

BY COURIER

IMPORTANT

31<sup>st</sup> July 2007

His Excellency Mahinda Rajapakse  
President of the Republic of Sri Lanka / Minister of Finance  
Temple Trees  
Colombo 3.

Your Excellency,

Hotel Developers (Lanka) Ltd. [HDL]

**HDL Bankrupt warranting Winding-up**

I refer to my Letter dated 24.11.2006, after intimating that in the interest of the Government, I had instituted an Action to wind-up HDL, in conformity with the Cabinet Decision of 5.10.2005 – viz:

"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." (Emphasis added)

HDL's Attorneys-at-Law, D.L. & F. De Saram had filed Motions in the Supreme Court on 26.10.2005 and 8.11.2005, disclosing the facts and admitting that HDL is hopelessly bankrupt.

It is disclosed that on 5.10.2005 Dr. P.B. Jayasundera had advised the then Hon. Minister of Finance & Planning and the Cabinet of Ministers on 'one course of action', **based on recommendation made by a CANC**, and thereafter on 21.1.2007, with the change of Government, **he had on his own** advised the Hon. Minister of Finance & Planning and the Cabinet of Ministers on a '**diametrically opposite course of action**', **suppressing** the first 'course of action' advised upon, and the justifications therefor, **given by a CANC.**

The Companies Act No. 7 of 2007 mandates Companies, which are bankrupt to be wound-up. **Can a responsible Government violate the law ? Also, in terms of the said law, those who oppose such winding-up stand personally responsible and liable for the losses caused, in this instance, to the Government.**

**Government Loans defaulted since 1997**

Cabinet Memorandum of 21.1.2007 **had not disclosed the defaults by HDL on Government Loans from as far back as 1997 to 2005, as set out below:**

<u>Date of Loan</u>	<u>Capital</u> Rs.	<u>Rate of Interest</u> % p.a.	<u>Interest</u> Rs.
02.7.1997	288,567,633	12.50	648,504,108
12.7.1999	469,742,070	12.50	735,514,859
03.7.2000	464,427,826	12.50	594,791,483
29.6.2001	360,618,876	18.56	640,942,571
01.7.2002	446,803,874	12.50	358,351,215
04.7.2003	340,024,378	9.40	147,032,120
30.6.2004	395,658,959	8.59	110,970,575
30.6.2005	<u>225,639,338</u>	10.28	<u>48,775,967</u>
Total	<u>2,991,482,954</u>		<u>3,284,882,898</u>

I annex copies of 8 Letters from 1997 to 2005, giving the conditions of these Treasury Loans.

In addition to the above defaults amounting to Rs. 6,276,365,852, **that too at old Treasury Bill rates**, further Loans would have been given on 1.7.2006 and 1.7.2007, with which, the defaulted Loans by HDL to the Government would be around **Rs. 7,000,000,000/-**; and with further Loans that would be required to be given on 1.7.2008, 1.7.2009 and 1.7.2010, the total defaults to the Government would then be in the region of **Rs. 10,000,000,000/-**.

#### **No Cabinet Approval for Undertaking ?**

Dr. P.B. Jayasundera has stated to Court that the Government has given an undertaking to HDL not to demand re-payment, until the Japanese are paid in full i.e. upto 1.10.2010. No such Cabinet approval had been sought in the Cabinet Memorandum of 21.1.2007, and accordingly, there is no Cabinet Approval for the Government to have given such an undertaking to HDL.

Even to grant such questionable and dubious "special privilege" **only to HDL**, of not being demanded and/or not requiring repayment of **long overdue defaulted Loans**, is a blatant violation of the Fundamental Rights to equality guaranteed under the Constitution, whereby, in which event, if not all Loan defaulters, at least all Hotels, given the current condition in the Hotel Industry, ought be given the same concession, enshrined as a Fundamental Right under the Constitution.

Such "special privilege" on enormous Loans, **that too at old Treasury Bill rates**, defaulted amounting to Rs. 7000 million, over the last 10 years, with further Loans, to be granted, in total reckoned to be around Rs. 10,000 million, is not even given to essential public utility services, such as in Transport, Electricity, Health, Education, etc.

#### **7 Acres prime Government Land**

The Land on which the Hilton Hotels stands is now owned by the Government, and the Supreme Court has accepted such fact, stating that the Land has now re-vested in the State. The Land was re-vested in the Government in July 1999 on the advice of the Hon. Attorney General. Thus, a Shareholding of Rs. 250.9 million allotted for an under-lease of the Land, of the total Share Capital of HDL amounting to Rs. 452 million, stands frustrated as 'not-paid for'.

**Government has not received legitimate payment for the use by HDL of such valuable prime Land in extent over 7 Acres in the heart of the Colombo City**, a benefit not permitted to or enjoyed by any other party; which therefore is an unequal favourable treatment before the law, violative of the Fundamental Right to equality enshrined in the Constitution.

#### **Hilton International**

Hilton International having been involved in 'technical assistance services', paid for by HDL, from the very inception of planning and construction of the Hotel, had been privy to and had been aware of the fraud perpetrated on HDL, upheld by Supreme Court; and which at present is under investigations by the CID, on the advice of the Hon. Attorney General, consequent to the Police Commission and your Secretary, having raised queries in this regard, upon representations made by me.

Hilton International in January 1998, consequent to the Bomb damage of the Hotel, **dishonestly held out that the insurance monies of US \$ 10 million for the re-instatement of the Hotel, belonged to them, and by their Letter dated 16.1.1998 required Shares of HDL to the value of US \$ 7 million (then equivalent to SL Rs. 435 million) to be allotted to them.** In the context of HDL's Share Capital of only Rs. 452 million, this was a devious attempt on their part to get a major Shareholding of HDL, which together with the Shareholding of Japanese of Rs. 124.5 million would have given them a majority control. **This was thwarted by my Memo dated 28.3.1998 to then HDL Chairman, D.Y. Liyanage.**

Even though Hilton International was and is entitled to 25% of the Net Profits, however, through various charges made, they had recovered more than 25%, **even going up to 35%**, as was analysed and exposed by me, as then Chairman, HDL, also disclosing that the Average Room Rate had questionably dropped from over US \$ 90 to around US \$ 70, in confronting Hilton International.

### Proposed Resolution

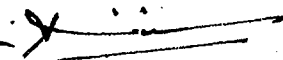
In the given circumstances, the most advantageous solution for the Government, in conformity with the law, to protect its interest and to prevent loss, is as follows:

- i) for the Court to Order the Winding-up of HDL
- ii) for Government to immediately form a new Government owned Company
- iii) to capitalise the Government Land at today's market value, as Share Capital of the new Company, taking also into reckoning the fact that the Government had not received any payment from HDL for the use of this valuable Government Land.
- iv) to transfer as further Share Capital of the Government, the Hotel Building to the new Company, inasmuch as the Building goes with the Land owned by the Government (Debts payable by HDL to Government would be in the region of Rs. 10,000 million, whilst the Building and Equipment are valued at only Rs 5,000 million).
- v) for the new Company to give an option to Hilton International to negotiate on a new Management Agreement beneficial to the Government or competitive offers for same could be called from International Hotel Chains of repute.
- vi) therefore, the new Company would be 100% owned by the Government. If the Government so wishes, it could give the present 7.5% public Shareholders of HDL, compensatory Shareholdings in the new Company.
- vii) at an appropriate time, the Government could sell a majority Shareholding of the new Company or a minority Shareholding, with a Management Contract, thereby ensuring the optimum return to the Government; and resolving the present problem.

I, with my sole and sustained efforts, **amidst severe obstructions and pressures**, having made an enormous contribution to have saved HDL and the Government in June 1995, as much as Jap. Yen 17,586 million, then equivalent to US \$ 207 million / SL Rs. 10,200 million (today reckoned to be around Rs. 40,000 million), **have an inherent right and entitlement, to ensure that such immense benefit is not 'exploited' for the benefit of any other party, including any party surreptitiously selected for a transaction, on the basis of 'private treaty', causing any loss and damage to the Government. It should be noted that the Supreme Court had observed that in the given facts and circumstances, the Government could not be indifferent.**

I attach a copies of my Counter-Affidavits dated 26.7.2007 and 30.7.2007 (without the voluminous Documents annexed thereto), which I was compelled to file, **being appalled at the contents of an Affidavit**, which had been tendered to Court by Dr. P.B. Jayasundera, Secretary, Ministry of Finance & Planning. **I draw your kind attention to the facts stated in my Counter-Affidavits.**

Yours truly,



Nihal Sri Ameresekere

cc: Mr. Lalith Weeratunga, Secretary to H.E. the President

Hon. Sarath Amunugama, Former Minister of Finance & Planning  
and Minister of Enterprise Development & Investment Promotion

Mr. Dhammika Perera, Chairman, BOI

- *Does the BOI give foregoing privileges and concessions even to investors, who bring in foreign investments, whilst in this instance, there was an attempt to 'deviously siphon out a large scale of foreign exchange from the Government', as observed by the Supreme Court.*

Mr. Gotabaya Rajapakse, Secretary, Ministry of Defence, Public Security, Law & Order

Mr. Victor Perera, IGP

Mr. D.W. Prathapasinghe, DIG-CID

- *Vis-à-vis, the on going Investigations*

Mr. Ameer Ismail, Chairman, Commission to Investigate Allegations of Bribery or Corruption

Ven. Elle Gunawansa, Member Police Commission / Chairman, Committee to Combat Fraud,  
Bribery & Corruption