

NIHAL SRI AMERESEKERE - HILTON HOTEL CASE

“TRUTH OVERCOMES FALSEHOODS!”

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I have been one of the 21 Lawyers involved in the Hilton Hotel derivative actions in law instituted by Nihal Sri Amersekere, as far back as 1990. One action proceeded up to a victorious landmark historic Judgment by the Supreme Court, the highest judiciary of the country, *reported in the Commonwealth Commercial Law Reports. [1992] LRC (Comm)@636 – Amersekere Vs Mitsui & Co. Ltd., and Others.*

Hence, in the face of blatant falsities having been published and stated by persons, who have been totally unaware of the real facts, I set out the real facts, from my own knowledge, and as verified from Documents and Amersekere.

1. **Amongst others, Amersekere had been a Promoter, Shareholder, Director and Chairman of Hotel Developers (Lanka) PLC (HDL). This matter of the Hilton Hotel was his own business and not a public interest litigation.**
2. The Directors of HDL had been indifferent to a fraud, *investigated and disclosed by Amersekere to the Board*, perpetrated by Mitsui & Taisei of Japan in the construction of the Hilton Hotel Colombo, on State Guarantees, which had been given by the Government of Sri Lanka.
3. Consequently, amidst serve obstructions and pressures from the other Directors, and persons even in the Government, Amersekere on his own instituted 2 derivative actions in law on grounds of fraud, resulting in all payments to Mitsui & Taisei by HDL or by the Government, under the State Guarantees, being injuncted, as affirmed by the Supreme Court, stating that it was to *‘prevent the devious syphoning of a large scale of foreign exchange from the country, and that it was a serious case of fraud, with real prospect of being successfully proven, and that the Government, as the Guarantor, could not have been indifferent’.*
4. **The final reliefs which were prayed for were that no payment, whatsoever, was due to Mitsui & Taisei, as a consequence of a major fraud perpetrated in the construction of the Hilton Hotel**, the structure of which had been materially different to what had been originally contracted for. *(This was akin to the supply of a 4 cylinder vehicle of an inferior quality, against the order for a 6 Cylinder vehicle of a superior quality, which had to be replaced).*
5. Mitsui & Taisei could have made a *quantum meruit* Application for reasonable payment for what had been constructed, which had to be made within 3 years of the Supreme Court Judgment, but Mitsui & Taisei did not do so, since they would then have been compelled to admit to a fraud in the construction of the Hilton Hotel. **Hence, the final reliefs would have resulted in the declarations as prayed for in the Petition, that no payments, whatsoever, were due to Mitsui & Taisei.**
6. Amersekere’s Senior Counsel were P. Navarathnarajah Q.C., H.L de Silva P.C., and K. Kanaglsvaran P.C., and other Lawyers, some of whom were exclusively doing research on Case References and Authorities for this precedent derivative actions in law in Sri Lanka.
7. In addition, a firm of Chartered Architects, Engineers & Surveyors, namely Shelton Wijayaratna, Williams & Associates had been engaged to carry out an Investigative Report, which was filed in Court.

8. To raise money for these litigations, Ameresekere had been compelled to sell 7 acres of prime Lands he had owned at Biyagama, on both sides of the main road for around Rs. 5.5 Mn. Had he not done so, then he would have still possessed these Lands, which as at 31.12.2016 has a market value of around Rs. 1,200 Mn.
9. In fact, upon the issuance of the Enjoining Orders by the District Court, *due to potential threats, on the appeal of his family*, Ameresekere left the country. They feared that, since K.N. Choksy P.C. M.P., being a Defendant and a Senior Counsel for President R. Premadasa in the then pending Presidential Election Petition Case filed by former Prime Minister Sirima Bandaranaike, who lost the Election to R. Premadasa, M.P., *the fate of Richard de Soysa, who was abducted during such time, would befall him also*.
10. I was personally present when Senior Counsel P. Navarathnarajah Q.C., telephoned President R. Premadasa and told him that the Hilton Case was his Case, and that Ameresekere was his Client, and admonishing him not to interfere therewith.
11. The Enjoining Orders were granted by the District Court, no sooner the Complaint was presented and supported by P. Navarathnarajah Q.C. These Enjoining Orders prevented the precipitation of an *international cross-default* on Sri Lanka's foreign borrowings, with foreign reserves being very low at that time, and with Mitsui & Taisei having given Notice to the Secretary, Ministry of Finance of the default under the State Guarantees, which had been issued to them.
12. Thus these Enjoining Orders had been promptly faxed to Sri Lanka's Director at IMF Dr. L.E.N. Fernando, and had been used in negotiations with the IMF at that time, and Secretary to the Treasury, R. Paskaralingam had subsequently urged Ameresekere to stand firm thereafter.
13. Consequently, Attorney General, Sunil de Silva P.C., had intimated to Senior Counsel P. Navarathnarajah Q.C., that he wished to discuss the Case with Ameresekere. I was requested to go along with Ameresekere to meet Attorney General, Sunil de Silva, P.C. at his Chambers.
14. Having listened to Ameresekere's explanation of the facts, Attorney General, Sunil de Silva P.C., intimated that he appearing for HDL would not oppose Ameresekere's action, and he wished him success in the interest of the country.
15. Acting contrary thereto, thereafter the Directors of HDL endeavoured to adopt the Annual Accounts of HDL, certified by KPMG Ford Rhodes Thornton & Co., Chartered Accountants, even after the above Enjoining Orders had been issued by the District Court, as an attempt to cover-up the fraud disclosed before Court, resulting in Ameresekere having to institute another derivative action in law, and have the said HDL Annual Accounts enjoined by Court.
16. Finally, the Court Ordered and Decreed that the said Annual Accounts of HDL be correctly re-stated and certified by another firm of Chartered Accountants, removing KPMG Ford Rhodes Thornton & Co., as Auditors of HDL.
17. A Special Presidential Commission, after investigations by the CID, and an investigative Report from a panel of 3 Chartered Architects, on the advice of the Solicitor General, had issued Charge Sheets on 4 persons, on grounds of fraud against HDL and the Government of Sri Lanka. One of the Charges pertained to the above Annual Accounts of HDL *Viz:*

"Disregarding 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 HDL for the year ended 31.3.1990 and endeavour to take action to adopt the accounts with the object of suppressing the aforesaid fraudulent acts and omissions."

18. With the disclosures by Ameresekere before the Special Presidential Commission, Mitsui & Taisei urged then Secretary Treasury, A.S. Jayawardena to have the Settlement concluded expeditiously, agreeing to receive Promissory Notes for the unwritten-off balance from HDL, and not from the Government, as they had insisted before.
19. In such circumstances, Ameresekere had further re-negotiated with Mitsui & Taisei, **who in June 1995 had agreed to write-off 10 years' accrued interest and 30% of the Loan Capital, with the unwritten-off balance Loan of US \$ 120 Mn., being re-scheduled over a further period of 16 years, at a reduced rate of interest of 5.25% p.a., as compared to what had been negotiated in June 1993.**
20. Thus, in June 1995 on Ameresekere's insistence, Mitsui & Taisei **wrote-off 62%** of their fraudulent Claims on State Guarantees. The write-off was Jap. Yen. 17,586 Mn., then US \$ 207 Mn., or **Sri Lankan Rs. 10,200 Mn.**, which write-off at value as at 31.12.2016 at AWFDR amounts to **Rs. 89,927.6 Mn.**, and likewise, the re-scheduled balance at value as at 31.12.2016 amounts to **Rs. 51,884.7 Mn.**
21. In addition, the balance unwritten-off debt was re-scheduled for over a further **period of 16 years**, at a **reduced rate of interest of 5.25% p.a.**
22. The above had *immensely* benefited the Government, as the Guarantor, **as had been admitted by the Government, itself, in the legal Agreement executed with Ameresekere.**
23. The same Agreements as had been previously drafted in June 1993 had been executed on 28.6.1995 by and between the Government, Mitsui & Taisei, HDL and Ameresekere, as the initial drafts of June 1993 referred to below, with the further improvements as above, as settled by Solicitor General, Douglas Premaratne P.C. for Attorney General, Shibly Aziz P.C., and approved by the Special Presidential Commission, and approved by the Cabinet of Ministers.
24. These Agreements executed contained certain Conditions, which had to be performed as '**Conditions Precedent**' by the Government, Mitsui & Taisei and HDL **before** Ameresekere withdrew his 2 derivative actions in law referred to above.
25. The District Court had issued interim injunctions in the main Case, castigating the Directors, particularly K.N. Choksy P.C., M.P., stating that '*those who had gained influence in society had intervened to prevent the verification of the correctness of the construction, and had endeavoured to somehow make payment to Mitsui & Taisei, which tantamounted to an instance of fraudulent collusion*'.
26. Subsequently, Attorney General, T.J. Marapana P.C., appearing by Additional Solicitor General, Shibly Aziz P.C., taking a different stance, had intervened in the Court of Appeal with a view to having Ameresekere's Case dismissed, **even though the Attorney General had not participated in the District Court proceedings at the Inquiry into the issuance of interim injunctions.**
27. Thereafter, after the above Supreme Court Judgment, with Mitsui & Taisei being unable to answer interrogatories, which had been ordered by the District Court to be answered, Mitsui & Taisei, through the Secretary Treasury, R. Paskaralingam had required a Settlement, and Ameresekere had been urged by R. Paskaralingam to so agree in the context of Japan being the biggest Aid provider to Sri Lanka at that time.
28. At subsequent discussions had with the Treasury and the Attorney General's Department by Ameresekere and his Counsel, K. Kanag-Isvaran P.C., a clear case of fraud had been established.

29. Thereafter on Ameresekere's insistence to reach a settlement, **Mitsui & Taisei had agreed in June 1993 to write-off accrued interest for 8 years and 30% of the Capital of their Loan on the construction by them of the Hilton Hotel, and re-schedule the unwritten-off balance Loan over 13 years at 5.9% p.a. interest.**
30. After further discussions by Ameresekere and his Counsel, K. Kanag-Isvaran P.C., had with Attorney General, T.J. Marapana P.C., and Secretary Treasury, R. Paskaralingam, on their instructions Agreements for a settlement were drafted and formulated in June 1993 by Addl. Solicitor General, A.S.M. Perera P.C., with Attorney General, T.J. Marapana P.C.
31. The above had been co-ordinated by Deputy Secretary Treasury, K. Shanmugalingam, and copies of the draft Agreements for a settlement had been forwarded to Ameresekere by the Treasury, for his observation.
32. The above draft Agreements had not been concluded due to the tragic demise of President R. Premadasa, and the departure overseas of Secretary Treasury, R. Paskaralingam, and also since Mitsui & Taisei were insisting upon receiving Promissory Notes from the Government for the unwritten-off balance Loan, **in addition to the State Guarantees which had been already given to them.**
33. In fact, just prior to the Judgment being delivered by the Supreme Court, ASP Ronnie Gunasinghe, who had allegedly abducted Richard de Soyza had met Ameresekere through a person known to Ameresekere, who is still living.
34. Over a drink, ASP Ronnie Gunasinghe has suggested that Ameresekere should drop his Hilton Hotel litigations because it was causing embarrassment to the Government, with a *veiled threat* that Ameresekere was taking a risk with his life.
35. Ameresekere had promptly retorted that destiny of death is a certainty in life, and whether it be by a bullet of ASP Ronnie Gunasinghe or some other, that he would walk the path he had chosen. ASP Ronnie Gunasinghe had got shaken by such retort. Shortly thereafter ASP Ronnie Gunasinghe had died in the tragic terrorist bomb, which killed President R. Premadasa on 1st May 1993.
36. It was proven beyond any reasonable doubt before the Special Presidential Commission, that the **Cross-sectional Sheets of the original Architectural Plans had been replaced with new Cross-sectional sheets giving new 'elevations' of the respective floors**, and two of the Floor Sheets and the Basement Sheets of the original Architectural Plans had been removed.
37. The '*elevations*' denoted on the Floor Plan Sheets did not match with the corresponding '*elevations*' of the respective Floors depicted on the new Cross-sectional Sheets, which was **undisputed evidence of criminality of cannibalization of the original Architectural Plans.**
38. **As a result of such cannibalization, the 3rd and 4th Floors were shown to be at the same '*elevation*' of 24.5 meters, whilst the 19th Floor and the Roof of the 19th floor were shown to be at '*elevations*' of 72.7 meters and 72.5 meters, respectively, whereby the Roof was depicted to be below the 19th Floor !**
39. With the disclosure of the foregoing **undisputed evidence of criminality**, the Special Presidential Commission observed that such was an **intrinsic, inherent, impossibility** for the Urban Development Authority (UDA) even to have approved such Architectural Plans !
40. **The '*elevations*' depicted on the Floor Plan Sheets were identical to the '*elevations*' on the corresponding Floors shown in the Cross-Sectional Sheets in the original Project Plans, thereby well and truly establishing the criminality of cannibalization of the original Architectural Plans. The Basement Sheets had been removed. On being questioned by the Special Presidential Commission, HDL Chairman & Managing Director, C.L. Perera's Counsel, S.C. Crossette Thambiah, Attorney-at-Law, had been unable to give any explanations thereon.**

41. The Counsel, L.C. Seneviratne P.C., representing the Japanese Architects, Kanko Kikaku Sekkeisha Yozo Shibata & Associates, did not cross-examine Ameresekere on his above evidence adduced before the Special Presidential Commission, though he was repeatedly exhorted to do so by the Commission. **L.C. Seneviratne P.C., subsequently had withdrawn from appearing for the Japanese Architects.**
42. **Subsequently, UDA acknowledging negligence on their part, were compelled to prepare Measured Drawings of the actually built Hilton Hotel structure.**
43. The quality of the finishes and the specification of the equipment, fixtures and fittings too could not be verified, since the original Schedule to the Supplies Contract too had gone missing, together with Architectural Plans at all locations with a *mysterious* fire at the Construction Site Office, with a *fabricated* Police Report thereon.
44. Initial Cases had been caused to be filed by Cornel & Co. Ltd., against this Settlement brought about by the Government, having previously opposed Ameresekere's 2 derivative actions in law referred to above. This delayed the implementation of these Agreements.
45. However, with the dismissal of these initial Cases, and with the foregoing undisputed evidence of *irrefutable criminality* of canibalisation of the original Architectural Plans being exposed in 1996 before the Special Presidential Commission, **the Japanese Government had wanted the Settlement effected immediately in September 1996 before the Aid-Group Meeting in November 1996 threatening otherwise to withhold an Aid component of US \$ 275 Mn.**
46. Ameresekere had been confronted with such evidence of threat by the Japanese Government by Secretary Treasury, B.C. Perera and Deputy Secretary Treasury, Dr. P.B. Jayasundera, and he was urged to agree to **withdraw his 2 derivative actions in law**, with President Chandrika Kumaratunga also intervening.
47. Attorney General, Sarath N. Silva P.C., endorsed the above Agreements, and at the behest of Secretary Treasury, B.C. Perera and Attorney General, Sarath N. Silva P.C., himself pleading therefor, with Ameresekere's consent, excluding only one Condition from the Agreements, *which Condition had adversely personally affected then Minister of Justice G.L. Peiris, as a former Member of the SEC for dereliction of duty.*
48. Attorney General, Sarath N. Silva P.C., Secretary Treasury, B.C. Perera and Deputy Secretary Treasury, Dr. P.B. Jayasundera had pleaded with Ameresekere to agree to withdraw his 2 derivative actions in law, **before** the fulfillment of all the '**Conditions Precedent**', which had to be fulfilled **prior** to Ameresekere withdrawing his 2 derivative actions in law, **due to the lack of time.**
49. They **solemnly promised and undertook to fulfill these 'Conditions Precedent' as 'Conditions Subsequent'**.
50. Ameresekere had **acquiesced once again** with the Government's anxious pleadings, and had agreed to amend the Agreements to have the '**Conditions Precedent**' fulfilled as '**Conditions Subsequent**', and for which purpose an **Addendum** had been formulated by the Secretary Treasury, B.C. Perera and Attorney General, Sarath N. Silva P.C., and executed in September / October 1996 between the Government, Ameresekere and Mitsui & Taisei.
51. In the above **Addendum**, on Ameresekere's insistence, with Mitsui & Taisei giving *irrevocable* voting rights on their Shareholdings to the Secretary Treasury, to fulfill the '**Conditions Precedent**' as '**Conditions Subsequent**', it had been, *inter-alia*, recorded as follows:

“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.**”

52. Accordingly, at the HDL Board Meeting it had been decided to give effect to the Agreements and the **Addendum** with the Deputy Secretary Treasury, Dr. P.B. Jayasundera chairing and stating thus:

“The Chairman, Dr. P.B. Jayasundera, informed that this Board Meeting was convened as a matter of national importance in the interest of Sri Lanka Japan relationship and that he was acting at the request of the Government and urged the Directors to proceed with the Meeting on the Agenda placed before them. All others agreed.”

53. In fact, the aforesaid **Addendum** was signed on **21.10.1996**, and Ameresekere’s 2 derivative actions in law had been withdrawn on **23.10.1996** and the HDL Board Meeting presided by Dr. P.B. Jayasundera held on **25.10.1996**, and payments to Mitsui & Taisei had been made on **28.10.1996**, from the funds accumulated in HDL of US \$ 30 Mn., due to injunctions obtained by Ameresekere; **thereby demonstrating the expediency in which Ameresekere had readily co-operated with the fervent urgings of the Government, which he had believed in good faith would be reciprocated by the Government.**
54. With HDL having accumulated US \$ 30 Mn., at that time, had Ameresekere not withdrawn his 2 derivative actions in law, as urged by the Government, he could have easily continued his 2 derivative actions in law, over several years, to be successfully proven, as he did before the Special Presidential Commission.
55. Ameresekere would then have obtained the **final reliefs** which were that no payments, whatsoever, were due to the Mitsui & Taisei, **thereby accumulating well over US \$ 125 Mn., or more, in HDL.**
56. Thereafter Ameresekere could have come to a settlement with Mitsui & Taisei further reducing the unwritten-off balance of US \$ 120 Mn., and paying them off, **thereby cancelling and annulling the State Guarantees and the Government’s involvement in HDL.**
57. **Had Ameresekere done so, he would have been, among others, a major stakeholder of HDL today, and not the Government, with the State Guarantees given to Mitsui & Taisei having got annulled, with the full repayment to Mitsui & Taisei as above.**
58. **The above was the correct business decision to have been made, which was well within Ameresekere’s own sole power,** but he had heeded the pleadings of the Government, and acted in the interest of the country, **as had been desperately urged by the Government in the face of a threat by Japanese Government, thereby giving up a valuable right he had just before a Sri Lanka Aid-Group Meeting, with Japan being the biggest Aid provider to Sri Lanka at that time.**
59. Thereafter, the Warrant of the Special Presidential Commission had not been extended by President Chandrika Kumaratunga, as Ameresekere had been later apprised by President Chandrika Kumaratunga, since Justice Minister, G.L. Peiris and K.N. Choksy, P.C. M.P., one of the Directors of HDL, who was so charged by the Special Presidential Commission on grounds of fraud against the Government, having held out the assurance of support of the UNP for the aborted draft Constitution of August 2000 mooted by President Chandrika Kumaratunga.

60. Consequently, regretting such act, President Chandrika Kumaratunga had directed the Inspector General of Police to have this fraud in the construction of the Hilton Hotel promptly investigated and persons prosecuted, as per the advice, which had been given by Attorney General, K.C. Kamalabayson P.C.
61. Though the Criminal Investigation Department had commenced such investigations, their actions were thwarted by the Attorney General's Department that was directing such investigations.
62. In addition, Ameresekere had rendered the following valuable contributions:
- i) He had prevented in 1989, HDL surreptitiously mortgaging the Hilton Hotel and UDA Lands to Mitsui & Taisei, in addition to the State Guarantees, which had been issued to them.
 - ii) He had assisted the Government to have the UDA Lands Leases to be annulled and the Lands returned to the State by the execution in July 1999 of Surrender of Special Grant Instruments.
 - iii) He had prevented Hilton International fraudulently claiming in 1998 insurance monies of US \$ 10 Mn., received on the Terrorist Bomb destruction of Hilton Hotel, and Hilton International wanting Shares of HDL for US \$ 7 Mn., at the nominal value, whereby Hilton International would have got 50.1% controlling Shareholding of HDL, with Mitsui & Taisei 13% and the Government reduced to 32% from its Shareholding of 65%.
 - iv) He had concluded negotiations, which had been commenced by previous HDL Chairman, Ajith Dias, and the finalization of new favorable and reduced Management Terms with Hilton International, with Cabinet Approval obtained therefor on 13.10.2005.
 - v) As a Director of HDL and Chairman, Ameresekere had not drawn any fees or allowances, nor used a HDL vehicle.
63. Cabinet Approval had been granted on 13.10.2005 for Cabinet Memorandum dated 5.10.2005 of Minister of Finance Hon. Sarath Amunugama, together with the Report of the Cabinet Appointed Negotiation Committee (CANC), and for the Secretary to the Treasury to submit the same to the Supreme Court in compliance with the Court Order.
64. The above Cabinet Approval, *inter-alia*, granted approval for the following, in terms of the Agreement No. 3 entered into by and between the Government and Ameresekere:
- “Government to decide on an appropriate allocation of HDL Shares after above restructuring or a payment in lieu in cash, to be made by the Government to Nihal Sri Ameresekere / Comindtax Management Service Ltd., (now Consultants 21 Ltd.) for the endeavours and efforts in bringing about the write-off of Jap. Yen 17,586 Mn., (then US \$ 207 Mn., / SL Rs. 10,200 Mn.) benefitting the Government and HDL, and for the cost incurred since July 1995 in assistance rendered in defending the interests of the Government and HDL in the above litigations instituted / caused to be instituted by Cornel & Co. Ltd.; and HDL and Nihal Sri Ameresekere to withdraw Case No. 15322/MR and the Claim in Reconviction, respectively, without costs.”
65. Thereafter in March 2006, the Secretary to the Treasury independently engaged the services of Merchant Bank of Sri Lanka Ltd., to determine the payment of professional compensation, under and in terms of the Agreement No. 3 by and between the Government and Ameresekere *viz*:
- “as determined by an independent financial / merchant banking institution/s, also compensate Ameresekere for his professional time and efforts, incurred on behalf of and in the interest of Hotel Developers (Lanka) Ltd., for its benefit and interest and that of its Shareholders, including the Government, as the major Shareholder and Guarantor of the Loans of Hotel Developers (Lanka) Ltd., resulting in the write-offs, reductions and rescheduling, referred to in the said Agreement No. 1.”**

66. As revealed by the subsequent Supreme Court Minutes of 24.4.2006, Secretary to the Treasury had reported that Ameresekere's matter of professional compensation had already been resolved on the basis that it would be determined on an independent assessment *for which purpose Merchant Bank of Sri Lanka Ltd., had been appointed as referred to above.*
67. Consequently, Merchant Bank of Sri Lanka Ltd., by its Report of 19.7.2006, *inter-alia*, had expressed the following Opinion.

"8 OUR OPINION

- 8.1 In view of the matters set out above we are of the opinion that in respect of NSA's claim for services rendered, NSA / Comindtax Management Services Limited (now Consultants 21 Ltd.) be Compensated within the range of **0.1% to 0.75%** of the benefit obtained by the Government and HDL as a result of the said write off of **Japanese Yen 17,586,000,000 (LKR 10,200,000,000 as at June 1995)** under **Option (1)** given below. The details of calculation under different rates of Compensation is given in **Annexure (I)** for your convenience.

However the Treasury can consider a higher rate of compensation up to 2% taking into consideration NSA's valuable services, the relationship the Government wishes to continue with him in the future and any other relevant factors. We also wish to state that commission payment upto 2% is within the Market Practice as explained in Section 6 of this Report.

- 8.2 **In addition to the above**, it is also suggested / recommended that as recommended in the CANC Proposal of 11th July 2005, the Govt. reimburse the **Costs** incurred by NSA / Comindtax Management Service Limited (now Consultants 21 Ltd.) since July 1995 in defending the interests of Government and HDL in the litigations instituted or caused to be instituted by Cornel and Company Ltd., upon verification of such documents."

Ameresekere had not personally got involved in any negotiations with them, and due to concerns of national interest, he had not given copies of certain documents, which could have shown complicity of the Treasury with him at the time he instituted legal action, inasmuch as Mitsui & Taisei had already alleged that the Treasury had instigated Ameresekere to institute legal action.

68. The above was with an endeavour to settle with Cornel & Co. Ltd., its final Case of a total of 8 Cases, 7 of which had been dismissed previously. However, Cornel & Co. Ltd., was not satisfied with the compensation offered to it by the Government. In any case, thereafter in May 2014 this last Case filed by Cornel & Co. Ltd., was dismissed by Court.
69. **On 15.6.2012 C. L. Perera and Nihal Sri Ameresekere had entered into an Agreement that each one of them was free to pursue and obtain their respective Claims from the Government, and that they renounce any Claims against each other. A copy of the Agreement had been forwarded to the Secretary to the Treasury.**
70. However thereafter, the above final Case of Cornel & Co. Ltd., had been dismissed by the District Court on **26.5.2014**, consequent to the Judgments of the Supreme Court in such regard on **5.8.2013** and **25.11.2013**, and **upon which the above Agreements signed with Ameresekere by Government, Mitsui & Taisei and HDL came into full force.**
71. Prompt Notice thereof, after having had obtained on **5.6.2014** a certified copy of the above Dismissal Order was given by Ameresekere's Attorneys-at-Law, V.W. Kularatne Associates, by their Letter dated **11.6.2014** to the Secretary Treasury, Dr. P.B. Jayasundera, **requiring him to fulfill the Government's obligations and undertaking under and in terms of the aforesaid Agreements. Dr. P.B. Jayasundera had not disputed the same.**

72. **The Government having thus got Ameresekere to withdraw his 2 derivative actions in law on the above undertaking and solemn promise given by the Government to fulfill the ‘Conditions Precedent’ as ‘Conditions Subsequent’, Ameresekere expected the Government to promptly fulfill the said Conditions, as had been solemnly promised, reciprocating in the manner in which he had speedily acted, heeding the urgings of the Government.**
73. Accordingly on 4.7.2014, Ameresekere submitted the Claim for professional compensation based on the Report obtained by the Treasury from the Merchant Bank of Sri Lanka Ltd., updated to 30.6.2014 by his Auditors, Jayaweera & Co., Chartered Accountants.
74. Merchant Bank of Sri Lanka Ltd., had affirmed *with evidence* that **2%** of the write-off was the market norm for Professional Compensation, and Vanik Incorporation Ltd., likewise had affirmed that **1.5%** was the market norm of the re-scheduling of the unwritten-off balance debt.
75. The above rates were for an instance of a normal financial restructuring package on a straightforward negotiation of a write-off and re-scheduling of defaulted Loans.
76. **On the other hand, Ameresekere had achieved the above with strenuous complex litigations, with voluminous documentations, and with the exposure of irrefutable evidence of criminality before a Special Presidential Commission, amidst severe pressures and obstructions.**
77. Nevertheless, **without reciprocating the expeditious goodwill Ameresekere had extended and the compromises he had made as referred to above**, the Secretary Treasury, Dr. P.B. Jayasundera had ***‘dragged his feet’***, taking much time on Ameresekere’s above Claims made on **4.7.2014**, and only on **12.12.2014** offered him a total professional compensation of Rs. 300 Mn., as a full and final settlement of professional compensation payable to Ameresekere by the Government, ***without any discussion or negotiation, whatsoever, had thereon.***
78. In the circumstances and predicament Ameresekere was placed in at that time, he had been *coerced* into agreeing to such ***inequitable*** offer by his Letter of same day **12.12.2014** on the premise that the said **payment would be made within one Month** as had been promised by Secretary Treasury Dr. P.B. Jayasundera.
79. As per the further updated computations of the Report of the Merchant Bank of Sri Lanka Ltd., certified by Ameresekere’s Auditors, Jayaweera & Co., Chartered Accountants, the professional compensation payable to Ameresekere on the value as at **30.11.2014**
- on the then value of the **write-off** of **Rs. 81,024.2 Mn.**, on Government Guaranteed Loans at the market norm of **2%** amounted to **Rs. 1,620.5 Mn.**, and
 - the professional compensation payable to Ameresekere for the **re-scheduling** of the unwritten-off balance Government Guaranteed Loans at the market norm of **1.5%** amounted to **Rs. 541.6 Mn.**,
- making a total of such professional compensation at market norms amounting to **Rs. 2,162.1 Mn.**, as at **30.11.2014**.
80. It had been against such above market norms of professional compensation of **Rs. 2,162.1 Mn.**, on such immense benefit gained by the Government, as had been admitted by the Government in the contractual Agreement, that only **13.9%** thereof, amounting to **Rs. 300 Mn.**, had been arbitrarily offered to Ameresekere, as a full and final settlement, by Secretary Treasury, Dr. P.B. Jayasundera.
81. Ameresekere had not pursued the professional compensation for the costs and endeavours, *vis-à-vis*, Cases of Cornel & Co. Ltd., referred to in the Report of Merchant Bank of Sri Lanka Ltd.

82. It was public knowledge that the relationship between Ameresekere and Secretary Treasury, Dr. P.B. Jayasundera had completely broken down, after Dr. P.B. Jayasundera had been 'ousted' from Public Office, consequent to a Supreme Court Case, Ameresekere had caused to be instituted, the privatization of the Colombo Port Bunkering Infrastructure & Monopoly had been annulled as fraudulent by the Supreme Court, with severe castigations made against Dr. P.B. Jayasundera, **whereby he was compelled to give-up Public Office** and later re-instate as Secretary Treasury by President Mahinda Rajapakse.
83. # Obtaining a Letter from Ameresekere on 10.10.2014 that professional compensation payable to him by the Treasury was to be paid directly to the Bank of Ceylon, upon offer by the Treasury of Rs. 300 Mn., and acceptance **extorted** thereof from Ameresekere as per Letter of 12.12.2014, Secretary Treasury, Dr. P.B. Jayasundera made an arrangement to afford an Overdraft to him Rs. 100 Mn., as an interim measure on 17.12.2014 through the Bank of Ceylon, *via* an Account Ameresekere had been requested to open therefor, until the execution of an Agreement by 31.12.2014 on the fulfillment of the obligation to pay professional compensation to Ameresekere by the Government;
- # With Ameresekere having given Letter dated 17.12.2014 on the same day addressed to Secretary to H.E. the President, Secretary, Ministry of Finance & Treasury and General Manager, Bank of Ceylon, *inter-alia*, stating as follows:
- “4. The aforesaid Addendum was signed 21.10.1996, and the litigations were withdrawn on 23.10.1996 and the HDL Board Meeting presided by Dr. P.B. Jayasundera held on 25.10.1996, and payment effected to the Japanese on 28.10.1996, **demonstrating the expediency in which I readily co-operated with the urgent urgings of the Government.**
- Accordingly, I trust that the same would be reciprocated, and the settlement being given effect to now in terms of Agreement No. 3 referred to above, would be concluded and effected by 31.12.2014, particularly in view of my aforesaid overseas travels.”
84. It is in such circumstances, that Ameresekere had acted and intimated to the Bank of Ceylon that the Overdraft of Rs. 100 Mn., would be regularized in a Month, as had been also assured by the Treasury directly to the Bank of Ceylon.
85. Ameresekere had required Rs. 100 Mn., urgently in December 2014, having sold part of his residential property in **June 2014**, when his right and entitlement under the above Agreement had come into force as referred to above, **with an option to re-purchase the same on or before 31.12.2014.**
86. The above had been also to settle debts incurred, *inter-alia*, in pursuing several public interest litigations, **which had immensely benefitted the Government**, as morefully referred to hereinbelow, with no costs or any other benefit claimed or obtained by Ameresekere from the Government therefor.
87. The above were the circumstances under which Ameresekere without any discussion or negotiation had been *coerced* into accepting, without any option, the offer made by the Secretary Treasury, Dr. P.B. Jayasundera of Rs. 300 Mn., against what was determined at market norms in a normal instance to be **Rs. 2,162.1 Mn.**, as at 30.11.2014 i.e. **only 13.9%** thereof, since such offer was **belatedly made** by Secretary Treasury, Dr. P.B. Jayasundera at the last moment in December 2014 – *vide* Paragraph 85 above.
88. Regrettably, the conclusion Agreement was not executed by Secretary Treasury, Dr. P.B. Jayasundera by 31.12.2014, though he having got Ameresekere's written acceptance by Letter dated 12.12.2014 for a payment of Rs. 300 Mn., as full and final settlement, **without any discussion or negotiation, whatsoever, thereon.**

89. The above was a **grave lapse** causing harm to Ameresekere on the part of Secretary Treasury Dr. P.B. Jayasundera, whereas Ameresekere had agreed to settle and withdraw his 2 derivative actions in law on the very pleadings of Dr. P.B. Jayasundera, then Deputy Secretary Treasury, conceding the **'Conditions Precedent'** to be converted to **'Conditions Subsequent'** as referred to above, **which Ameresekere had no obligation, whatsoever, to have done.**
90. With the change of Government on 9.1.2015, this matter was thus in a **flux**, and in March 2015 the Treasury acknowledging the correctness of the above, having submitted a Cabinet Paper, made a further interim arrangement through the Bank of Ceylon, as and by way of an enhancement of the Overdraft in July 2015 by a further Rs. 125 Mn., making a total of Rs. 225 Mn., **for a period of 6 months** to be concluded by the payment due to Ameresekere by 31.12.2015 to the Bank of Ceylon, **with the Treasury so assuring in writing to the Bank of Ceylon.**
91. Ameresekere was requested to accept this interim arrangement, since also at that time, the Government had been considering a compensation payment to Cornel & Co. Ltd., whereas professional compensation payable to Ameresekere had been under the above legally binding contractual Agreements, which were completely different Agreements by and between the Government and Ameresekere, with Ameresekere, at the behest of the Government, **by the Addendum** having also agreed to convert the **'Conditions Precedent'** in to **'Conditions Subsequent'** **including the payment of professional compensation to him.**
92. In addition to the above, the Agreements also provided for Ameresekere to have adequate representation on the Board of Directors of HDL, and stipulated **3 of his nominees to be so appointed.**
93. **It is reiterated that had not Ameresekere settled and withdrawn his 2 derivative actions in law and continued therewith obtaining the final reliefs that no payment, whatsoever, were due to Mitsui & Taisei, Ameresekere would have then, among others, been a major stakeholder of HDL today, and not the Government, with the State Guarantees given to Mitsui & Taisei having got annulled, with the repayment of the further negotiated Loan to them as above, after having concluded Ameresekere's 2 derivative actions in law, after the passage of several years.**
94. The above was the correct business decision to have been made, **which was well within Ameresekere's own sole power, but he had heeded the pleadings of the Government, and had acted in the interest of the country, as had been desperately urged by the Government, which crucial factor ought have been taken into reckoning in offering professional compensation to Ameresekere in terms of a contractually binding legal Agreement the Government had entered into with him, after having got him to convert the 'Conditions Precedent' to 'Conditions Subsequent', including the professional compensation payable to him as per the Agreement, and giving up his above legal right.**
95. Normal professional compensation at 2% on the **write-off** at the value as at **31.12.2016** of **Rs. 89,927.6 Mn.**, amounts to **Rs. 1,798.5 Mn.**, and the **re-scheduling** of the balance Loan of **Rs. 51,884.7 Mn.** at 1.5% amounts to **Rs. 778.3 Mn.**, amounting in total Professional Compensation to **Rs. 2,567.8 Mn.**, as at **31.12.2016**
96. Ameresekere has disclosed the full details pertaining to the above, together with Documents, in the following Books authored by him and published in the US
- # ['Colombo Hilton Hotel Construction - Fraud on Sri Lanka Government - Vol. 1 - Sri Lanka's First Derivative Action in Law'](#)
['Colombo Hilton Hotel Construction - Fraud on Sri Lanka Government - Vol. 2 - Criminality Exposed, but Perversely Covered-up'](#)
['Colombo Hilton Hotel Construction - Fraud on Sri Lanka Government - Vol. 3 - Settlement of a Fraud'](#)
['Socio-Political Realities - Hilton Hotel Fiasco & Ad hominem Legislation - Expropriation Law'](#)
97. It is relevant to cite the following public interest actions by Ameresekere, which had immensely benefitted the Government and the public; and also in several instances **of tax free professional compensation** paid to Consultants, both foreign and local, by the Government, in certain instances even colossal losses to the Government :

- i) **In 2003** on the privatization of Sri Lanka Insurance Corporation Ltd., Pricewaterhouse Coopers and Ernst & Young had been paid by the Government professional compensation of over **Rs. 170 Mn.**, which at value as at 31.12.2016 amounts to around **Rs. 940 Mn.**

*As a result of a public interest litigation caused to be instituted by Ameresekere, he got back for the Government, Sri Lanka Insurance Corporation Ltd., valued as at 31.12.2016 over **Rs. 90,300 Mn.**, including also the valuable Lanka Hospitals PLC, valued as at 31.12.2016 over **Rs. 15,050 Mn.**, as a result of the privatization being annulled as unlawful, illegal and fraudulent by the Supreme Court. ([IMF, World Bank & ADB Agenda on Privatisation – Sri Lanka Insurance Privatisation - Annulled as Unlawful & Illegal by Supreme Court](#))*

- ii) **In 2001** on the privatization of National Insurance Company Ltd., Arthur Anderson, who were the fraudulent Auditors of the Enron fraud had been paid around **Rs. 135 Mn.**, which at value as at 31.12.2016 is over **Rs. 870 Mn.**, for a Sale consideration in 2001 of **only Rs. 450 Mn.**

- iii) **In 2003** on the privatization of Lanka IOC Ltd., Ernst & Young had been paid professional compensation of over **Rs. 55 Mn.**, and at value as at 31.12.2016 it would amount to over **Rs. 290.1 Mn.**

*Ameresekere's consequent action on this privatization reduced by around **Rs. 5000 Mn.**, in 2005 the Subsidies claimed as per an agreed 'pricing formula' by LIOC from the Government, with future Subsidies being stopped. ([IMF, World Bank & ADB Agenda on Privatisation – 'Dubious Deals' in Sri Lanka – What a Paradox](#))*

- iv) On the Oil Hedging Deals in foreign litigations, professional compensation and costs incurred, as a consequence of foolhardy stance taken by Attorney General, Mohan Peiris P.C., preventing public interest actions Ameresekere had instituted to prosecute in Sri Lanka, as reported had amounted to over **Rs. 1232 Mn.**, whilst also losing the Standard Chartered Bank Claim of **US \$ 160 Mn., + interest**, and the Deutsche Bank Claim of **US \$ 80 Mn., + interest.**

*Citibank Claim of **US \$ 192 Mn. + interest** was overcome it is believed due to certain endeavours by Ameresekere in publishing a Book globally distributed on this specific matter at that time. ([Derivative / Hedging Deals by Citibank, Standard Chartered Bank, Deutsche Bank, with Sri Lanka Government's Petroleum Corporation - Dubious & Illegal ?](#))*

- v) Even on Loans raised by the Government, **which have to be re-paid** professional compensation and commission to Financial Advisors / Syndicates are paid, whereas the above is a complete **write-off** at value as at **31.12.2016** of **Rs. 89,927.6 Mn.**, on State Guaranteed Foreign Loans, with the further **re-scheduling** of the unwritten-off balance at value as at **31.12.2016** of **Rs. 51,884.7 Mn.**, **admitted by the Government, itself in the Agreement with Ameresekere to have been of immense benefit to the Government, as the Guarantor.**

- vi) The annulment in 2004 of the perverse all-encompassing amnesty '*in the guise of a tax amnesty*', which prevented the write-off of around Rs. 200,000 Mn., in State Revenues as had been reported, and also prevented the erosion of the rule of law and good governance. The Supreme Court Pronouncement, *inter-alia*, had stated thus –

"It is inimical to the rule of law, violative of the 'Universal Declaration of Human Rights and International Covenant on Civil & Political Rights', and it had defrauded public revenue, causing extensive loss to the State" - ([Transparency & Public Accountability Fiscal Mismanagement & Lack of Public Accountability Case Study - Sri Lanka, a Country under the purview of IMF, World Bank, ADB](#))

- vii) On another public interest action caused to be instituted by Ameresekere, he got back for the Government the Colombo Port Oil Bunkering Infrastructure Facility & Monopoly valued at around **Rs. 20,000 Mn.**, as at 31.12.2016, as a result of privatisation being annulled, as unlawful, illegal and fraudulent by the Supreme Court. ([IMF, World Bank & ADB Agenda on Privatisation – Colombo Port Bunkering Privatisation – Annulled as Illegal & Fraudulent by Supreme Court](#))
- viii) Challenge by Ameresekere to the Appropriation Bill of 2008, resulted in the disclosure of the total correct borrowings by the Government, and exposing cognizable hidden transactions by the Treasury, through a purported allocation as 'Development Activities' which the Supreme Court referred to as a 'budget within a budget'. ([Transparency & Public Accountability Fiscal Mismanagement & Lack of Public Accountability Case Study - Sri Lanka, a Country under the purview of IMF, World Bank, ADB](#))
98. With his services being sought by Clients, Ameresekere / Consultants 21 Ltd., commands a certain level of professional fees from professional practice. He has been spending his own monies so earned, supplemented by borrowings, in acting in the public interest, resulting in immense benefit to the Government at no cost to the Government, not even an import duty free permit for a vehicle !
99. He does not operate a NGO with other people's monies. Such fact very clearly had been overlooked, and so also his immense services to society in combatting fraud and corruption. **The above matter of the Hilton Hotel was his own business and not a public interest litigation.**
100. i) Even as far back as 1978, in addition to his professional practice, he had rendered services on an honorary basis, from 1980 as part-time Finance Director of the all island Sri Lanka Transport Boards, appointed to a Special Executive Board by President J.R. Jayawardene.
- ii) Then Secretary Treasury, Dr. W.M. Thilakaratne had intimated that Ameresekere could have Subsidies of around Rs. 300 Mn., per year for Sri Lanka Transport Boards. (*Value as at 31.12.2016 over **Rs. 30,000 Mn.** for two years*).
- iii) Nevertheless, Ameresekere had managed the finances of the all island operations, which had achieved 93% of Time Tables Schedules, **without drawing any Subsidies from the Treasury.**
- iv) Ameresekere had resigned after two years due to pressure of his professional work, leaving Fixed Deposits of over Rs. 80 Mn. (*at value as at 31.12.2016 over **Rs. 10,000 Mn.***)
- v) The Hon. Minister of Transport, M.H. Mohamed, had stated as follows in the Parliament of Sri Lanka, as per the Hansard of 19th December 1981 –

එම්. එච්. මොහමඩ් මහතා,
(ஐஐஏஐ எம். எச். முஹம்மத்)
(Mr. M. H. Mohamed)

Mr. Chairman, now I am happy regarding the transport boards. As the hon. Member for Mannar pointed out, I am happy to say that we are able to cut down the losses to about Rs. 250 million. Though the Treasury pointed out that during the year 1982 the losses are going to be about Rs. 1.2 billion. I always disagreed with that figure. I felt, and I said that the figure is not quite correct. But I expect it to be always Rs. 500 to 600 million. I am happy that the present Board is able to reduce the losses to about Rs. 250 million. It is a good beginning. I must congratulate my Secretary and Chairman Dr. Gamini Wijesekera—and the Finance Director Mr. Nihal Amerasekera—he is a Chartered Accountant and a very efficient accounting officer. By his advice the Chairman was able to achieve this.

We have also decided to pay Rs. 300 as bonus to all our workers. It is not necessary to make big profits. We have been paying in the past Rs. 217. I brought this matter up before the Cabinet, and the Board has decided to pay the workers a sum of Rs. 300 as bonus from this year.

Now the accounting system has been changed, and they have brought about lot of restrictions and controls. on their advice, we have been able to make certain strict controls. By doing this we have been able to bring down the losses.

Some of the things they have introduced are, the improved method of cost controls, the improved method of inventory controls, reduction of stocks, voluntary retirement schemes, improved method of security and prevention of frauds. I am happy about it, and I must congratulate my Secretary and the Chairman and the Board for doing a wonderful job.

- vi) Ameresekere had dispensed with 4 Consultants provided by Crown Agents of UK under a World Bank Development Assistance Project, thereby saving US \$ 1.9 Mn., (*at value as at 31.12.2016 around Rs. 243 Mn.*)
- vii) Commendations by international Visiting Missions on Ameresekere's above work are given in the bellow-scanned Letter dated 8.6.1983 from the Director, Public Enterprise Division, Treasury, which he had refrained from replying due to modesty:

මහලුපිටු අංකය
පැවැත්වූ ලේඛණ
Treasury No.
මගේ අංකය
ඔබගේ ලේඛණ
Your No.

PE1/COMPAC.



මහ මාණ්ඩලීය
මුදල් දෙපාර්තමේන්තුව
GENERAL TREASURY

කොළඹ
Colombo

1983 June 8.

Mr.Nihal Sri Amerasekera,
167 B, Sri Vipulasena Mawatha,
Colombo 10.

Computerisation of information - Sri Lanka Central
Transport Board

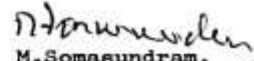
I refer to an extract of a mission report 17th November to 9th December, 1982, of Mr.P.W.P.Browne, Inter-regional Adviser on Information Management and the use of computers in Public Administration which reads as follows -

"Useful computerisation of an organisation can only be carried out with the active participation and desire of management. Management must feel the need for better information and support the search for it via computerisation. They must understand what sort of improvements in information, computerisation can bring about. The only manager that I encountered during my mission who seemed to have such an understanding was the Director (Finance) of the Sri Lanka Transport Board, (Mr.Nihal Sri Amerasekera) who developed and installed some 10 computerised control systems in about one year".

An United Nations supported International Advisory team, consisting of Mr.Praxy Fernandes, (Team Leader) who was formerly the Secretary, Ministry of Finance, Government of India and presently UN Team Leader to the International Centre for Public Enterprises, Mr.Philip Neck, The Director, ILO Regional Office, India, Dr.Toni Bennett, UN Adviser, Ministry of Public Enterprises, Malaysia, Mr.Raja Gomez, Assistant Director, Commonwealth Secretariat and Mr.Yashieko Inoue, ILO Regional Adviser on Productivity, in their study titled "Government and Public Enterprises in Sri Lanka - A Study in relationships," have said

"The Finance Director of the SLCTB has introduced an information system which enables top management to assess continuously the performance of each bus depot and indeed of each vehicle in the fleet. This system covers information on vehicle utilisation, load factor, fuel consumption, tyre consumption, earnings per road kilometre, expenditure per road kilometre and a variety of other productivity factors. This information has been computerised and this enables the top management of SLCTB to know what is going on".

2. Since you have left the public sector, a statement for posterity of your experience in this field will be very valuable. I wonder whether you could prepare a note, which I intend to give wide exposure at senior decision making levels, about how you got about achieving this task indicating the information providing system that prevailed, the strategies and tactics adopted, the difficulties encountered, the achievements and failures and suggestions for the future. These elements are mere suggestions for you are welcome to draft this note in the way you wish.


M.Somasundram,
Director,

Public Enterprises Division.



S.P. Sriskantha, LL.M. (U.K.)
Attorney-at-law,
Solicitor [Eng. & Wales]

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