

BRIEF NOTE ON FACTS

1. Nihal Sri Ameresekere from the very inception had been one of the Promoters and Directors of Hotel Developers (Lanka) PLC (HDL), the owning Company of Hilton Hotel and later it's Chairman.
2. The Hilton Hotel was constructed on financing by Mitsui & Co. Ltd., and Taisei Corporation on State Guarantees, which had been granted to them in the background of the 1983 ethnic riots, to repair and restore the international image of the country.
3. The Hilton Hotel commenced construction in 1984 and commenced operations in 1987.
4. Amidst obstructions and pressures, Ameresekere instituted in September 1990 a legal action on a scandalous fraud, resulting in all payments to Mitsui & Co. Ltd., and Taisei Corporation by HDL or by the Government under the State Guarantees being enjoined by the District Court in October 1991 and being affirmed by the Supreme Court in December 1992.
5. Ameresekere's legal action in September 1990, with enjoining orders being issued promptly by the District Court preventing any payments to Mitsui & Co. Ltd., and Taisei Corporation by HDL or by the Government under the State Guarantees, prevented the precipitation of an international cross-default on the country's foreign borrowings, **with the foreign exchange reserves being very low at that time.**
6. Ameresekere also instituted a further action to have the Annual Accounts of HDL enjoined by Court.
7. In the face of interrogatories served on Mitsui & Co. Ltd., and Taisei Corporation in the District Court, the Japanese Ambassador intervened with the Ministry of Finance to urge that the matter be settled and resolved.
8. Ameresekere having agreed to co-operate with the Government, after discussions had, Agreements had been drafted in June 1993 for such settlement by the Hon. Attorney General.
9. On Ameresekere insistence, Mitsui & Co. Ltd., and Taisei Corporation had agreed to write-off accrued interest for 8 years and 30% of the Capital, and re-schedule the unwritten-off balance over 13 years at 5.9% p.a. interest.
10. These Agreements could not been concluded, since Mitsui & Co. Ltd., and Taisei Corporation had insisted upon receiving Promissory Notes from the Government for the unwritten-off Loan balance, in addition to the State Guarantees which had been issued to them.
11. Subsequently, Mitsui & Co. Ltd., and Taisei Corporation, having agreed to receive Promissory Notes for the unwritten-off balance from HDL, and not from the Government, the Agreements further finalized by the Hon. Attorney General, were executed in June 1995 by the Treasury after Cabinet Approval and approval from the Special Presidential Commission.
12. In the above Agreements, Ameresekere had further re-negotiated with Mitsui & Co. Ltd., and Taisei Corporation, for them write-off 10 years accrued interest and 30% of the Capital, with the unwritten-off balance, being re-scheduled over a further period of 16 years, at a reduced rate of interest of 5.25% p.a.

13. The above write-off in June 1995 amounted to 62% of the Claims on State Guarantees, and had had amounted to Jap. Yen. 17,586 Mn., then US \$ 207 Mn., or SL Rs. 10,200 Mn.
14. The Government had admitted that the above had *immensely* benefited HDL and the Government, as stated in the Agreements.
15. The above write-off at value as at 31.12.2016 at AWFDR amount to Rs. 89,927.6 Mn., and the re-scheduled balance amounts to Rs. 51,884.7 Mn.
16. The above Agreements contained certain Conditions to have been performed as '*Conditions Precedent*' by the Government, Mitsui & Co. Ltd., and Taisei Corporation, before Ameresekere withdrew his 2 Cases.
17. With the disclosure of irrefutable evidence of criminality before the Special Presidential Commission, Mitsui & Co. Ltd., and Taisei Corporation through the Japanese Government brought pressure to bear on the Government of Sri Lanka, threatening not to release a Japanese Aid component of US \$ 275 Mn., at the Aid-Group Meeting in November 1996.
18. In such circumstances, Government intervened with Ameresekere and persuaded him to agree to withdraw his 2 Cases, before the fulfillment of the '*Conditions Precedent*', which had to be fulfilled **prior** to him settling and withdrawing his 2 Cases, undertaking to fulfill these '*Conditions Precedent*' as '*Conditions Subsequent*'.
19. Accordingly, an Addendum prepared by the Hon. Attorney General to the above Agreements converting the '*Conditions Precedent*' to '*Conditions Subsequent*' was signed by the Treasury with Ameresekere, Mitsui & Co. Ltd., and Taisei Corporation, as had been approved by the Cabinet.
20. In the above **Addendum**, *inter-alia*, it is 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."

21. At the HDL Board Meeting had to give effect to the above Agreements, the Treasury Representative chairing the Meeting had stated as follows, as per the Board Minutes:

"The Chairman, 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."

22. The above *Addendum* had been signed **21.10.1996**, and Ameresekere's 2 Cases had been settled and withdrawn on **23.10.1996** on the basis of the above Agreements / Addendum and the HDL Board Meeting held on **25.10.1996**, and payments to Mitsui & Co. Ltd., Taisei Corporation made on **28.10.1996**, from the funds accumulated in HDL of **US \$ 30 Mn.**, due to interim injunctions obtained by Ameresekere; *demonstrating the expediency in which Ameresekere had readily co-operated with the urgings of the Government.*
23. Ameresekere states that with such accumulated funds of US \$ 30 Mn., at that time, had he not withdrawn his 2 Cases, as urged by the Government, he could have easily continued his 2 Cases to be successfully proven, accumulating more funds in HDL; and upon winning the Cases, as had been affirmed by the Supreme Court, thereafter settling Mitsui & Co. Ltd., Taisei Corporation in a businesslike manner, thereby cancelling the State Guarantees.
24. Ameresekere states had he not so acted, as urged by the Government, he would have been a major stakeholder of HDL today, and not the Government, with the State Guarantees given to Mitsui & Co. Ltd., and Taisei Corporation having got annulled, and that this was the correct business decision, which was well within his own sole power to make, but he had heeded the pleadings of the Government, and acted as urged by the Sri Lanka Government, **due to pressures by the Japanese Government, and thus giving up his legal rights.**
25. In addition, Ameresekere states that he had made the following 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.
26. Since Professional Compensation payable by the Government to Ameresekere as per the above Agreements had been agreed to be determined by an independent financial / merchant banking institution, the Treasury had appointed Merchant Bank of Sri Lanka Ltd., for such purpose and had also so confirmed to the Supreme Court.
27. Cornel & Co. Ltd., who had persistently opposed the above Settlement **which had been required by the Government**, and had instituted several Cases. Ameresekere had assisted the Treasury and HDL to successfully defend such Cases, the last of which Case was dismissed in **May 2014**.

28. In **June 2014** Ameresekere had submitted his Claim for compensation based on the Report of Merchant Bank of Sri Lanka Ltd., updated by his Auditors, as affirmed that the market norm for the write-off at 2%, and for re-scheduling at 1.5% confirmed by Vanik Incorporation Ltd., which was in a normal instance, notwithstanding this had been with complex litigations.
29. Ameresekere states that thereafter in December 2014, the Treasury had inquired through a third party as whether Ameresekere would accept Rs. 300 Mn., as a full and final settlement. **There was no discussion or negotiation, whatsoever, due to personal strained relationship.**
30. Ameresekere states that due to circumstances he had been in, he was **coerced** to accept the same on the basis that the matter was to be concluded by 31.12.2014, pending which the Treasury had arranged through the Bank of Ceylon an Overdraft of Rs. 100 Mn.
31. Subsequently, upon discussion had with Treasury in March 2015, the Treasury after a Cabinet Paper had arranged the above Overdraft to be increased in July 2015 to Rs. 225 Mn., with the Treasury undertaking to pay from monies payable as Professional Compensation to Ameresekere from the Government within a period of 6 Months.
32. As at value of money as at 31.12.2016 Professional Compensation at market norms on the above write-off amounts to Rs. 1,798.5 Mn., and for the re-scheduling at 1.5% amounts to Rs. 778.3 Mn., making a total Professional Compensation of Rs. 2,567.8 Mn., at market norms, as certified by his Auditors, updating the Report of Merchant Bank of Sri Lanka.
33. 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 amounts to **Rs. 89,927.6 Mn.**, on State Guarantees, and had been of immense benefit to the Government, as have been admitted by the Government, with the further re-scheduling of the balance.
34. Prior to signing the Agreements in June 1995 Ameresekere had given the Treasury the following quotations as an indication of Professional Compensation:
 - Dated 20.3.1995 from Ernst & Young - Fees ranging from 1% to 4%
 - Dated 30.5.1995 from Vanik Incorporation Ltd., - Fees around 1.5%

Ameresekere has also adduced evidence that **Merchant Bank of Sri Lanka Ltd.**, had charged Rs. 4.3 Mn., for structuring the Share Sale deal of Kotagala Plantations at Rs. 102 Mn., and had quoted on 2.11.1998 Fees of 2% to 3% in addition to retainer fees, for a privatization bid.

Cabinet Memorandum of October 2005 had, *inter-alia*, approved as follows:

“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 is 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 Reconvention, respectively, without costs.”

35. Ameresekere cites some instances of Professional Compensation paid by the Government, on the Sale of State Assets i.e.

- 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 value at 31.12.2016 amounts to **Rs. 940 Mn**, which privatization was annulled by the Supreme Court.
- ii) **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.**
- iii) **In 2001** on the privatization of National Insurance Company Ltd., Arthur Anderson had been paid around **Rs. 135 Mn.**, which at value at at 31.12.2016 is over **Rs. 865 Mn.**, for a Sale consideration in 2001 of **only Rs. 450 Mn. !**
- iv) On the Oil Hedging litigations, Professional Compensation and costs incurred as a consequence of foolhardy stance by Hon. Attorney General, as reported in the COPE Report amounts of **Rs. 1,232 Mn.**, 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** had been overcome due to certain believed endeavor by Ameresekere.*

36. In addition, the above **Agreements also had provided for Ameresekere to have adequate representation on the Board of Directors of HDL, and had stipulated 3 of his Nominees to be so appointed.**



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Original 30.9.2016
Updated 1.1.2017