

SUBMISSION OF EVIDENCE FOR THE Q.S.C. ON ASHOK LEYLAND LTD AND SUDAN.

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SECTION	DESCRIPTION	PAGE
One	This section lays out the facts that lead to a BBC 2 Newsnight investigation into any potential role played by Mr Anders Spare and Mr Dheeraj Hinduja in an agreement with Ashok Leyland Ltd and GIAD to supply army trucks to Sudan.	1
Two	This section details the course of the Newsnight investigation and the response of Mr Dheeraj Hinduja, Mr Anders Spare, Landrover Leyland International Holdings Ltd (LRLIH) into the investigations findings.	3
Three	Conclusions and recommendations	7
Fig. 1	Ashok Leyland Stallion 4x4 Mk III truck	1
Fig. 2	The Managing Director of Ashok Leyland, R. Seshasayee (right), and the Executive Director (Finance), K. Sridharan, at a press conference in Chennai on Thursday 29 <sup>th</sup> April 2005.	5
Transcripts	This section provides extracts from the secret recordings made by the BBC Newsnight investigation.	10

## SECTION ONE

### Background.

1. The Indian company Ashok Leyland Ltd announced on its company website on the 16<sup>th</sup> February 2005 that it had signed an agreement four days previously to supply 100 Stallion 4 x 4 army trucks to the Sudan Defence Ministry. The trucks were to be supplied to GIAD Automotive Industry Co., the Sudan Government's vehicle assembly unit in kit form. The GIAD factory is situated near Khartoum. The announcement of the agreement was also made at IDEX, the arms fair in Abu Dhabi and was reported in Jane's Defence Weekly, March 23<sup>rd</sup> 2005: "Following its successful introduction into Indian military service, Ashok Leyland commenced an active export campaign for the Stallion during 2004, announcing the first export sale of the type at IDEX 2005 in February. The week prior to the show, Sudan had signed a contract for an initial 100 Mk III vehicles. These will be supplied from Ashok Leyland's Hosur facility (near Bangalore) in complete knock-down form for local assembly plus insertion of some local content."<sup>1</sup>

It was reported by a number of newspaper and journals in India, Asia and UK including the Economist Intelligence Unit. <sup>2</sup>

2. The UK military list of controlled goods includes military vehicles under category ML6, being "Ground "vehicles" and components , as follows: a. Ground "vehicles" and components therefore, specially designed or modified for military use."



Figure 1. Ashok Leyland Stallion 4x4 MkIII truck.<sup>3</sup>

Page 2.

3. Ashok, list the Stallion 4 x 4 under its defence vehicle section of its company website and describes the Stallion as “the workhorse of the army.” Though the agreement appears to be legal under Indian law.<sup>4</sup> Under UK law, to quote the Defence Manufacturers Association website, “if the deal had involved the potential supply of the same vehicles from the UK to Sudan then it would have been highly problematic for a British export licence to have been issued to cover the deal.” The EU arms embargo on Sudan (introduced in 1994) is covered under The Trade in Controlled Goods (Embargoed Destinations) Order 2004 which states:

“No person shall directly or indirectly a) supply or deliver; b) agree to supply or deliver; or c) do any act calculated to promote the supply or delivery of any controlled goods to any person or place in an embargoed destination.”

4. The Ashok Leyland 1999-2000 Annual Report stated that:

“The Company has been supplying Stallion 4x4 vehicles to the Indian Army. These vehicles performed creditably during the recent Kargil conflict and the army has placed further orders for these vehicles.”<sup>5</sup>

5. Ashok is part of the Hinduja Group, who list the company as a “flagship company.” The UK company LRLIH (also part of the Hinduja Group) owns a controlling interest in Ashok.

6. The Ashok Leyland website lists the following UK residents and nationals as being on their board of directors; Dheeraj Hinduja- Vice chairman. Mr Hinduja is a UK citizen. Mr Herbert Klingele a UK resident, also a director of LRLIH and Machen Holdings Ltd. Mr Firoz Shami- a UK citizen and Mr Anders Spare , an alternate director and UK resident. It would be illegal for UK citizens and residents to have any involvement in the agreement between Ashok and GIAD for the intended supply of Stallion 4 x 4 army trucks without a Trade and Brokerage Licence from HM Government UK.

Page 3.

## SECTION TWO.

The Newsnight investigation.

I brought this story to BBC2 Newsnight and was hired to investigate and report on any potential UK involvement in the Ashok/ GIAD agreement.

1. Posing as potential clients the Newsnight team made contact with Mr Anders Spare and Mr Dheeraj Hinduja. Comments made to the reporting team during the Newsnight investigation by Mr Anders Spare and Mr Dheeraj Hinduja indicated that both men were aware of the Ashok deal with Sudan and that both men had some involvement in that deal.

Mr Spare said "We've been, let's say, involved behind the scenes." He also said "I have also personally been involved to some degree in supporting this [Ashok /Sudan deal] from here[UK]." And added that Mr Dheeraj Hinduja "knew everything" about the deal and was involved in it.

Mr Dheeraj Hinduja stated, "initially whenever we develop new markets and new customers we try and identify those for Ashok Leyland and we were very closely involved in how that deal [Sudan] was structured."

Transcripts of these recordings are listed as items 1-4.

2. When approached formally by Newsnight Mr Spare denied any knowledge of the Sudan deal other than what he had seen in the press release, contradicting his statements and actions during the secret filming. Copies of the transcript of this conversation is included at the end of the report- as item 5.

3. Initially LRLIH responded on behalf of the directors, and was signed amongst others by Mr Dheeraj Hinduja, "We were not aware of "the deal" you refer to..."

However, the letter went on to say " Now that we are aware that there is at least the possibility of a transaction that might require a licence under the trade(sic) in Controlled Goods (Embargoed Destinations) Order 2004, we have asked Ashok Leyland's management that the right course of action should be followed and the Board be kept informed of all developments, and if necessary the Cooperation Agreement be terminated."

The letter also stated that no transaction had taken place between Ashok and GIAD. In an attached letter from Ashok, the company stated " The Cooperation Agreement with GIAD does not refer to any supplies to be made to the Army/ Defence Ministry of Sudan. On the contrary, the Agreement refers to GIAD assembling the vehicles in the public and private sectors and neighbouring

countries.” Though the letter also states, “[the Stallion] 4 x 4 trucks: these are logistics/transport vehicles suitable for commercial/ civil and also defence applications.”

However, in a reply to a Parliamentary question the Minister Malcolm Wicks issued a statement regarding the Stallion 4 x 4 trucks, on the 14 July 2005:

From the information available on the company website, it appears these vehicles are specially designed for military use and therefore potentially require an export or trade licence under ML6a of the UK's Military Control list. An export licence would only be required if the goods were exported from the UK, and a trade licence would only be required for the transfer of the goods between third countries if there were some UK involvement, as defined in the relevant legislation.

4. A lengthy exchange of legal letters took place between the BBC and Dean and Dean, the solicitors acting for Mr Anders Spare and Mr Dheeraj Hinduja. Dean and Dean stated that the Stallion 4 x 4 trucks in kit form intended for Sudan were not military trucks and not designated for the Sudan Defence Ministry. Dean and Dean explained that the company was supplying “trucks and buses for the public and private sector in Sudan. The BBC’s error is in supposing that the trucks are “military specification” vehicles. They are not.”

5. However, the company’s own press release on the company website stated the trucks were “army trucks” and the supply was for the “Sudan Defence Ministry.” Dean and Dean stated that the press release was “wholly inaccurate.”

Yet, in the company’s own listing for the IDEX arms fair catalogue in 2005 the company says: “A pioneer in the design, development and manufacture of special vehicles for the Armed Forces, the Company supports the modernisation of the Indian Armed Forces by developing a host of modern special application vehicles to address their special needs. These vehicles include Stallion (4x4),”

Ashok’s own promotional literature “What Drives the Armed Forces” lists the Stallion 4 x 4, it “plays the role of the workhorse of the army.”

At the Dubai show, IDEX in 2005. the marketing manager of Ashok said: “We are now aggressively looking at marketing our defence vehicles in the overseas markets, particularly Middle East and North Africa.” And in a press statement dated April 28<sup>th</sup> April 2005 from Ashok Leyland / Hinduja Group announcing their annual report and share dividend, the statement reads, “Following the order received from Sudan for its Stallion 4x4 army vehicles, the Company is actively pursuing sales prospects in several African and Asian countries”<sup>6</sup>

Photo caption: RIDING HIGH: The Managing Director of Ashok Leyland, R. Seshasayee (right), and the Executive Director (Finance), K. Sridharan, at a press conference in Chennai on Thursday.

"Following the order received from Sudan for its Stallion 4x4 army vehicles, the company was actively pursuing sales prospects in several African and Asian countries, Mr. Seshasayee said."

Photo: BIJOY GHOSH



6. Dean and Dean replied to the BBC: "You say our clients market these Stallion trucks as a military vehicle. So they do. That is not the point. It is simply a commercial truck which can well be used for military use."

7. When the BBC solicitor further enquired into this Dean and Dean stated. "If a vehicle designed for military use is adapted or fitted out for civilian use, it is not controlled goods. Note the comparison with the Stallion truck, which was put into production for use by the Indian army, but which has been stripped of all of its military features in the form in which it was destined for Sudan."

8. The BBC then asked to see the specifications for the Stallion 4 x 4 intended for GIAD. Dean and Dean stated, "No specifications were attached to the co-operation agreement nor were any specifications prepared or exchanged with GIAD in connection with the proposed agreement."

9. On the 3<sup>rd</sup> July Dean and Dean issued the first, of numerous, statements indicating they would seek an injunction on the broadcast of the investigation. No injunction was ever

sought though Dean and Dean did negotiate an agreement with the BBC whereby the BBC would give the solicitors 48 hours notice of any intention to broadcast the report and that the solicitors would get to see the report before it was broadcast.

Dean and Dean wrote "If the BBC chooses to ignore the truth of this matter, it could very well end as the BBC's most expensive mistake ever." The threat of legal action was made on several occasions including a letter to Mark Thompson and Michael Grade from Lord Temple Morris who wrote in his capacity as an advisor to the Hinduja Group.

10. After several provisional broadcast dates Newsnight decided to broadcast the report on the 20<sup>th</sup> of October, listing the story as appearing in that nights edition in its pre broadcast e mail to viewers. The story was pulled 2 hours from broadcast after a meeting with legal representatives of the Hinduja group.

11. The editor of Newsnight Mr Peter Barron explained his reason on the Newsnight website, after an article appeared in the Spectator magazine by Andrew Gilligan detailing the decision to not show the report. Mr Peter Barron said the decision not to broadcast the report was an editorial one, "The story we'd ended up with would, I think, have been so complicated and qualified as to be impossible to tell meaningfully." It is hard to reconcile the truth of this statement with the fact that the BBC was hours away from broadcasting the report and was not concerned with any editorial problems then. It is my belief that the BBC was intimidated into cancelling the broadcast.

SECTION THREE.

Conclusions and Recommendations.

1. Regardless of the Hinduja's legal response to the issues, the publicly available information (the initial Ashok Leyland press release, report in Jane's Defence Weekly and a simple cross check of the Ashok Leyland website list of directors and UK Companies House) would indicate that the matter should have been investigated by HMRC. To the author's knowledge HMRC were not aware of the issue until Newsnight approached them. **It is important to assess HMRC's operational capacity in identifying potential breeches and enforcing the law in this area.** It is my understanding that the investigation team for the "prohibitions and restrictions" unit at HMRC, who's remit covers child pornography to embargoed destinations, has a full time staff of 6. **Given the complexity and apparent lack of investigations in this area it would seem that the staffing levels in HMRC are simply insufficient to do the job required.**

2. The initial press announcement of the deal took place at IDEX arms fair in Dubai 2005, attended by UK government representatives, including DESO for example. **The QSC should establish what formal remit exists for reporting potential breeches of legislation by government representatives at these types of events and how they can be made more effective. If none exist the government agencies involved should review this as a matter of urgency.**

3. LRLIH and Mr Spare indicated that they were not aware of the laws requirements. While the QSC has considered in the past the need for outreach programmes by the DTI there are questions as to whether HMRC should take a role in running information outreach programmes. **The presence of HMRC at the various international defence/police and security trade fairs might be an appropriate place to contact those directly involved in the industry and raising awareness of the law.**

4. If the original website press release is correct, in that the deal was for "army trucks" to the "Sudan Defence Ministry" as Mr Anders Spare and Mr Dheeraj Hinduja have clearly stated an involvement then there is a clear need for the HMRC to investigate. As although Mr Dheeraj Hinduja and Mr Anders Spare denied any involvement or knowledge of the Sudan deal when formally approached by Newsnight, these denials are hard to reconcile with their previous statements, like, "we were very closely involved in how that deal was structured".

The DTI issued the following statement to Newsnight: "All applications for trade licences are considered on a case-by-case basis against the Consolidated EU and National Arms Export Licensing criteria, taking into consideration the circumstances prevailing at the time and other announced Government policies. Among the factors taken into account in assessing applications will be the destinations and parties involved, the nature of the

