

# *Synopsis of*

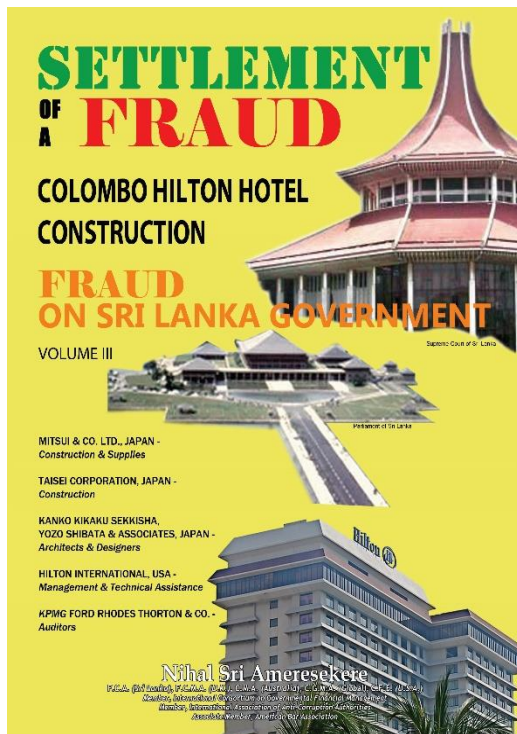
## Settlement of a Fraud

### Colombo Hilton Hotel Construction

# Fraud on Sri Lanka Government

Amazon Books – [‘Colombo Hilton Hotel Construction - Fraud on Sri Lanka Government Vol. 3 - Settlement of a Fraud’](#)

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



Size - 8.25" X 11" – Pages 776

To clearly understand and study the facts contained in this Book, which is Volume III, it would be essential to read and understand the contents in the first two Volumes on this subject, namely – ‘Colombo Hilton Hotel Construction - Fraud on Sri Lanka Government – Vol. 1 – Sri Lanka’s First Derivative Action in Law’ and ‘Colombo Hilton Hotel Construction - Fraud on Sri Lanka Government - Vol. 2 - Criminality Exposed, but Perversely Covered-up’.

Shocking reality in the contemporary world is appallingly revealed in this Book, with the disclosure of a colossal fraud perpetrated, with immense corruption, on the people of a 3<sup>rd</sup> world developing independent sovereign country, which is already impoverished, with such fraud being unashamedly covered-up, by pressurizing such

poor country, shockingly by an economically powerful country, acting in a shameless manner by subjugating and making servile the Government of a poor country.

The Author had well established, with evidence of *irrefutable* criminality, the perpetration of a colossal fraud in the construction of the Colombo Hilton Hotel by Mitsui & Co. Ltd., Taisei Corporation of Japan and Japanese Architects Kanko Kikaku Sekkeisha, Yozo Shibata & Associates, with Technical Assistance from Hilton International US, financed on Sri Lanka Government Guarantees. All facts are well revealed in the series of the above 2 Books, this Book and the Book ‘Socio-Political Realities - Hilton Hotel Fiasco & Ad hominem Legislation - Expropriation Law’ by the Author.

Upon the Attorneys-at-law of the Plaintiff Author having given notice to the Hon. Attorney General Sunil de Silva P.C., that in circumstances of fraud, the Sri Lanka Government Guarantees given would be null and void in law, and to give notice thereof to the Japanese Financiers, Secretary Treasury, R. Paskaralingam, disclosing reality, had minuted thereon – 'Please study this. The Japanese Ambassador told me this may affect our aid'

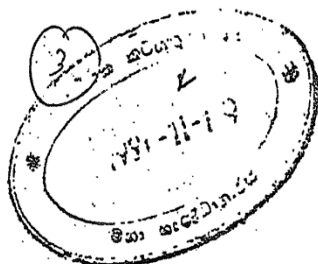
DE SILVA & PERERA  
SOLICITORS, ATTORNEYS AT LAW AND NOTARIES PUBLIC

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REGISTERED POST

12th November 1991

Hon. Sunil De Silva Esqr., P.C.,  
Attorney General,  
Attorney General's Department,  
Hulftsdorp Street,  
Colombo 12.

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*11/11*

Hon. Sir,

D.C. Colombo Case No. 3155/Spl

We write in pursuance of our earlier correspondence and forward copies of the Order made by the Learned District Judge on 28.10.91 in the abovementioned Action and the Interim Injunctions issued therein against the 1st, 2nd, 3rd & 4th Defendants.

We trust that you will take note of the contents of the Learned District Judge's Order, particularly, the matter of fraudulent collusion, and since, prima-facie, the premise of fraud has been taken cognisance of by Court, that you would accordingly, take steps in the interest of Public of Sri Lanka with regard to the State Guarantees that are in issue and notify the relevant parties, that under such circumstances of fraud, that such State Guarantees in law would be null and void.

You may also consider notifying accordingly the Exim Bank in Japan and any other known co-financiers of the said Loan. We also draw your kind attention to our letter dated 26.09.90 and believe that you would have taken necessary action in this regard.

Please acknowledge safe receipt.

Yours faithfully,

*De Silva & Perera*

Attorneys-at-law  
cc: Secretary, Ministry of Finance & Secretary Treasury

The Plaintiff Author, as a Shareholder of the Colombo Hilton Hotel owning Company Hotel Developers (Lanka) Ltd., (HDL) had succeeded in establishing in the Supreme Court of Sri Lanka, this colossal fraud, with affirmation of the Interim Injunctions, which had been granted by the District Court of Colombo, preventing any payments being made to these Japanese Companies by HDL and/or the Government of Sri Lanka under Government Guarantees. These Japanese Companies had been even unable to answer the series of interrogatories submitted by the Plaintiff Author and Ordered by the District Court of Colombo to be answered by them.

It is in such background, that these Japanese Companies had got the Japanese Government to exercise undue diplomatic pressures on the Sri Lanka Government to persuade the Plaintiff Author to settle and withdraw the above Case, and another connected Case, thereby suppressing and covering-up such colossal fraud perpetrated on the Sri Lanka Government and its people. In the context of the poverty stricken economic condition, the Sri Lanka Government was hapless and succumbed to such severe diplomatic pressures to make such requirement happen, which reflects one instance of socio-political reality in the contemporary world.

The Japanese Ambassador in Sri Lanka Masaaki Kuniyasu had addressed the following Letter on 18.2.1993 to Secretary, Ministry of Finance R. Paskaralingam requiring a definite settlement of the Plaintiff Author's litigations, stating that '*longer it takes for a settlement, the worse the situation gets*'.

THE EMBASSY OF JAPAN  
IN THE DEMOCRATIC SOCIALIST  
REPUBLIC OF SRI LANKA  
20, Gregory's Road  
Colombo 7.

18 February, 1993

Mr. R. Paskaralingam  
Secretary  
Ministry of Finance  
Colombo 1.

Dear Mr. Paskaralingam,

I write to thank you very much for the excellent lunch hosted by you yesterday. The discussions we had were both very interesting and fruitful. May I, however, mention that I hope such meetings in the future will be held much earlier for the coming years as it would be very useful to both Japan and Sri Lanka.

With regard to the pending case I spoke to you about yesterday, I would be most grateful if you could please see that there would be a definite settlement to this before you leave for Japan and USA, as I feel that with you being out of the island, nothing positive will be done. I would also like to mention that the longer it takes for a settlement, the worse the situation gets.

Thanking you for your understanding and cooperation at all times.

Yours sincerely,

*Masaaki Kuniyasu*  
Masaaki Kuniyasu  
Ambassador of Japan

*D/EA*  
*Please report regarding Hilton Case.*


*SIF*

*23/2*

*✓ Spoke 15.2.93*  
*JK*

In the context of such Japanese diplomatic pressures exerted, Hon. Attorney General T.J. Marapana P.C., after discussions had by him with R. Paskaralingam, Secretary Treasury and other Treasury Officials, together with the Plaintiff Author and his Senior Counsel K. Kanag-Isvaran P.C., had prepared draft Settlement Agreements, initially previous discussions having been had by and between the Treasury and Attorney General's Department Officials, Plaintiff Author and his Senior Counsel K. Kanag-Isvaran P.C., *to have established that a fraud in fact had been perpetrated.*

On the insistence of the Plaintiff Author, Mitsui & Co. Ltd., and Taisei Corporation had agreed 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 as incorporated in the above draft Settlement Agreements.

	දුරකථන - Telephones -	අමාත්‍යවරයාගේ MINISTER	} 431028	ලේකම් SECRETARY	} 431761	මගේ අංකය My No.
				මහලේකම් PRIVATE SECRETARY	} 20436	ඔබේ අංකය Your No.
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 நிதி அமைச்சர்  
 MINISTRY OF FINANCE

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 செயலகம், கொழும்பு 1  
 The Secretariat, Colombo 1

දිනය  
 நாள்  
 Date } 21st June, 1993.

Mr. Nihal S. Amarasekera,  
 167/4, Sri Vipulasena Mawatha,  
 Colombo 10.

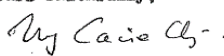
Dear Sir,

Hilton Project - Draft Agreement

I forward herewith copies of draft agreements Nos.1, 2 and 3 dated 17th June, 1993.

The said agreements incorporate certain changes from the draft dated 11/6/93. The said agreements have been underlined and highlighted in green.

The Secretary to the Treasury has directed me to obtain your observations on the amended agreement very early.

Yours faithfully,  
  
 (Mrs) V.M.Y. Casie Chetty  
 Director General  
 Physical Policy and Economic Affairs  
 MINISTRY OF FINANCE.

However, after the untimely death of President R. Premadasa by a terrorist bomb attack in May 1993, upon further Japanese diplomatic pressures, in June 1994 President D.B. Wijetunga had invited Plaintiff Author for a discussion, together with Hon. Attorney General T.J. Marapana P.C., endeavoring with much effort to have the above settlement concluded.

But such effort had failed, primarily due to the fact that Mitsui & Co. Ltd., and Taisei Corporation having insisted on receiving Promissory Notes from the Government of Sri Lanka, in addition to the Sri Lanka Government Guarantees they already had, for the balance unwritten-off debt, which was to be re-scheduled as above.

With unbearable pressures having been brought to bear on the Plaintiff Author, he was hospitalized, with suspected heart condition, and flown overseas for a medical check-up. Even whilst in hospital, then Secretary Treasury, N.V.K.K. Weeragoda had endeavoured to summon the Plaintiff Author for a discussion to conclude the Settlement, necessitating his wife to write to President D.B. Wijetunga.

What is further disclosed is that a baseless and malicious legal action had been instituted in the name of HDL against the Plaintiff Author to exercise undue pressures on him, and with the disclosure of the correct facts, the Government, the Japanese and HDL had given written apologies to the Plaintiff Author, with HDL having signed a separate Settlement Agreement with the Plaintiff Author in this regard.

With change of Government of Sri Lanka in 1994, the new President Chandrika Kumaratunga appointed a Special Presidential Commission to investigate into this colossal fraud. This Special Presidential Commission was assisted by the Criminal Investigation Department of the Sri Lanka Police, Solicitor General and other Officials of the Attorney General's Department.

The Commission had recorded the evidence of 24 Witnesses, including the Plaintiff Author, with documentary evidence, and had also obtained an Investigative Report from a Panel of 3 Chartered Architects. Upon being satisfied with such evidence of fraud perpetrated on the Government of Sri Lanka, the Commission had issued in December 1995 Charge Sheets on 4 persons on grounds of fraud against the Government of Sri Lanka.

In addition to the foregoing, Justice Minister G.L. Peiris had made the following public pronouncement:

*"The settlement signed with the Japanese contractors also conforms to the major planks of the People's Alliance government's election manifesto of combating the pillage and plunder of national resources and the government's commitment, which has brought about the large scale saving. However, this settlement has nothing to do with the punitive action, which the legal machinery will take against the offenders, by the Special Presidential Commission on Bribery and Corruption."*

However, in reality on the contrary, Justice Minister G.L. Peiris had *scuttled* the Special Presidential Commission investigation *vide* – Synopsis of 'Colombo Hilton Hotel Construction - Fraud on Sri Lanka Government - Vol. 2 - Criminality Exposed, but Perversely Covered-up'

The Special Presidential Commission had also examined the final Settlement Agreements, which had been formulated by Hon. Attorney General, Shibly Aziz P.C., based on the same draft Settlement Agreements of June 1993 submitted to the Commission by Solicitor General, P.L.D. Premaratne P.C., and had examined the Author Plaintiff on the said Settlement Agreements, which were to be executed between the Secretary to the Treasury on behalf of the Government of Sri Lanka, Mitsui & Co., Ltd., Taisei Corporation of Japan, HDL and the Plaintiff Author.

'Extracts' of the Cabinet Memorandum dated 21.6.1995 are set out below:

**TOTAL STATED DUES TO 30.06.1995 – (to Mitsui & Co. Ltd., and Taisei Corporation, Japan)**

	Jap. Yen Mn.	US \$ Mn. @ 85 Yen./US \$	SL Rs. Mn. @0.58 Rs./Yen.
Balance Construction & FFE Costs	1,400	16	812
Long Term Loans	12,300	145	7,134
Payable in full by 1999	13,700	161	7,946
Interest on Balance Construction & FFE Costs	1,562	18	906
Interest on Long Term Loans	7,617	90	4,418
Overdue Interest for non-payment	4,827	57	2,800
Past Insurance Premium	<u>87</u>	<u>1</u>	<u>50</u>
	<u>14,093</u>	<u>166</u>	<u>8,174</u>
<b>TOTAL DUES</b>	<u>27,793</u>	<u>327</u>	<u>16,120</u>

**WRITE-OFF'S ON SETTLEMENT – (on Nihal Sri Ameresekere's insistence)**

	Jap. Yen Mn.	US \$ Mn. @ 85 Yen./US \$	SL Rs. Mn. @0.58 Rs./Yen.
30% Balance Construction & FFE	420	5	244
30% of Long Term Loan Capitals	<u>3,690</u>	<u>43</u>	<u>2,140</u>
	4,110	48	2,384
Overdue Interest	4,827	57	2,800
Normal Interest from commencement In 1984 upto 30 <sup>th</sup> June 1995	7,617	90	4,418
Interest on Balance Construction & FFE Costs	1,562	18	906
Past Insurance Premium – 30% write-off	26	0	15
<b>Less</b> Simple Interest @ 3% p.a. for last 2 years – i.e. July 1993 - June 1995 on Reduced Capital Balance of Japanese Yen Mn. (9590-312)	<u>(556)</u>	<u>(7)</u>	<u>(322)</u>
	<u>13,476</u>	<u>159</u>	<u>7,816</u>
<b>TOTAL WRITE-OFF</b>	<u>17,586</u>	<u>207</u>	<u>10,200</u>

**BALANCE DUES TO 30.06.1995 AS PER SETTLEMENT**

	Jap. Yen Mn.	US \$ Mn. @ 85 Yen./US \$	SL Rs. Mn. @0.58 Rs./Yen.
Capital - Construction & FFE	980	12	568
Long Term Loans	<u>8,610</u>	<u>101</u>	<u>4,994</u>
	9,590	113	5,562
<u>Add</u> Simple Interest @ 3% p.a. for last 2 years – i.e. July 1993 - June 1995 on Reduced Capital Balance of Japanese Yen Mn. (9590-312)	<u>556</u>	<u>7</u>	<u>322</u>
	10,146	119	5,885
Deduct - Payment made to Mitsui / Taisei In May 1990 – but suspended due To Injunctions in September 1990	312	4	181
- From Monies accumulated in Company due to Injunctions	<u>2,000</u>	<u>24</u>	<u>1,160</u>
	2,312	27	1,341
NET REDUCED BALANCE AS AT 30.06.1995 AS PER SETTLEMENT	<u>7,834</u>	<u>92</u>	<u>4,544</u>

It had been disclosed that on the Plaintiff Author's insistence, that Mitsui & Co. Ltd., and Taisei Corporation in June 1995 had written-off on their Claims from the Sri Lanka Government 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. This write-off had amounted to 62% of the Claims made by these Japanese Companies on the Sri Lanka Government Guarantees, and had then amounted to Jap. Yen. 17,586 Mn., then US \$ 207 Mn., or SL Rs. 10,200 Mn.

As stated in the Settlement Agreements the Government of Sri Lanka had admitted that the above had *immensely* benefited HDL and the Government of Sri Lanka. This write-off at value as at 30.6.2016 at AWFDR amounts to Rs. 89,177.3 Mn., and the re-scheduled balance amounts to Rs. 51,451.8 Mn.

Accordingly, with the approval of the Special Presidential Commission and the Cabinet of Ministers, the Secretary to the Treasury A.S. Jayawardena, acting on behalf of the Government of Sri Lanka had executed in 28.6.1995 these Settlement Agreements, which had been prepared and approved by the Hon. Attorney General – viz:

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My No. }

ඔබේ අංකය }  
உமது අංක }  
Your No. }

දුරකථන අංක } 20781  
தொலைபேசி எண் } 27919  
Telephone Nos. } 33964



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சட்டத்துறை அறிவுறு திணைக்களம்  
ATTORNEY-GENERAL'S DEPARTMENT

ඔ. ප. අංකය } 502  
அஞ்சல் பெட்டி }  
P. O. Box No. }

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கொழும்பு 12  
Colombo 12

15th June, 1995.

Mr. A.S. Jayawardena  
Secretary,  
Ministry of Finance, Planning, Ethnic  
Affairs and National Integration

HOTEL DEVELOPERS (LANKA) LTD.

I refer to your letter dated 9th June, 1995 forwarding copies of draft Settlement Agreements in respect of the above Company.

I am of the opinion that the draft Settlement Agreements are in order.

P.L.D. Premaratne  
Acting Solicitor General  
for Attorney General

The Settlement had been announced at a Media Conference with complete euphoria, in the presence of Justice Minister & Deputy Minister of Finance G.L. Peiris, Foreign Minister Lakshman Kadirgamar P.C., and the Yasuo Naguchi, Japanese Ambassador in Sri Lanka, to all of whom shockingly this colossal fraud on the Government of Sri Lanka and the public was a 'mere dispute' and an 'irritant' adverse to the Sri Lanka-Japan relationship !

There had been several Conditions included in the above Settlement Agreements to further financially restructure the Hilton Hotel owning Company HDL. Also, one such Condition had been the following in relation to the Securities & Exchange Commission of Sri Lanka (SEC) for having neglected its statutory duties and responsibilities concerning such fraud in a listed public company, with the Government having agreed to take legal action against such Members of SEC viz:

- "5. The Government shall and will take appropriate independent actions on the conduct and actions of the Securities and Exchange Commission of Sri Lanka and/or Members of its Commission and the Colombo Stock Exchange and/or of its Directors, in relation to the representations made by Mr. Ameresekere to the said institutions on matters pertaining to HDL, which matters Mr. Ameresekere also reserves the right to pursue."

Among the then Members of SEC had been the subsequent Sri Lanka Justice Minister G.L. Peiris, who accordingly was one responsible for covering-up such colossal fraud on the Company, the Government and the public of Sri Lanka. Whilst being a State Counsel at the Attorney General's Department Aritha R. Wikramanayake, Attorney-at-Law, as disclosed, had concurred that this was a colossal fraud, but later as Director General SEC he had failed and neglected to take any action thereon, and had been unable to even respond to Letters.



Justice Minister G.L. Peiris having previously praised the above Settlement Agreements stating that - *“Today is a happy day. We have reached a settlement in the Hilton Hotel dispute”* and endeavoring to take credit therefor, as though they had been achieved by him, but the moment he came to realize the above Condition he promptly castigated the Settlement in and outside the Parliament of Sri Lanka, precipitating a perverse controversy thereon.

Based upon the spiteful, malicious and false statements made by Justice Minister G.L. Peiris and his conduct and actions, those parties who were against such Settlement had filed several legal actions against these Settlement Agreements. However later all those litigations had been dismissed. As a result, the further financial restructuring of the Hilton Hotel owing Company, HDL, according to the specified Conditions in Settlement Agreements got completely jeopardized, precipitating a financial crisis in HDL – Viz: Agreement No. 2

- “14. HDL shall and will explore the feasibility of building the 3rd Tower of Hotel Rooms at the Hotel and consider financing the cost of same, through a Rights and/or a new Issue of its Shares or otherwise, as considered feasible, to enhance HDL's profitability and debt service ability, to enable the repayment of the said Loans to Mitsui and Taisei and/or to the Government as aforesaid.”
- “15. HDL shall and will cause its profitability and cash flow projections required for the purpose of this Agreement and the said Agreement No. 1 to be formulated by Hilton International, the Managers of the Hotel and/or the Auditors of HDL.”

Then United National Party Member of Parliament, Rajitha Senaratne, had made a lengthy statement in Parliament well and truly exposing that Justice Minister G.L. Peiris had made absolutely false statements in Parliament, the Hansard record of which revealing Statement is included in this Book. Justice Minister G.L. Peiris had miserably failed to reply such lengthy Statement, thereby it had been proven that he had intentionally made such spiteful malicious and false statements in and out of Parliament.

*‘Extracts’* of aforesaid Statement by Rajitha Senaratne M.P.

“ This is one of your Deputy Ministers telling about you at that time. That was how Hon. Lakshman Kiriella condemned and criticised the Members of the Securities & Exchange Commission, which then included Prof. G. L. Peiris. Hon. Kiriella had referred to them as persons who were indifferent to fraud, having vested interests. What has Hon. Lakshman Kiriella got to say now about Prof. G. L. Peiris and such conduct?

In view of the above circumstances, the former Attorney-General, Mr. Tilak Marapana had very correctly included a Clause in the Hilton Settlement Agreements that had been finalised by him in June 1993, stating that the Government should quite rightly take action against the Members of the Securities & Exchange Commission in regard to their conduct and inaction on the several complaints that had been made by Mr. Amarsekera in regard to the Hilton. This very same Clause has been included in the Hilton Settlement Agreements that have been executed in June 1995 by this Government, approved by the Solicitor-General.

It was accepted by the then Attorney-General as well as the present Solicitor-General.

Therefore, this Government has signed Agreements committing to take action against Prof. G. L. Peiris, amongst other Members of the Securities & Exchange Commission. This has been in accordance with the considered opinion of the former Attorney-General and the present Solicitor-General, who had very correctly approved such condition. Can Hon. Kiriella state otherwise?

When Prof. G. L. Peiris discovered this, in anger and madness what did he do? He made a false statement to mislead the Members of Parliament, diabolically and calculatedly only quoting a small part of a paragraph taken out of context from the Hilton Settlement Agreements to give a completely distorted picture. He deliberately did not read the balance parts of the paragraph. The full paragraph however was before him.

XXXXXXXXXXXXXXXXXXXXXXXXXXXX

**He did this out of anger to slander and humiliate Mr. Nihal Sri Amerasekera, who he considered was a threat to him in exposing his past conduct and actions. Professor Peiris, having been a part of the very so-called system he now openly criticises, has deliberately made a false statement to Parliament fully knowing the full facts that were before him.**

**Not only did Professor Peiris mislead the House, but also he did not disclose that he himself was very much an affected party by the Hilton Settlement Agreements. He should have disclosed his interest to Parliament in the first instance before he made any statement.”**

In the foregoing circumstances, the Author's Attorneys-at-Law had addressed Letter dated 27.3.1997 to Justice Minister G.L. Peiris, which he had been unable to reply. On such basis the Author had instituted two legal actions against Justice Minister G.L. Peiris one for having insulted the Author, and the other on behalf of HDL for causing loss and detriment to HDL by his conduct and actions.

A shocking disclosure is made by the Author, that Justice Minister G.L. Peiris had surreptitiously spoken to an Addl. District Judge of Colombo, who was hearing one of the above Cases, and who was under his administrative power, and had requested that Author's such Case be dismissed. The Author having come to know had expeditiously acted and had the Case transferred to be heard by another Judge, thereby frustrating such endeavour, which had been made by Justice Minister G.L. Peiris.

Justice Minister G.L. Peiris though he was also the Deputy Minister of Finance could not answer interrogatories served on him through the District Court of Colombo and had evaded giving discovery of documents pertaining to these Cases, which documents were available at the Ministry of Finance / Treasury and which were under his power and control, as had been ordered by the District Court of Colombo in terms of Section 102(1) of the Civil Procedure Code.

As a result, even though G.L. Peiris, the Defendant in one of the above Cases was Justice Minister, a fearless District Judge who came under his administrative purview, Justice Sarath Ambepitiya made Order awarding *ex-parte* trial in favour of the Plaintiff Author, after striking out the Answer of the Justice Minister G.L. Peiris.

Upon panicking on such Order, Justice Minister G.L. Peiris had frantically made an Appeal to the Court of Appeal to set aside the *ex-parte* Order made in favour of the Author, but with the Author's Counsel informing the Court of Appeal that he wished to have an *inter-partes* hearing, as a just battle in Court, the matter was referred back to the District Court for an *inter-partes* trial.

Controversially, the respected H.L. de Silva P.C., who had appeared for the Plaintiff Author in the Supreme Court and had castigated in the Written Submissions wrong-doer Director-Defendant of HDL K.N. Choksy P.C., appeared for Justice Minister G.L. Peiris in the Court of Appeal, who had acted in concert with K.N. Choksy P.C., as disclosed in Synopsis of '*Colombo Hilton Hotel Construction - Fraud on Sri Lanka Government - Vol. 2 - Criminality Exposed, but Perversely Covered-up*'. Letters written to H.L. de Silva P.C., in this regard by the Attorneys-at-Law for the Plaintiff Author had not been responded to.

Consequently, the above two Cases had gone before the Supreme Court on the issues of interrogatories and discovery of documents and after the effecting of the Settlement, the Author had not pursued with the above Cases.

Prior to the said matter going before the Supreme Court in the District Court of Colombo, the said inquiries had been conducted by Addl. District Judge Tilak Thabrew, whilst Romesh de Silva P.C., had appeared as Counsel for Justice Minister G.L. Peiris the following paragraphs are cited from the Book -

*“Very significantly it was at that very same time 3 days previously on 22<sup>nd</sup> August 2000 that Addl. District Judge of Colombo Tilak Thabrew delivered a perverse Order vis-à-vis Interrogatories to be answered by the 1<sup>st</sup> Defendant, Minister of Justice & Deputy Minister of Finance, G.L. Peiris, now Minister of External Affairs, in my District Court of Colombo Case No. 19849/MR, wherein the he was the sole Defendant. (See Chapter 8)*

*Seven months thereafter, I was shockingly appalled to read a news report in the Sunday Leader of 25<sup>th</sup> March 2001, where an Award of Rs. 10 Mn., for defamation had been made against the Associated Newspapers of Ceylon Ltd., in favour of Learned Addl. District Judge of Colombo, Tilak Thabrew, on whose behalf President’s Counsel, J. Romesh de Silva had appeared in his said personal Case. This has been in relation to a news report in the Sinhala paper Dinamina of 2<sup>nd</sup> December 1996.”*

*“Subsequently, as reported in the media the High Court Judge, Tilak Thabrew was compelled to resign from Judicial Office.”*

Likewise as in the instance of Justice Minister G.L. Peiris, the Author’s Attorneys-at-Law had addressed a similar Letter dated 8.4.1997 to Foreign Minister Lakshman Kadirgamar for him having made false statements regarding the Author. He too like Justice Minister G.L. Peiris was unable to answer the said Letter, thereby establishing the facts therein to be true.

Justice Minister G.L. Peiris and Foreign Minister Lakshman Kadirgamar were both Scholars of the Oxford University of UK, but unashamedly they had been unconcerned about this colossal fraud perpetrated on the country and the public, referring to it as a ‘mere dispute’, thereby as spineless weaklings shamelessly being traitorously subservient to Japan.

In the foregoing circumstances, the Government of Sri Lanka having entered into Settlement Agreements and delaying in acting in accordance therewith, resulted in the Japanese Government expressing dissatisfaction. Consequently the Japanese Government had exercised pressures stating that the Aid component of US \$ 245 Mn., which was to be given to Sri Lanka at the Aid-Group Meeting in November 1996, would be withheld until the Settlement Agreements are given effect to, and that if not, such committed Aid would not be granted.

In this background, on the intervention and pleading by President Chandrika Kumaratunga, then Secretary Treasury B.C. Perera and Hon. Attorney General Sarath N. Silva in October 1996 formulated an *Addendum* to the above Settlement Agreements, with the consent of the Plaintiff Author, to convert '*Conditions Precedent*' contained in the Settlement Agreements to be performed as '*Conditions Subsequent*', with the Sri Lanka Government solemnly undertaking and promising to do so *vide - recitals from the Addendum*

"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 Mr. 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."

Accordingly, such *Addendum* had been signed by and between Secretary Treasury on behalf of the Government of Sri Lanka, Plaintiff Author, Mitsui & Co. Ltd., and Taisei Corporation. As per pleadings and urgings of the Government of Sri Lanka, before the November 1996 Aid-Group Meeting, the Plaintiff Author had settled and withdrawn his two Cases at the instance of the Government of Sri Lanka.

In the above endeavours, then Deputy Secretary Treasury P.B. Jayasundera had been directly involved pleading with the Plaintiff Author to settle and withdraw his Cases on the above basis, and on 25.10.1996 he chaired a Meeting of the Board of Directors of HDL held for the above purpose. The Minutes of the Board Meeting had recorded 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."

Thereafter the moment the Plaintiff Author's Cases had been settled and withdrawn, the Hilton Hotel owning Company, HDL, which had accumulated US \$ 30 Mn., as a result of the Interim Injunctions which had been obtained by the Plaintiff Author, immediately remitted US \$ 29 Mn., to Mitsui & Col. Ltd., and Taisei Corporation, before the Aid-Group Meeting in November 1996, as had been required by the Japanese Government.

In addition, HDL gave 16 dated Promissory Notes to Mitsui & Col. Ltd., and Taisei Corporation, and not the Government of Sri Lanka, in respect of the re-scheduled balance unwritten-off Loans, which were to be paid over 16 years, at a reduced rate of interest of 5.25% p.a.

Consequently, as a result of the Conditions contained in the Settlement Agreements for the further financial restructuring of HDL having been restrained by a questionable Order in the Court of Appeal by C.V. Wigneswaran, except mysteriously releasing payments to be made to these Japanese Companies as per the very Settlement Agreements, HDL had been forced into a bankrupt position.

*'Extracts'* from Book *re* - by Justice C.V. Wigneswaran's Judgment

“The Court of Appeal *turned a completely blind eye* to the fraud perpetrated on HDL and the Government of Sri Lanka, as its Guarantor, which fraud had been upheld by the Supreme Court of Sri Lanka in SC Appeals Nos. 33 & 34/1992.

By a *perverse* Judgment, the Court of Appeal, whilst restraining the totality of the conditions of the Settlement Agreements, however *curiously* permitted the payment of the reduced sums of monies (*i.e. the unwritten-off balance rescheduled amounts, as per the said Settlement Agreements*) to Mitsui & Co. Ltd., and Taisei Corporation, *significantly* noting as follows:

“Mr. Sivarasa, President's Counsel, during the course of this Court exploring possibilities of a settlement did mention to Court that he would not have any objections to the Japanese receiving their dues provided his client's rights under P6, P12 and P13 were protected. “

The foregoing raises the *intriguing* question, as to what *motivated* S. Sivarasa, President's Counsel, appearing for Cornel & Co. Ltd., to have so suggested to make payments to Mitsui & Co. Ltd., and Taisei Corporation, and Justice C.V. Wigneswaran of the Court of Appeal readily agreeing therewith, without having taken into account the Settlement Agreements, in their entirety, which Settlement Agreements were inter-dependent and formed one composite Agreement ?

There was no settlement, but an *unilateral arbitrary questionable direction* by the Court of Appeal, permitting payments to Mitsui & Co. Ltd., and Taisei Corporation, whereby the sole responsibility for which, and the consequences thereof lied with Court of Appeal Judge, namely, C.V. Wigneswaran and Counsel for Cornel & Co. Ltd., S. Sivarasa President's Counsel, in that, the consequent plight HDL was plunged into was as a direct result of such *perverse* direction, *which was consistently opposed by me*.

The foregoing *intriguing* Judgment was delivered in total disregard of the material facts, which HDL and the Author had adduced in a comprehensive Statement of Objections, *annexing relevant documents*, objecting to any such payments, whatsoever, being made, without the totality of the Settlement being given effect to, which included the further restructuring of HDL and thereby enhancing its profitability and debt- service ability.

*Intriguingly*, there was no reference, whatsoever, in the Court of Appeal Judgment to the said comprehensive Statement of Objections, notwithstanding that the said matter before the Court of Appeal, was concerning the grant of Interim Order *vis-à-vis* the Restraining Orders.

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The Special Presidential Commission, after preliminary investigations by the Criminal Investigation Department (CID) assisted by the Solicitor General, Douglas Premaratne, President's Counsel, had issued Show Cause Notices on 4 persons, *inter-alia*, on grounds of fraud against the Government of Sri Lanka, (*Colombo Hilton Hotel Construction - Fraud on Sri Lanka Government - Vol. 2 - Criminality Exposed, but Perversely Covered-up - by same Author*), and which Show Cause Notices were before the Court of Appeal, as part and parcel of the said Statement of Objections.

The Court of Appeal by its said Judgment, written by Justice C.V. Wigneswaran, after hearing only the Revision Applications Nos. 721/98, 728/98 and 738/98 on the matter of the grant of Interim Orders i.e. Restraining Orders, *most shockingly* dismissed, without any hearing, whatsoever, the Leave to Appeal Applications, *which were never taken-up*. That alone well and truly demonstrated that Justice C.V. Wigneswaran had a *hidden agenda*. Subsequently, the Supreme Court granted Special Leave to Appeal *highlighting such perversity*.”

As a consequence of such calamity, the Author as a Director of HDL, acting under the provisions of the Companies Act No. 7 of 2007 had filed Application to wind-up HDL, as mandated by the said Act. Consequent to which the Author had informed then President Mahinda Rajapakse thereof, but as per his instructions, violating the provisions of the Companies Act No. 7 of 2007, then Secretary Treasury P.B. Jayasundera had opposed in the District Court of Colombo the said winding-up Application of HDL.

However thereafter, whilst such judicial power was being exercised, the Government of Sri Lanka, with the Supreme Court making a Special Determination in violation of the Constitution, very hastily had enacted an *Ad Hominem* law in November 2011, to vest all the Shares of HDL in the Secretary to the Treasury, simply on the reason adduced by President Mahinda Rajapakse, as Minister of Finance in Parliament of Sri Lanka, since HDL had owed the Treasury Rs. 12,098.6 Mn., and of this, Rs. 8,148.7 Mn., had been accrued compounded interest, and the Capital had been only Rs. 3,949.9 Mn.

The Colombo Hilton Hotel having been developed just after the barbaric communal riots of July 1983, which had ruined Sri Lanka's foreign image, to re-develop the good name and standing internationally of Sri Lanka, with the blessings and assistance of the Government of Sri Lanka, but nevertheless in implementing the Hilton Hotel Project, a colossal fraud had been perpetrated, and the same had been effectively dealt with amidst severe pressures and obstacles by the Author, as set out in these Books; but finally due to the Japanese Governmental pressures and on the urgings of Sri Lanka Government, the Author had been compelled to settle and withdraw his Cases.

The Author risking his life had acted according to his principles and values in combatting fraud and corruption by those holding the highest positions, both in public and private sectors, thereby facing malicious pressures and overcoming several challenges and obstacles. *Viz: Some Finance Ministry Minutes –*

S/T Addl. D.S.T

I refer to your minute at f (60) and wish to make the following observations.

The lawyers of Mr. Nihal Amarasekera has requested A.G. to inform relevant parties including Exim/Bank that the State guarantees would be null & void under circumstances of fraud, in view of the recent decision of the District Court.

The request made has no merit whatsoever. Mr. Amarasekera's lawyers do not need to remind A.G. of his responsibilities and duties. The Guarantee document signed by the Government clearly states that in case fraud is proved that the guarantee will be null and void. Therefore, there is no need to anyone to remind the parties concerned about this fact.

I discussed this with Mr. Shibly Aziz and he informed me that they will ignore this letter as there is no action they can possibly take.

The recent letters sent by Mr. Amarasekera show that he is over reacting to the recent judgement. Pl. see f(50) letter of 8th November 1991 wherein he says the District Judge has observed (a) to (1) on pg(1) and(2). It is correct that these facts are mentioned in the judgement but in doing so the Judge has merely repeated the allegations made by Mr. Amarasekera and has not reached any conclusion of his own. The Judge has merely considered whether a loss would be caused to the country by the payment of monies to Japanese in view of the allegations made by the Plaintiff and concluded that damage could be caused if the monies are siphoned off and therefore, decided that the Interim injunction should stand. The Judge has also, observed that the Lenders would have to be compensated with adequate interest if the final decision is in their favour.

The Japanese are appealing against the decision of the D.C. Judge that no payment at all should be made to them.

The decision of the Judge that no payment at all should be made seems unfair in view of the fact that it is only a part of the construction that is in dispute. Mr. Aziz is also, of the view that we should support the appeal of the Japanese. He is studying the matter and will get back to us. I think it is reasonable to support the appeal if A.G. considers if proper do so.

The other way we could help the Japanese and also, strengthen the position of the Government is by expediting the signing of the amended Investment and Share Transfer Agreements. Pl. see minutes at Ms 13, 14, 15 and 16 regarding this matter.

(3) Request A.G. to take a fair view of the situation and support the Japanese firm by the extent possible, in their appeal to the Supreme Court. I think we should take a positive stand on this. M

M discuss with Mr. Shibly and map out our strategy. The USA Director tell me that the lending is in accordance with the laws. The USA had issued the Certificate of Conformity. The USA can give evidence. This must be settled at once.

<sup>H.</sup>  
20/11/91  
ST  
(1) I am informed that Mr. A is trying to get the Company delisted from the Stock Exchange. This has to be stopped.  
(2) We may re-examine the Japanese bank our guarantee of the loan will be honored, in case of the restructuring we have agreed to.

DEA  
A arrange a weekly as indicated by ST above M.

3/30 on 27th