

DO JAPANESE AID / RAID ??? !!!

Nihal Sri Ameresekere instituted District Court Cases Nos. 3155/Spl and 3231/Spl, and first of which was upheld by Supreme Court, *the highest judiciary*, as a *prima-facie* Case of fraud, confirming Interim Injunctions issued by District Court, restraining any payments by Hotel Developers (Lanka) PLC, (*owning Company of Colombo Hilton Hotel*) and/or by the Government of Sri Lanka under the State Guarantees to Mitsui & Co. Ltd. & Taisei Corporation, Japan. (*Commonwealth Commercial Law Report of 1992 – Sri Lanka – Ameresekere v Mitsui & Co. Ltd., and Others (1992) LTC (Comm) @ 636*)



Colombo Hilton Hotel

Thereafter before a Special Presidential Commission, evidence beyond reasonable doubt of this fraud perpetrated on the Government of Sri Lanka, was disclosed by the Fort Police, who affirmed that the purported Police Report given by Mitsui & Co. Ltd. & Taisei Corporation on a Fire at the Construction Site destroying all documents, **had been a forgery!**

It was further revealed that what was before the Commission were the **Original Plans, cannibalized** with Floor Sheets and Basement Sheets **removed** and **new Cross-Sectional Sheets introduced**, giving **incongruous elevations**, which the Commission observed to be an **inherent, intrinsic, impossibility**. Japanese Architects represented by Counsel did not deny such revelations, but admitted thereto.

Japanese Embassy / Japanese Government, under threat of stopping Aid pledged, intervened / pressurized Government of Sri Lanka to cause Nihal Sri Ameresekere to settle and withdraw his 2 Cases. Agreements / Addendum therefor were finalized by the Hon. Attorney General.

DE SILVA & PERERA
Solicitors, 11, 12 & 13, Cross Street, Colombo 1.
Tel: 21707
Fax: 21717
Registered Post
12th November 1991
D/C - Colombo Case No. 3155/Spl
Hon. Sunil De Silva Esqr., P.C.,
Attorney General,
Attorney General's Department,
Raffles Road,
Colombo 12.
Hon. Sir,
We write in pursuance of our earlier correspondence and forward copies of the Order made by the Learned District Judge on 28.10.91 in the abovesentenced Action and the Interim Injunctions issued therein against the 1st, 2nd, 3rd & 4th Defendants.
We trust that you will take note of the contents of the Learned District Judge's Order, particularly, the matter of fraudulent collusion, and since, prima-facie, the premise of fraud has been taken cognizance of by Court, that you would accordingly, take steps in the interest of Public of Sri Lanka with regard to the State Guarantees that are in issue and notify the relevant parties, that under such circumstances of fraud, that such State Guarantees in Law would be null and void.
You may also consider settling accordingly the Esia Bank in Japan and any other known co-conspirators of the said loan. We also draw your kind attention to our letter dated 28.09.90 and believe that you would have taken necessary action in this regard.
Please acknowledge safe receipt.
Yours faithfully,
De Silva & Perera
Attorneys-at-Law
Secy, Secretary, Ministry of Finance & Secretary Treasury

THE EMBASSY OF JAPAN
IN THE DEMOCRATIC SOCIALIST
REPUBLIC OF SRI LANKA
20, Gregory's Road
Colombo 7.
18 February, 1993
Mr. R. Pankaralingam
Secretary
Ministry of Finance
Colombo 1.
Dear Mr. Pankaralingam,
XXXXXXXXXXXXXXXXXXXXXXXXXXXX
With regard to the pending case I spoke to you about yesterday, I would be most grateful if you could please see that there would be a definite settlement to this before you leave for Japan and USA, as I feel that with you being out of the island, nothing positive will be done. I would also like to mention that the longer it takes for a settlement, the worse the situation gets.
XXXXXXXXXXXXXXXXXXXXXXXXXXXX
Yours sincerely,
Masao Kumiyama
Ambassador of Japan

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D/G/EA
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8 April 1994
Secretary
Cabinet Sub-Committee on Investment
801
Colombo 1.
Hilton Hotel
Mr. I. Hashimoto, Charge de Affaires a.i. of the Japanese Embassy in Colombo, recently called on Mr. R.C.A. Vanderger, State Secretary, Ministry of Foreign Affairs. During their discussion the Charge de Affaires made reference to the Hilton Hotel dispute.
I am sending herewith an extract of a note prepared by Mr. Vanderger, on his meeting with the Japanese Charge de Affaires. I shall be glad if this is brought to the notice of the Cabinet Sub-Committee on Investment at its next meeting.
G. Wijesanti
Director-General/Economic Affairs

Desperately Japanese Government even offered to negotiate with the LTTE by having discussions in Japan away from the public glare !

Secretary,

Last afternoon Mr I Hashimoto, C/d'A. of Japanese Embassy, called on me.

2. While it was predominantly a courtesy call, he referred to the following matters, which I think need a studied response from the appropriate agency of government:-

i. Referring to the ethnic conflict and the expressed intentions of the Government to negotiate with the LTTE, he said he was thinking aloud about what the reaction of the Government would be if Japan was to offer itself as a venue for talks between the representatives of the Government and the LTTE. He thought that such a meeting away from the public glare, might provide a conducive atmosphere for such talks. I replied that he should make this proposal to AIR since these matters were being handled by the Presidential Secretariat.

ii. Mr Hashimoto also brought to my notice the concern of the Government of Japan and Japanese investors in regard to the Hilton Hotel dispute. He said that in view of the importance which Sri Lankan Foreign Policy attaches to attracting foreign investment, the Government should look at the overall impact which disputes like the Hilton Hotel dispute would have on Sri Lanka-Japan bilateral economic relations and, more particularly, the adverse impact it may have on Japanese investors who might feel that in situations of this nature, the government was not doing enough to help resolve such issues. Since the overall loss would be to the country itself, he thought that in matters like this the Government should become more involved, without leaving it to private arbitration or even negotiations conducted by BOI etc. I said I would convey his concerns to the appropriate authorities.

SS/FA
24.3.94

copy to :DG/PA
DG/EA

The **Addendum** formulated by the Hon. Attorney General contained the following Recitals, disclosing that it was the Government of Sri Lanka, that intervened to bring about a Settlement, due to the threatening pressures exerted by the Japanese Government, with the Sri Lanka Government succumbing thereto ! :

“AND WHEREAS the Government wishes to continue to maintain without any impediment the cordial relationships with Japan and the Government has been concerned about the delay in the implementation of the aforesaid Agreements

AND WHEREAS in these premises the Government, with the consent and concurrence of Ameresekere, has now agreed to proceed with the implementation of the said Agreements No.1 and 2 without the fulfilment of the



conditions stipulated in Agreements No. 3 and 4 except as herein specifically provided. It is understood by and between the parties that the Government will take administrative action, as permitted under applicable law, to give effect to the contents of Agreements No.3 and 4.”

On insistence by Nihal Sri Ameresekere for such Settlement, Mitsui & Co. Ltd. & Taisei Corporation wrote-off in June 1995 Jap. Yen. 17,586 Mn., then US \$ 207 Mn., or Sri Lankan Rs. 10,200 Mn., which write-off at value as at 30.6.2020 at AWFDR amounting to **SL Rs. 136,215 Mn., and likewise, the balance at value as at 30.6.2020 amounting to **SL Rs. 78,591 Mn.**, had been re-scheduled over a further period of 16 years, at a reduced rate of interest of 5.25% p.a.**

In terms of the Agreements, notwithstanding the fraud perpetrated on the Government of Sri Lanka by the Mitsui & Co. Ltd. & Taisei Corporation, they were paid Jap. Yen 11,124,552,538/- (value as at 30.6.2020 without interest **Rs. 29,678 Mn.**) **Even though under circumstances of fraud, the State Guarantees could have been rendered null and void by the Government of Sri Lanka, who however, did not or could not do so, obviously due to Diplomatic pressures !**

Had Nihal Sri Ameresekere pursued his 2 Cases, he would have succeeded, without any payment having had to be paid to Mitsui & Co. Ltd. & Taisei Corporation, and today he, among others, would have been one of the main Stakeholders of Hotel Developers (Lanka) PLC.

At that time Mitsui & Co. Ltd. & Taisei Corporation had failed to Answer Interrogatories, which had been Ordered to be answered by the District Court, and the period of time had lapsed for Mitsui & Co. Ltd. & Taisei Corporation to have filed a Quantum Meruit Application to claim payment for the reduced work done, which was also in doubt in the context of the blatant major fraud perpetrated on the Government of Sri Lanka involving State Guarantees, which ought have been rendered null and void.

The Special Presidential Commission issued Charged Sheets framed by the Solicitor General against 4 persons on grounds of fraud against the Government of Sri Lanka. Criminal prosecution directed by the Hon. Attorney General were scuttled by the Criminal Investigation Department of Sri Lanka Police, with the Officers of the Attorney General's Department acting in tandem therewith !

One of the Charges in the Charge Sheets against the said persons were as follows:

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

The Auditors of Hotel Developers (Lanka) PLC, who certified such Accounts were KPMG Ford, Rhodes, Thornton & Co., Chartered Accountants, who were removed as Auditors, as per Decree ordered and entered by the Commercial High Court with the Hon. Attorney General not contesting the said Case D.C. Colombo No. 3231/Spl re – the adoption of fraudulent Annual Accounts of Hotel Developers (Lanka) PLC.

In fact one of the persons so charged was ironically later appointed as the Finance Minister of the Government of Sri Lanka, who introduced a perverse Amnesty, which was challenged by Nihal Sri Ameresekere resulting in the Supreme Court castigating the said Statute as follows :

“Supreme Court condemn the Statute 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.”

To IMF, World Bank, ADB, *et al* and the West, the foregoing were intriguingly palatable, in that, they failed to condemn the same, raising the cogent issue of credibility on their part ? ! In fact, in the face of critical representations extensively made, Japan signed and ratified only as late as July 2017 the United Nations Convention Against Corruption, which came into force in December 2005.

The worst is that obligations and commitments to Nihal Sri Ameresekere, as per the Consent Decrees ordered and entered by the Commercial High Court, in contumacious contempt thereof had not been fulfilled. Japanese Government having intervened and threateningly pressurized the Government of Sri Lanka to have the above Settlement entered into, stood and stand bound likewise to have ensured the prompt fulfillment of such obligations and commitments, which had been ‘Conditions Precedent’ converted into ‘Conditions Subsequent’ due to undue pressures exerted by the Japanese Government.

On the contrary, having got their part of the deal, with such threatening pressures to cover-up a fraud perpetrated by Japanese Companies on the Government of Sri Lanka, several Letters addressed to the Japanese Embassy / Japanese Government on the obligations and commitments, as per Consent Decrees ordered and entered by the Commercial High Court have been evasively and shamelessly ignored ! – viz :

Fulfillment of Sovereign Obligations and Commitments, as per Agreements executed and Consent Decrees ordered and entered based thereon by the Commercial High Court of Sri Lanka

<u>Date of Letter</u>	<u>Addressed to</u>
1. 30.12.2016	H.E. Kenichi Suganuma, Japanese Ambassador to Sri Lanka
2. 30.12.2016	Mr. Minae Tsuchiya, Attorney, International Affairs Division Attorney, Ministry of Justice, Japan
3. 28.12.2017	H.E. Taro Kono, Foreign Minister of Japan C/o H.E. Kenichi Suganuma, Japanese Ambassador to Sri Lanka
4. 4.1.2018 (2)	H.E. Kenichi Suganuma, Japanese Ambassador to Sri Lanka
5. 16.3.2018	H.E. Kenichi Suganuma, Japanese Ambassador to Sri Lanka
6. 11.4.2018	H.E. Taro Kono, Foreign Minister of Japan C/o H.E. Kenichi Suganuma, Japanese Ambassador to Sri Lanka
7. 18.5.2018	H.E. Taro Kono, Foreign Minister of Japan C/o H.E. Kenichi Suganuma, Japanese Ambassador to Sri Lanka
8. 22.6.2018	H.E. Kenichi Suganuma, Japanese Ambassador to Sri Lanka, H.E. Taro Kono, Foreign Minister of Japan and H.E. Shinzo Abe, Prime Minister of Japan
9. 19.9.2019	H.E. Akira Sugiyama , Japanese Ambassador to Sri Lanka
10. 28.10.2019	H.E. Akira Sugiyama , Japanese Ambassador to Sri Lanka
11. 12.12.2019	H.E. Akira Sugiyama , Japanese Ambassador to Sri Lanka and H.E. Toshimitsu Motegi, Minister for Foreign Affairs of Japan
12. 14.1.2020	H.E. Kozo Yamamoto, Japanese State Minister of Regional Revitalization and H.E. Akira Sugiyama , Japanese Ambassador to Sri Lanka

DOUGHT NOT THE FOLLOWING PETTY DONATIONS OR GRANTS TO COVER-UP ABOVE REALITIES BE A MERE FARCE ?



H.E. Akira Sugiyama

Japan grants equipment worth Rs. 1.4 b for Sri Lanka's fight against COVID-19

SL Police gets Rs.340mn Japanese grant to reinforce anti-narcotic activities

Japan provides JDS scholarships worth Rs.463mn to Lanka public officials

GOVERNMENTS ENTERING THE MARKET PLACE ARE GOVERNED BY COMMERCIAL LAW DEVOID OF SOVEREIGNTY

The following citations from Judgements of Lord Denning MR perhaps would be pertinent in the context of diplomatic influences and nuances, *vis-à-vis*, this matter. (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*

Several persons having acted in contumacious contempt of the Consent Decrees ordered and entered by the Commercial High Court, stand liable for the grave and serious Offence of Contempt of Court of Consent Decrees



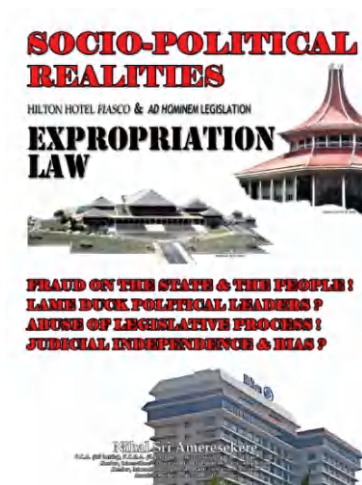
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