting the said Lands in the Government.**

3. **'Management Fees reduced from over an excess of 37% - normally it should have been 15%'**

a) The Cabinet Appointed Negotiating Committee in its Report dated **11.7.2005**, which as per Cabinet Memorandum of **5.10.2005** had been approved on **13.10.2005**, by the Cabinet of Ministers, *which also included you, yourself*, had stated thus:

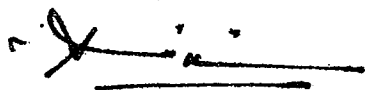
"17. Heads of Terms of the new Management Agreement being considered with Hilton International, compared with the Terms of the present Management Agreement are as follows:

	Present	Proposed
Management Fees	25% of Gross Operating Profit (GOP), which is after deducting FF&E	2% of REVENUE as Base Fee + 7% of Adjusted Gross Operating Profit (AGOP) as Incentive Fees, only if it EXCEEDS Rs 400 Mn AGOP = GOP-RATES-INSURANCE
Group Services and Benefits	Approx. 7% of GOP	2% of Revenue
Term	Initial term expires on 31.12.2007, with the Option to extend the Operating Term by three (3) successive periods of 10 years each	The initial term is ten (10) years, with the Option to extend by two further five year periods with the mutual agreement of both parties
Furniture, Fittings and Equipment Reserve	US \$ 700,000/= per annum	The Reserve for FF&E will be fixed at 5% of the Gross
Early Termination	Not allowed	Allowed. No Compensation if the Hotel's Revpar in any two consecutive years does not exceed it's Competitors If the ownership of the hotel is sold, compensation is payable if the Contract is to be terminated.

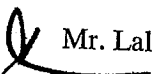
- b) I resigned as Chairman of HDL on 10.11.2005 and the *foregoing matter* had been *pending and had not been pursued by the Treasury*, even though the aforesaid Terms had been *agreed upon* and draft of an Agreement *had been finalized*.
- c) It is also pertinent to be notified, that consequent to the bomb explosion in October 1997, Hilton in January 1998 *fraudulently* claimed entitlement to the US \$ 10 Mn., payment made under the Group – ‘Business Interruption Insurance Policy’, and demanded HDL Shares to the value of US \$ 7 Mn., be allotted to them, *which I refuted and successfully established, as belonging to HDL*.
- d) With HDL’s Share Capital being only Rs. 452.3 Mn., if not for my such stance, by such *fraudulent manoeuvre* Hilton would have acquired 48.5% of the increased Share Capital of HDL and with the consequent reduced 14.2% Shareholding of the Japanese, *jointly they would have thereby acquired 62.7% controlling Shareholding of HDL*, with the Government Shareholding being reduced to a *minority of 33.4%*.

I regret that Your Excellency, as the Minister of Finance, had not been *correctly* apprised of the foregoing facts, *presumably by the Treasury*, for the totality of the facts to have been placed before Parliament, thereby rendering such *incomplete* statement to Parliament, *to be false and misleading*.

Yours truly,



Nihal Sri Ameresekere

cc:  Mr. Lalith Weeratunga, Secretary to the President – *for H.E. President to be correctly apprised*