

# **Synopsis of**

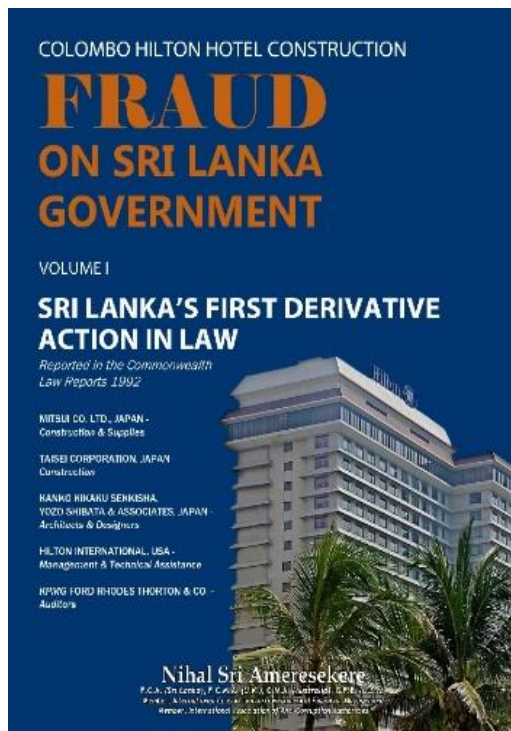
## **Colombo Hilton Hotel Construction**

# **Fraud on Sri Lanka Government**

## ***Sri Lanka's First Derivative action in law***

Google Books – [‘Colombo Hilton Hotel Construction - Fraud on Sri Lanka Government – Vol. 1 – Sri Lanka’s First Derivative Action in Law’](#)

<http://www.consultants21.com/page-1-derivative-actions-in-law.php>



**Size - 8.25" X 11" - Pages 500**

This Book discloses the encouragement and assistance extended by the Government of President J.R. Jayawardene of Sri Lanka, to develop and implement the Hilton Hotel Project in Colombo, Sri Lanka, consequent to the barbaric communal riots of July 1983, which adversely damaged the international image of Sri Lanka, as a barbaric country, and by such Project to repair and re-build the good name and repute of the country, and also reveals the consequent colossal fraud perpetrated on the Government of Sri Lanka.

Accordingly, to support the Hilton Hotel Project implementation, the Government of Sri Lanka provided State Guarantees to obtain Foreign Loans for the first time by a private sector Company. Then Prime Minister R. Premadasa

endorsing his support, provided Land on a 99 years Lease in the City of Colombo from the Urban Development Authority (UDA) on very concessionary terms, with a 30-year interest free re-payment, to build the Colombo Hilton Hotel.

Consequently, with Cornel & Co. Ltd., as the main Promoter, together with Delmege Forsyth Co. Ltd., and the Author, a Management Consultant, and Lawyer M. Radhakrishnan, as the other Promoters, the construction of the Hilton Hotel Project commenced in March 1984, with Technical Assistance and Management from Hilton International of United States and with internationally reputed multinationals, Mitsui & Co. Ltd., and Taisei Corporation constructing and equipping the fully furnished Hilton Hotel, they providing Loan finance to be re-paid in installments against the Guarantees given by the Government of Sri Lanka, upon a majority shareholdings of Hotel Developers (Lanka) Ltd., (HDL) being acquired. The Architects of the Hilton Hotel Project were the reputed firm of Architects in Japan, Kanko Kikaku Sekkeisha, Yozo Shibata & Associates.

Amidst stunning celebrations, with the patronage of President J.R. Jayawardene, Prime Minister R. Premadasa and several other Dignitaries, the Colombo Hilton Hotel commenced operations in 1987. The Colombo Hilton Hotel was owned by a Company, namely, Hotel Developers (Lanka) Ltd. (HDL).

As shown in the picture given below, the Hilton Hotel Project had been designed to consist of 3 Towers, with 19 Floors thereof, containing 684 Rooms. Basements Floors parking for 450 vehicles and all necessities for the Hotel, such as Banquet Hall, Restaurants, Luxury Shops, Resting areas, Communication Center, Swimming Pool, Sports Center, etc, included.



However, in the first phase only 2 Towers were to be built, whilst the complete foundation for the 3<sup>rd</sup> Tower had been made, with 2 Lift Wells for usage of the 3<sup>rd</sup> Tower, so that the 3<sup>rd</sup> Tower could be easily built at a second phase. Accordingly, in the first phase of the Hilton Hotel, 2 Towers, of which 19 Floors were to contain 456 Rooms.

To demonstrate the repayment ability of the Japanese Loans obtained against the Sri Lanka Government Guarantees, Hilton International of US had forecasted projected profits of Colombo Hilton Hotel, on the basis of the Hotel having 2 Towers, including 19 Room Floors, consisting of 456 Rooms.

Extracts from Mitsui & Co. Ltd.'s Profitability Forecast & Cash Flow Projections of October 1983 –  
**456 Guests Rooms**

<u>Year</u>	<u>1st</u>	<u>2nd</u>	<u>3rd</u>
Total No. of Rooms (Room Days) Available (for year) i.e. 456 Rooms x 365 Days (A)	166440	166440	166440
Room Occupancy - % (B)	65%	70%	75%
Average Room Rate – US \$ (C)	73.00	78.84	85.15
Room Revenue – US\$ ' 000 (A) x (B) x (C)	7898	9185	10629
Net Funds Available US \$ '000	5180	6403	7651
Jap Yen '000 (1 US\$ = 230 Jap Yen)	1191400	1472690	1759730

However, after the Hotel commenced operations in July 1987, the Operational Accounts of the Colombo Hilton Hotel disclosed that there was only 17 Room Floors, consisting of 387 Rooms, upon which it is disclosed, that the Author, as a Director of HDL had raised questions.

No. of Rooms (Room Days) Available (For Year)			
i . e. 387 Rooms x 365 Days	141255	141255	141255
Room Occupancy	20%	30%	40%
Average Room Rate US\$	40.0	50.0	60.0
Room Revenue - US\$ '000	1130	2119	3390
Total Revenue - US\$ '000	4800	5298	7614
Gross Operating Profit - US\$ '000	0	350	1904
G.O.P. Rate	0	0	25%
Net Funds Available - US\$ '000	0	0	1421

Upon such circumstances, together with the assistance of the Ministry of Finance, the Author being a Director of HDL, had investigated the matter further. What was then discovered was that after the Hilton Hotel construction had commenced in 1984, based on the original Architectural Plans of 1983 approved by the UDA.

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 දෙපාර්තමේන්තුව, කොළඹ 03, ඉදිකටු සහ නිවැසි  
 Ministry of Local Government, Housing and Construction
 

 නාගරීය සංවර්ධන අධිකාරිය  
 நகர அபிவிருத்தி அதிகார சபை  
 urban 'development' authority

දුරකථන } 92021, 91368  
 දුරකථන } 92296, 92768  
 telephones } 596271
 

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 P. O. BOX }
 

 27, පී. අර්. විජේවර්ධන මාවත, පලාඪ 10  
 27, ඩී. ඒ. විජේවර්ධන මාවත, පලාඪ 10  
 27, D. R. Wijewardena Mawatha, Colombo 10

Ref: 02/20/523/83  
 5th March 1984

Project Co-ordinator,  
 Hotel Developers (Lanka) Ltd.,  
 16, Alfred Place,  
 Colombo - 3.

Dear Sir,  
 Proposed Hilton Hotel Project at  
 Echelon Square Colombo 1.

Reference your building application dated 19.10.83 submitted to this Authority.

I have to inform that your plans are approved subject to the following conditions:-

XXXXXXXXXXXX

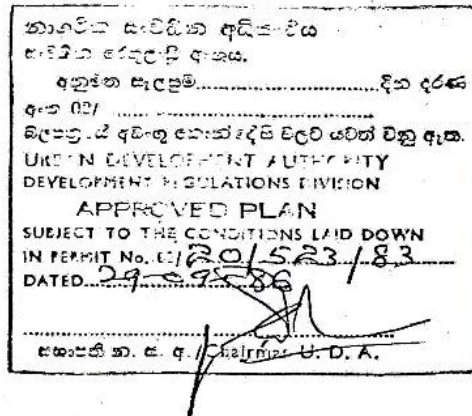
A set of approved plans duly certified is sent herewith and the building permit will be issued in due course. Please submit 3 additional copies of the plans to enable the permit to be issued.

Yours faithfully,  
 Sgd/ R.Paskaralingam,  
 Chairman,  
 Urban Development Authority

G. L. D. de Silva  
 By Director (Dev.Reg.)

c.c: 1. Municipal Engineer. Col.  
 2. Chief Officer, Fire Brigade Col.

Later in 1986 secretly the original Architectural Plans had been changed, as per the evidence provided by UDA. It had been also discovered that copies of the original Architectural Plans had not been available at the UDA, Colombo Municipal Council and other relevant Authorities.



Even the copy of the UDA Approved original Architectural Plans at the HDL Head Office had been mysteriously borrowed by the Japanese Architects, Kanko Kikaku Sekkeisha, Yoza Shibata & Associates, and during such time, the Hilton Hotel Construction Site Office one night had shockingly got completely destroyed by a fire, and it had been reported that all equipment, including Plans and Documents, had been completely destroyed.

*Photocopy Obtained from F.R. HDL DATA (14)*  
*Re: UDA Permits & Approvals LSN/HH/1/14*

No original of the letter given by the UDA on 23/March/84 (Ref. 02/20/523/83 27/7/90 on building permit) is with Mr. Kitagawa KES together with the set of approved set of plans.

Approved plans by UDA.	Approved by Fire Dept.
A-01	C-01
A-02	A-09
A-03	A-19
A-04	A-20
A-20	A-21
A-21	A-22
A-22	A-28
A-23	
A-24	
A-25	
A-26	
A-27	
A-30	
A-31	

with Mr. Kitagawa of KES.

The original of the letter given by UDA on 23/3/84 Ref. 02/20/523/83 was sent burned in the fire that occurred in the site office in 1984 together with the originally approved plans. Later documented plans were submitted & approved obtained. No approved plans are with Mr. Kitagawa of KES.

Later it was disclosed before a Special Presidential Commission of Inquiry that the Police Report said to have been given by the Colombo Fort Police on the said fire, had been a fabrication, as per the evidence given by the Colombo Fort Police.

**REPORT FROM MITSUI TAISEI CONSORTIUM**

**Report on the fire-incident which occurred on 18th October 1985  
at the Hilton Hotel Site**


XXXXXXXXXXXX

(3) All drawings and documents got burnt. Our principles in Tokyo dispatched all drawings, documents etc., they possessed, which arrived in Colombo on 26.10.85 to replace the ones that got burnt.

In addition, the Schedule to the Supplies Contract, defining and specifying all supplies of equipment, furniture and furnishings to the Colombo Hilton Hotel had suspiciously also gone missing. Whereby it had become an impossibility to check and verify the correctness of these items in number and quality specifications, which had been supplied to the Colombo Hilton Hotel.

Such fraud had been exposed to the Board of Directors by the Author, a Director, with proof thereof. The Board of Directors of the owning Company of Colombo Hilton Hotel, HDL had been dumbfounded, and without taking any action thereon, had been questionably silent.

Surreptitiously, in November 1989, these Japanese Companies had got an Agreement signed for them to be granted a Mortgage over the Colombo Hilton Hotel, in addition to the Government Guarantees they already had. Such attempt had been successfully and strongly opposed by the Author, HDL Director, supported by Dr. A.C. Randeni, Addl. Director Economic Affairs, HDL Director of the Government of Sri Lanka. Such commitment had been consequently annulled in May 1990 – viz :



**ශ්‍රී ලංකා මහ බැංකුව**  
இலங்கை மத்திய வங்கி  
CENTRAL BANK OF SRI LANKA

ජනාධිපති මාවත,  
කැපුල් පාරේ 590,  
කොළඹ-1.  
දුරකථන: 2522

අනුපිටි මාර්ගගත  
ක. පෙ. இல. 590,  
கொழும்பு-1.  
தலை: 'மத்தியவங்கி'

29-11-1989  
Janadhipathi Mawatha  
P. O. Box 590,  
Colombo-1, S.L.  
Telegrams: CENTRABANK

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මගේ අංකය  
My No. }  
ඔබේ අංකය  
Your No. }

29-11-1989

Mr. R. Paskaralingam  
Secretary,  
Ministry of Finance,  
Colombo.

**Strictly Confidential**

24th November, 1989.

29-11-28

P/15A  
2  
29/11/89

Dear Sir,

**Proposal to Mortgage the Assets of  
Hotel Developers Ltd.**

"Dr. Randeni referred to the request made by Mr. Nihal Amarasekera at the Board Meeting held on 30th October, to table the agreements signed by HDL with respect to the postponement of loan repayments due upto the end of 1989, and said that he received the copies of the documents signed by HDL.

XXXXXXXXXXXX

Yours faithfully,  
*A.C. Randeni*  
Dr. A.C. Randeni,  
Additional Director of Economic  
Research and  
Director of Hotel Developers Ltd.  
representing the General Treasury.

In such circumstances, the Author, as a Shareholder of HDL had instituted in September 1990 in the District Court of Colombo, Sri Lanka, for the first time in Sri Lanka, a derivative action in law against such fraudulent Japanese Companies, who were socio-politically powerful and influential.

According to the requirements of such a derivative action in law, the Directors of HDL, who had so acted wrongfully, had been named as Defendants, and HDL also named as a Defendant, to obtain the reliefs from the judiciary in favour of HDL.

In September 1990, itself, the moment this derivative action in law had been filed, the District Court of Colombo had promptly issued Enjoining Orders preventing any payments being made to these Japanese Companies by HDL and/or by the Government of Sri Lanka under the State Guarantees, observing that the Colombo Hilton Hotel had not been constructed, as had been approved by the Government of Sri Lanka, as the Guarantor.

Even in the face of the observations made by the District Court of Colombo in September 1990 in issuing such Enjoining Orders, on the premise that there was an established *ex-facie* Case, shortly thereafter notwithstanding the objections by the Author, as a Director of HDL, KPMG Ford, Rhodes Thornton & Co., Chartered Accountants had fraudulently certified and forwarded Audited Annual Accounts of HDL, with a view to suppressing the aforesaid fraud.

## Hotel Developers (Lanka) Ltd.

### REPORT OF THE AUDITORS

To The Members of Hotel Developers (Lanka) Limited

We have examined the balance sheet of Hotel Developers (Lanka) Limited, as at 31st March 1990 and the related statement of profit and loss for the period then ended. Our examination was made in accordance with Sri Lanka Auditing Standards. We have obtained all the information and explanations which to the best of our knowledge and belief were necessary for purposes of our audit.

In our opinion, so far as appears from our examination, proper books of accounts have been maintained by the company and to the best of our information and according to explanations given to us, the balance sheet and statement of profit and loss which are in agreement therewith read together with the notes referred, provided the information required by the Companies Act, No. 17 of 1982, and subject to note 19 to the Accounts, give a true and fair view of the state of affairs of the Company as at 31st March 1990 and of its loss for the year then ended in conformity with generally accepted accounting principles applied on a basis consistent with that of the previous year.

We further report that according to information available to us, no Director of the company is directly or indirectly interested in a contract with the company other than those disclosed in Note 18 to the accounts.

Ford Rhodes, Thornton & Company  
Chartered Accountants  
28th November, 1990

This had resulted in the Author, as a Director of HDL in January 1991 filing a further derivative action in law in the District Court of Colombo, challenging the aforesaid fraudulent Annual Accounts of HDL, and upon its support, the District Court of Colombo had promptly made Order enjoining the said fraudulent Annual Accounts of HDL.

Thereafter KPMG Ford, Rhodes Thornton & Co., Chartered Accounts had also been applied to be added as Defendants in this Case by the Author, as Director, HDL. However, the Hon. Attorney General realizing and accepting the truth and reality of the foregoing circumstances had decided not to contest the said Case.

What had been disclosed, as a grave wrong-doing, is that the Directors of HDL, owning Company of Colombo Hilton Hotel, and KPMG Ford, Rhodes Thornton & Co., Chartered Accounts, Auditors of HDL, had acted in concert and collusion to support this fraud.

Later in October 1996, the Commercial High Court of Sri Lanka had ordered and decreed, among other matters, that KPMG Ford, Rhodes Thornton & Co., Chartered Accounts be removed, as Auditors of HDL, and for the said Annual Accounts of HDL to be re-prepared and audited by another firm of Chartered Accountants.

The first main Case instituted by Author in September 1990 was inquired into by the District Court of Colombo, and after strong Oral and Written Submissions, the District Court of Colombo issued Interim Injunctions, preventing any payments to these Japanese Companies by HDL and/or by the Government under the State Guarantees. The District Court of Colombo in issuing Interim Injunctions had made the following observations;

- # *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 that they were acting through such collaboration, in a manner amounting to defeat the interests of the Shareholders of the Company.*

The then Learned District Judge, further observed, in his said Order; *inter-alia*, as follows;

"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 [*reference being to the 4<sup>th</sup> Defendant*], 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".

A feature in this Case was that the Hilton Hotel owning Company HDL was represented by then Hon. Attorney General Sunil de Silva P.C., and he did not oppose the Author in his Case, and did not participate in the said Inquiry.

Thereafter, the Author as the Plaintiff in terms of the provisions of the Civil Procedure Code, made Applications and obtained Orders from the District Court of Colombo for the discovery and production of all relevant Documents of these Japanese Companies, and to obtain copies thereof, and in addition he also had obtained Orders for these Japanese Companies to answer a series of Interrogatories. However, these Japanese Companies were unable even to answer the Interrogatories, thereby well and truly exposing the reality of what had transpired.

In addition, after the above, Hon. Attorney General Sunil de Silva P.C., had retired and new Hon. Attorney General T.J. Marapana P.C., had assumed Office, shocking everyone, he had objected to an Application by the Plaintiff Author for the District Court of Colombo to issue a Commission to a team of Engineers to examine the constructed Hilton Hotel and to forward to Court a Report thereon, thereby disclosing that the Hon. Attorney General T.J. Marapana P.C., had acted in concert with these Japanese Companies, to prevent the truth and reality from surfacing. Would this not demonstrate the socio-political influence and realities ?

These Japanese Companies appealed to the Court of Appeal, Sri Lanka, against the Orders issued in granting Interim Injunctions by the District Court of Colombo, which Appeals were opposed by the Author, as the Plaintiff, whereas appallingly, the Hon. Attorney General, after the change from Sunil de Silva P.C., who retired, to T.J. Marapana P.C., having not participated in the District Court inquiry into the issue of Interim Injunctions, without any status to do so, intervened in the Court of Appeal to support and assist the Japanese in their Leave to Appeal Applications.

Likewise, three Directors of HDL, who had not participated in the inquiry into the issuance of Interim Injunctions in the District Court of Colombo, also had intervened in the Court of Appeal, without any status to do so, to support and assist these Japanese Companies, which disclosed the shocking realities of collusion.

One of the HDL Directors who was a main wrong-doer Director, named in the District Court Complaint was K.N. Choksy P.C., M.P., regarding whom adverse observations had been made in the District Court Order concerning the exercising of undue socio-political influence. However, as per the conduct and actions of K.N. Choksy P.C., M.P., the Court of Appeal granted Leave to Appeal to these Japanese Companies, also having allowed the above other parties, who had no status to have participated to participate. The Supreme Court had rejected their participation.



and misrepresentations to pass, was present as a member. He was also a Director of LB Finance at the time whose Group Chairman's activities were being called into question here. In keeping with Section 9 of the Securities Council Act No: 36 of 1987, he should have disclosed his status as an interested and affected party and withdrawn from the proceedings.

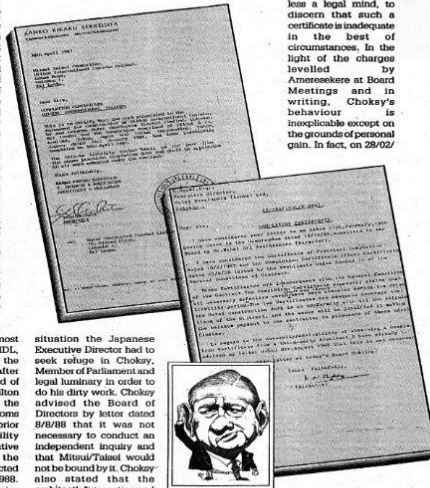
Amerasekera and his battery of distinguished lawyers have established a pioneering action in the court proceedings against the directors of the company for aiding and abetting Mitsui/Taisei in their alleged attempt to defraud the shareholders, the chief of whom is the Government. The lengthy and detailed correspondence undertaken by and on behalf of Amerasekera with the SEC shows clearly, through the SEC's shallow and evasive replies, that what has happened at that end is its deliberate and determined endeavour to do nothing at all. The additional question for ordinary citizens concerns the fact that if Amerasekera -- a man of resources and tenacity, a fully-qualified accountant of stature and seniority in the profession -- cannot make himself heard by the SEC, what can the rest of us expect of this institution which has been set up to "protect the interests of investors"?

Mr. K. N. Choksy's involvement in the cover up is perhaps the most shocking of all. A Director of HDL, Choksy acted as a cat's paw of the Japanese contractors. Soon after Amerasekera informed the Board of Directors that the Colombo Hilton Hotel had been constructed on the basis of a reduced number of rooms (387 instead of 452) without prior approval or revised profitability forecasts, the Japanese Executive Director had intimated that the Japanese architects had conducted their final inspection in March 1989. In the light of the serious discrepancies that had come to light by then, a government-appointed Director,

chartered accountant M. T. L. Fernando had urged the Board that an independent engineering examination and inspection be carried out, assessing the obvious connections between the Japanese contractors Mitsui/Taisei and the Japanese Architects.

It is a telling irony that in this

that the construction is in order in every respect. All this on the basis of a "Completion Certificate" submitted by the architects Kankō Kikaku Sakidisha Yozo Shibata & Associates, a two paragraph letter dated 30/04/1987 without Bills of Materials or Final Measurements to support it; it does not take an accountant, much less a legal mind, to discern that such a certificate is inadequate in the best of circumstances. In the light of the charges levelled by Amerasekera at Board Meetings and in writing, Choksy's behaviour is inexcusable except on the grounds of personal gain. In fact, on 28/02/



situation the Japanese Executive Director had to seek refuge in Choksy, Member of Parliament and legal luminary in order to do his dirty work. Choksy advised the Board of Directors by letter dated 8/8/88 that it was not necessary to conduct an independent inquiry and that Mitsui/Taisei would not be bound by it. Choksy also stated that the architect's inspection and certification is an adequate protection to both the Board and the shareholders

1990 he writes reiterating his position that both the Certificate of Practical

Promptly, the Author Plaintiff had filed a Special Leave to Appeal Application in the Supreme Court challenging the above Leave to Appeal Order granted by the Court of Appeal, even permitting parties, who had not participated in the Inquiry in the District Court of Colombo, also to participate. The Supreme Court promptly granted Special Leave to Appeal to the Plaintiff Author.

After the Supreme Court hearing, consequent to very strong Written Submissions tendered on behalf of the Author Plaintiff, the Supreme Court, presided by His Lordship Chief Justice G.P.S. de Silva and comprising Their Lordships Dr. A.R.B. Amerasinghe J and K.M.M.B. Kulatunga J, delivered Judgment affirming the Interim Injunctions issued by the District Court of Colombo, and observing, *inter-alia*, as given below that what was disclosed by the facts was that it was a colossal fraud, and that the Author Plaintiff would be able to successfully prove the same in the District Court of Colombo.

The Supreme Court Judgment delivered in 1992 was a landmark historic Judgment, even censuring the Government of Sri Lanka, as the Guarantor, and thereby that the Government could not have been indifferent, and criticizing the Government Directors of the Board of Directors on HDL for their indifference;

- # *the Plaintiff [reference being to the 4<sup>th</sup> Defendant] 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 [reference being to the 4<sup>th</sup> Defendant] 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 [reference being to the 4<sup>th</sup> Defendant] 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*

The above historic landmark Supreme Court Judgment had been reported in the 1992 Commonwealth Commercial Law Reports – [1992] LRC (Comm) @ 636 – *Amerasekere v Mitsui & Co. Ltd. and Others*.

636 Sri Lanka	[1992] LRC (Comm)
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<b>Sri Lanka</b>	a
 <b>Amerasekere v Mitsui &amp; Co Ltd and Others</b>	
 Supreme Court	b
G P S de Silva CJ, Amerasinghe and Kulatunga JJ	
18, 19 November, 2 December 1992	
 (1) <i>Company law – Minority shareholder – Locus standi – Whether minority shareholder having locus standi to bring action on behalf of company.</i>	c
(2) <i>Remedies – Injunction – Interim injunction – Minority shareholder seeking injunction to restrain payments by company to third parties – Principles to be applied – Whether prima facie case with real prospect of success.</i>	
(3) <i>Remedies – Injunction – Interim injunction – Minority shareholder seeking injunction restraining company from making payments to foreign third parties – Whether damages an adequate remedy.</i>	d

A right to a derivative action in law arises, when the Directors controlling the management of a Company, perpetrate a fraud on the Company or permit a fraud to be perpetrated on it, and not taking any action to prevent the same, then any Shareholder of the Company, acting in the right and on behalf of the Company, in its interest and for its benefit, could file a legal action, against such fraud, which is a derivative action in law.

Subsequently, there had been a bomb explosion carried out by the LTTE in October 1997, whereby several buildings in the heart of the Colombo City, including the Colombo Hilton Hotel, had been badly damaged. Consequently, Hilton International had negotiated for US \$ 10 Mn. from the overseas insurers for the re-instatement of the Colombo Hilton Hotel, under a business interruption insurance policy.

By Letter dated 16<sup>th</sup> January 1998, Hilton International claimed title to this insurance payment of US \$ 10 Mn., requiring Shares of Hotel Developers (Lanka) Ltd., to the value to US \$ 7 Mn., to be allotted to Hilton International, and the balance US \$ 3 Mn., to be re-paid over 30 months, as increase in subsequent insurance premia – viz:



16th January 1998

Mr. Daya Liyanage  
Chairman  
Hotel Developers Lanka Ltd  
COLOMBO 1

Dear Mr. Liyanage,

**COLOMBO HILTON  
DAMAGE CAUSED TO THE RECENT BOMB BLAST.**

XXXXXXXXXX

As also explained to you at that discussion, although Hilton has no legal obligation to contribute to the cost of reconstruction and refurbishment of the Hotel, Hilton has negotiated, which will be for the well being of the Owners, payment of insurance money which will cover the cost of reinstatement. The likely cost of reinstatement is in the region of US\$. 10 million.

XXXXXXXXXX

In consideration of making available these insurance funds, Hilton requires US\$ 3 million and repayment would be within a period of 30 months in consecutive monthly instalments of US\$ 100,000/-. No interest will be payable on this money.

Hilton will not expect the balance sum paid to the Owing Company to be repaid in money, and will accept an allotment of shares in the Company in consideration of such sum.

XXXXXXXXXX

The participation by Hilton in the equity of the Owing Company in this manner will forge closer links between Hilton the Owing Company and also reflect the confidence Hilton has in its long term arrangements with the Owing Company.

XXXXXXXXXX

Yours sincerely

A handwritten signature in black ink, appearing to read "R Coxon".

ROY COXON  
GROUP RISK MANAGER  
HILTON INTERNATIONAL CO.

cc: Mr Gamini Fernando  
General Manager & Division Director

The Author, as HDL Director, had strongly refuted such stance, and had successfully established, with the concurrence of the Hon. Attorney General, that such insurance monies had belonged to Hotel Developers (Lanka) Ltd., and not to Hilton International.

If not for such stance of the Author, HDL Director, the US Dollar at that time being equivalent to Rs. 61/-, US \$ 7 Mn., would have got Hilton International Shares of Hotel Developers (Lanka) Ltd., to the value of Rs. 427 Mn., against the Share Capital of Rs. 452.3 Mn. of Hotel Developers (Lanka) Ltd., giving a total Share Capital of Rs. 879.3 Mn., with Hilton International owning 48.5%, and these Japanese Companies owning 14.2%, thereby giving them a total of 62.7% against the Government of Sri Lanka's Shareholding of only 33.4% ! *What a 'manoeuvre' to have taken control !*