

**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*

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

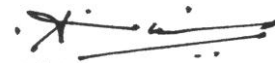
**TO: HIS LORDSHIP THE CHIEF JUSTICE AND THEIR LORDSHIPS AND LADYSHIPS
THE OTHER HONOURABLE JUSTICES OF THE SUPREME COURT OF THE
DEMOCRATIC SOCIALIST REPUBLIC OF SRI LANKA**

I, the Petitioner above named, appearing in person, tender herewith my Petition and Documents marked “X1”, “X2(a)”, “X2(b)”, “X3”, “X4(a)”, “X4(b)”, “X5(a)”, “X5(b)”, “X6”, “X7”, “X8(a)”, “X8(b)”, “X8(c)” and “X9”, together with my Affidavit and respectfully Move that Your Lordships’ Court be pleased to accept the same.

I understand that several other Applications have been made on this matter, and to save time of Your Lordships’ Court I respectfully Move that this Application also be listed together with such Applications.

I returned to the island on 4.11.2011 and have been indisposed under medical treatment. I have been advised not to engage in strenuous activity for two weeks from 11.11.2011 (*vide - copy of Medical Certificate attached*) and hence respectfully Move to permit me to support this Application in the course of next week.

On this 14th day of November 2011



Petitioner

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Attorney General's Department
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Respondents

TO: HIS LORDSHIP 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 14th day of November 2011

The **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 referred to as the “**country**”)

A true photostat copy of the National Identity Card of the Petitioner is annexed marked “X1”, 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 before Your Lordships’ Court, making submissions in the national and public interest, in Fundamental Rights Applications filed in the public interest, and Bill Challenges under Article 121 of the Constitution, which included;

- SC (SD) 22 & 23/2003 – challenges to amendments to Acts No. 2 and 4 of 1990, amendments struck down by Your Lordships’ Court
 - SC Opinion No. 1/2004 – on Acts Nos. 10 & 31 of 2003, *inter-alia*, determined as ‘inimical to the rule of law’
 - SC (FR) 158/2007 *re* – privatisation of Sri Lanka Insurance Corporation Ltd., annulled by Your Lordships’ Court
 - SC (FR) 209/2007 *re* – privatisation of Lanka Marine Services Ltd., annulled by Your Lordships’ Court
 - SC (SD) 3 of 2008 – challenge to the Appropriation Bill 2008, determined by Your Lordships’ Court as warranting moreful disclosure and constitutional accountability.
2. a) 1st Respondent is the Hon. Attorney General, named in terms of Article 35 of the Constitution, as representing the Minister of Finance.
- c) 2nd Respondent is the Minister of Economic Development.
- d) 3rd Respondent is the Secretary, Ministry of Finance & Secretary to the Treasury and Secretary, Ministry of Economic Development.
- e) 4th Respondent is the Minister of External Affairs, and former Minister of Justice & Deputy Minister of Finance.
- f) 5th Respondent is a former Attorney General.
- g) 6th Respondent is a former Attorney General, and now Advisor to the Cabinet of Ministers.
- h) 7th Respondent is the Minister of Justice.
- i) 8th Respondent is the Secretary, Minister of Justice.
- j) 9th Respondent is the Hon. Speaker of Parliament.
- k) 10th Respondent is the Hon. Attorney General, noticed in terms of Article 134 of the Constitution.
3. The Petitioner files this Application
- a) for himself and for and on behalf of and in the interest of the people of the country exercising constitutional rights to prevent the alienation of the sovereignty of the people, which is inalienable, and to secure and advance the fundamental rights of the people guaranteed by the Constitution.
- b) as a Shareholder / Stakeholder of Hotel Developers (Lanka) PLC described as the only ‘underperforming enterprise’ under Schedule 1 to the impugned Bill titled “Revival of Underperforming Enterprises & Under-utilised Assets” presented to Parliament on 8.11.2011.

4. The Petitioner reiterates

a) Articles 3 and 4 of the Constitution of the country enshrining that the sovereignty is in the people as *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) enshrining that the fundamental rights shall be respected, secured and advanced by all organs of Government i.e. legislature, executive and judiciary, (*including all those who had taken an Oath to uphold and defend the Constitution*), and shall not be abridged, restricted or denied.

c) The foregoing had been comprehensively dealt with in the Determinations made in October 2002 by a 7 Member Bench of Your Lordships' Court, comprising then Chief Justice, Sarath N. Silva, and Justices J.A.N. De Silva, Shirani Bandaranayake, S.W.B. Wadugodapitiya, A. Ismail, P. Edussuriya and H.S. Yapa on the aborted 18th and 19th Amendments to the Constitution. The following extracts therefrom are cited:

➤ *"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 8th Ed. 2000 – H.W.R. Wade and C.F. Forsyth p, 356) '

➤ *"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 '

➤ **"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)"**

➤ **"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" "**

- d) Attention of Your Lordships' court is very respectfully drawn to that;
- i) it is the judiciary that 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
 - ii) the Constitution does not attribute any unfettered discretion or authority to any organ or body established under the Constitution.
 - iii) the foregoing would apply with equal force to the Cabinet of Ministers a body established under the Constitution

True copies of Determinations on the aborted 18th & 19th Amendment to the Constitution made in October 2002 by a 7 Judge Bench of Your Lordships Court are annexed marked "X2(a)" and "X2(b)", pleaded as part and parcel hereof

5. a) The Petitioner in 2003, as a citizen, was denied being heard in his challenge to an all-encompassing amnesty, since he had not filed his challenge within the narrow time 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 so challenged.
- b) Later the Petitioner having persuaded the then President to refer the same under Article 129 of the Constitution for an Opinion of the Supreme Court, whereat the Petitioner made extensive submissions, it was *inter-alia* pronounced, by a 5 Member Bench of Your Lordships' Court, comprising Chief Justice Sarath N. Silva, Justices Shirani A Bandaranayake, H.S. Yapa, J.A. de Silva, Nihal Jayasinghe 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
 - that amnesties had been granted to those who had contravened laws and thereby defrauded public revenue causing extensive loss to the State..

A true copy of the SC Opinion in 1/2004 pronounced by a 5 Judge Bench of Your Lordships Court is annexed marked "X3", pleaded as part and parcel hereof

6. a) The exercise of the constitutional right by a citizen to be heard by Your Lordships' 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 act had consciously, intentionally and deliberately alienated the sovereignty of the people in the exercise of the judicial power of the people and precluding Your Lordships' Court from hearing the people in the enactment of laws, as provided for in the Constitution.**

c) This gives rise to the cogent question, as to whether there was apprehension that the Determinations of Your Lordships' Court would have been otherwise, had the voice of the people been heard, as was amply demonstrated by SC Reference 1/2004 referred to aforesaid.

7. In SC (SD) Nos. 22 & 23 of 2003 in which the Petitioner appeared in person and made submissions a 5-Member Bench of Your Lordships' Court, comprising Chief Justice Sarath N. Silva, Justices P. Edussuriya, H.S. Yapa, J.A.N. de Silva and T.B. Weerasuriya, *inter-alia*, giving reference to the dicta in the several Judgments of the Indian Supreme Court, determined 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’ 4th Edition – Vol 1, Page 532 (*Emphasis added*)

True copies of Determinations made in SC (SD) 22 & 23 of 2003 by a 5 Judge Bench of Your Lordships Court are annexed marked “X4(a)” and “X4(b)”, pleaded as part and parcel hereof

8. a) The Petitioner was overseas from 20.10.2011 to 4.11.2011 and was totally unaware of a Bill titled 'Revival of underperforming Enterprises and underutilised Assets', submitted to Your Lordships' Court, as an 'Urgent Bill'.

b) The foregoing deprived and denied the Petitioner and the people of the country, their constitutional right to have been heard by Your Lordships' Court on such matter of national and public importance alienating their constitutional rights and grossly violating their fundamental rights obnoxiously denying natural justice.

c) The Petitioner was able to obtain copies of the aforesaid Bill and the Determination thereon by a 3-Judge Bench of Your Lordships' Court only on 9.11.2011

Petitioner marks a true copies of the said Bill dated 8.11.2011 and the Determination of Your Lordships' Court tabled in the Parliament only on 8.11.2011 respectively marked “X5(a)” and “X5(b)”, pleaded as part and parcel hereof

9. 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:**

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."

10. Upon having been informed that Hotel Developers (Lanka) PLC, (hereinafter referred to as "**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. **The Petitioner reiterates the contents of the Petition.**

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 hereto marked "X6", pleaded as part and parcel hereof (Should Your Lordships' Court so directs, the Petitioner undertakes to furnish copies of the Documents annexed)

11. a) On 17.11.2006 i.e. 5 years ago, the Petitioner under the provisions of the then Companies Act No. 17 of 1982, in the given facts and circumstances filed a Winding-up Petition D.C. Colombo Case No. 217/CO to wind-up HDL on just and equitable grounds, if a restructuring HDL, as had been proposed by a Cabinet Appointed Negotiation Committee and approved by the Cabinet of Ministers could not be concluded and effected. **The Petitioner reiterates the contents of the Petition.**

A true copy of the Petition filed in the said D.C. Colombo Case No. 217/CO without the Documents attached thereto is annexed hereto marked "X7", pleaded as part and parcel hereof (Should Your Lordships' Court so directs, the Petitioner undertakes to furnish copies of the Documents annexed)

- b) 5th and 6th Respondents, as the Attorney General, appearing for the State opposed the aforesaid Winding-up, notwithstanding the mandatory provisions of the Companies Act No. 7 of 2007, which came into force on 3.5.2007.
- c) Ironically, HDL is Scheduled as an 'underperforming' enterprise due to protracted litigation prejudicial to the national economy and public interest. If this be the case, then 5th and 6th Respondents, as the Attorney General appearing for the State, having opposed the aforesaid Winding-up of HDL have caused the judiciary to have kept the Winding-up Application pending for 5 years; **with intimation of a possible settlement.**
12. a) The following paragraphs are cited from a Report prepared, as had been intimated to Your Lordships' Court by the 3rd Respondent, by the Merchant Bank of Sri Lanka Ltd., submitted to the Ministry of Finance on 19.7.2006 on the services rendered by the Petitioner to HDL.

“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 19th 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.”

- b) The wrongful and unlawful controversy precipitated by the 4th Respondent, G.L. Peiris, caused grave prejudice in the consequent perverse Orders by the judiciary, resulting in the present position of HDL, **for which the 4th Respondent is responsible.**

- c) Notwithstanding Your Lordships' Court in having upheld then Petitioner's derivative action in law in SC Appeals Nos. 33 & 34/1992 a serious prima facie case of fraud, upholding the interim injunctions restraining any payment of monies under State Guarantees, to prevent the devious syphoning of large extent of foreign exchange from the country, and observing that in the given circumstances the Government could not be indifferent, and that the Petitioner had a real prospect of proving the case, and further notwithstanding a Special Presidential Commission, assisted by the Solicitor General having issued Show Cause Notices on grounds of fraud against the Government, the 5th Respondent failed and neglected to pursue with criminal prosecution, notwithstanding my statement having been recorded by the Criminal Investigation Department.
13. a) Just prior to the aforesaid Bill, the Deputy Secretary to the Treasury on 10.5.2011, obviously with the concurrence and agreement of the 3rd Respondent, had issued a Letter 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.**

A true copy of the said Letter dated 10.5.2011 is annexed hereto marked "X8(a)", pleaded as part and parcel hereof

- b) Also just prior to the aforesaid Bill 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 1st, 2nd and 9th Respondents.

True copies of the said HDL draft Board Minutes of HDL are annexed hereto marked "X8(b)" and "X8(c)", pleaded as part and parcel hereof

14. Several facts pertaining to HDL referred to above had been stated in the Petition in HC (C) WP 52/2011/CO, to which was attached a copy of the Winding-up Petition in D.C. Colombo Case No. 217/CO. The Petition and Documents were delivered by Letter dated 8.11.2011 to the 9th Respondent.

A true copy of the said Letter dated 8.11.2011 is annexed hereto marked "X9", pleaded as part and parcel hereof

15. The Petitioner very respectfully draws the attention of Your Lordships' Court to the following:

- a) The facts pertaining to HDL as borne out above had not been correctly disclosed to Your Lordships' Court, whilst material facts had been suppressed, in seeking a Determination by the Attorney General, who had appeared to represent the State in the Winding-up Application as aforesaid.
- b) Thereby, the Attorney General has misled Your Lordships' Court to state in the Determination that the Bill contains no provisions for the exercise of the judicial power or interference in exercise of judicial power in relation to 'underperforming enterprise' (HDL), whilst in actual fact judicial power was being exercised and was being stultified by the Attorney General.
- c) The Schedules are *ad hominem* and had been selected without due process procedure and/or criteria

- d) Your Lordships' Court citing an Indian Judgment has correctly stated that the classification must be on intelligible differentia for specified groups. **Admittedly there has not been any intelligible differentia, whatsoever, placed before Your Lordships' Court by the Attorney General, what has been placed is a mere list of names.**
 - e) Your Lordships' Court in SC (FR) 158/2007 and 209/2007 annulled two perverse privatisations taking cognisance of the submissions made by the Petitioner, **having heard the affected parties**
 - f) The exception in Article 122 of the Constitution cannot be abused to alienate the sovereignty of the people as a general norm, since no body under the Constitution has unfettered power - *vide dicta* of a 7-Judge Bench of Your Lordships' Court
 - g) The Directive Principles of State Policy and the Fundamental Duties in Articles 27 and 28 must be taken in its entirety and not in isolation
 - h) The Bill is harsh, oppressive and unconscionable law, prescribing a procedure other than the ordinary procedure, which ought have been struck down - *vide dicta* of a 5-Judge Bench of Your Lordships' Court
 - i) The Bill denies the right to access to the judiciary in terms of Article 105 of the Constitution
 - j) Article 157 of the Constitution stipulates otherwise than in the interest of national security, **no written law** shall be enacted or made and no executive or administrative action shall be taken, in contravention of the provisions of treaty or agreement. HDL has foreign investors known to the Attorney General.
 - k) Therefore, the impugned Bill tantamounts to the suspension and/or amendment of the Constitution of the country and could not be passed by simple majority of Parliament or otherwise.
 - l) The Bill has been passed by a simple majority of Parliament on the premise of the Determination made by Your Lordships' Court, with the people having precluded from being heard
 - m) **The Bill is not yet law and exceptional circumstances would warrant exceptional remedy to defend and uphold the Constitution and to enforce the Rule of Law, the very basis of the Constitution of the country.**
 - n) **Your Lordships' Court 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 - *vide dicta* of a 7-Judge Bench of Your Lordships' Court**
16. a) In the foregoing circumstances good, sufficient and valid causes have arisen to the Petitioner to invoke the jurisdiction of Your Lordships' Court to seek just and equitable reliefs sought herein and as deem warranted in the given exceptional circumstances by Your Lordships' Court.
- b) The Petitioner has not invoked the jurisdiction of Your Lordships' Court on this matter except that is the case of HDL certain Cases SC Appeal Nos. 99-103/99 have been pending before Your Lordships' 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 4th Respondent. These had been laid by due to the Winding-up Application D.C. Colombo Case No. 217/CO.

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

WHEREFORE the Petitioner respectfully prays that Your Lordships' Court be pleased to:

- a) issue Notice
- b) grant Leave to Proceed
- c) declare that the conduct and actions of some of the Respondents aforesaid have violated the fundamental rights of the Petitioner guaranteed under the Constitution particularly Articles 12 and 13
- d) declare that the impugned Bill is obnoxious arbitrary harsh, oppressive and unconscionable law and ought be struck down
- e) declare that one or more provisions of the Bill are inconsistent with the Constitution and cannot be passed by a simple majority
- f) declare that one or more provisions of the Bill tantamount to the suspension and/or amendment of Constitution
- g) declare that one or more provisions of the Bill are prohibited from being enacted into law, particularly in the context of the sovereignty of the people being inalienable and Article 75 of the Constitution
- h) make interim orders as to Your Lordships' Court shall seem meet in the given circumstances to prevent a miscarriage of justice and a violation of the Constitution, which is under Oath to be upheld and defended.
- i) grant such other and further reliefs as Your Lordships' Court shall seem meet



Petitioner