

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

Submitted to the Q.S.C. by Mark Thomas.

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SECTION ONE

Background.

1. The Indian company Ashok Leyland Ltd announced on its company website on the 16th 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 23rd 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."¹

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

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.³

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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.⁴ 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.”⁵

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.

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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 28th 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”⁶

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 3rd 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 20th 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

goods concerned, the risk of diversion, and the uses to which the goods could be put (as well as the stated end use), and any other relevant information.

The UK enforces rigorously the EU arms embargo against Sudan. This is done by the scrupulous consideration of export licence applications, the investigation of alleged breaches and through dialogue with other states. The Government would only issue a licence for the supply of or trade in military equipment to Sudan in line with the exemptions to the embargo, for example for humanitarian end-use."

The destination and the factory's links to the Sudanese government would present significant difficulties in granting a licence, as even a humanitarian purpose for "army trucks" would demand a licence. The decision as to whether or not the kit for Sudan would need a licence can not be made solely on the basis of the type of equipment being exported.

The contradictory statements made by Mr Dheeraj Hinduja and Mr Anders Spare relating to the Ashok/Sudan deal raise significant doubts on the accuracy of their later statements, and indeed on the accuracy of statements made by Dean and Dean on their behalf.

The Ashok website clearly says the Stallions are "army trucks " for the "Sudan Defence Ministry." 7

Mr Anders Spare also indicates this is the case (Section 2, item 3, extract 2).

The MD of Ashok Mr Seshasayee, at a press conference to announce the company's annual share dividend, on the 28th April 05, was quoted as saying "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."8

This also quoted on the company's website press release of the same day and appeared in the SSKI India Research (stock market analysis of the firm also dated the 28th April 05).
9

The claims that the Stallion 4 x 4 kits were not military vehicles were elaborated upon in a letter from Dean and Dean (dated 22nd July 05) " This truck [Stallion 4 x 4] was subsequently specified for the Indian Army and incorporated a significant number of features to meet the specific requirements of the Army. Our clients have listed these features in the document attached to this letter. These features are not present in the trucks destined for Sudan, which were not designed for any military purpose, but which were just a basic set of truck components and aggregates, without the rear body, for local assembly." The attached document lists items that the Stallion 4 x 4 kits did not include:- black out lights, special cab storage requirements eg rifle clips, roof hatch, radio Page suppression, twin fuel tanks, pintel type tow hook, palm couplings. However, when Newsnight asked to see the specifications for the trucks attached to the GIAD agreement

they were told on the 26th August 05 , that “no specifications were attached to the Co-operation Agreement nor were any specifications prepared or exchanged with GIAD in connection with the proposed agreement.” It is hard to reconcile the two statements, if there is no specifications how can the company know what is and is not included ?

The contradictions in the statements coming from Mr Anders Spare, Mr Dheeraj Hinduja, the companies involved and Dean And Dean provide good reason for HMRC to investigate the deal. HMRC should conduct a full investigation into the exact nature of the equipment being offered to Sudan and the role played by Mr Anders Spare and Mr Dheeraj Hinduja in any deal.

TRANSCRIPTS OF TELEPHONE CALLS AND SECRET FILMING.

Item 1.

Newsnight phoned Mr Cowsik in India, the export manager of Ashok and the signatory on the Ashook / GIAD agreement. Posing as a potential client Newsnight asked if there was anyone in London who he could talk to regarding the Sudan deal. Mr Cowsik named Mr Anders Spare who works for Sangam (a Hinduja Group company based at New Zealand House, London. Newsnight phoned Mr Anders Spare on the same day 25th May 05 and asked him what he knew of the deal in Sudan, Anders Spare said:

AS : ...all the negotiations have taken place, and there is an order signed. We're just waiting for the letter of credit to arrive which is not a small issue in a country like Sudan. But all the technical negotiations, there is nothing left, it's just the money.

MT:

Has Sangam been involved or just Ashok?

AS:

No, this has been done directly by Ashok Leyland.

MT:

But you know about the deal.

AS:

We've been, let's say, involved behind the scenes

MT:

So you're completely across it?

AS:

We are up to speed yes

MT:

That's great.

Later in the same conversation:

MT:

I saw that the Hinduja Brothers are involved and this is the Hinduja company. Are they across the deal as well would they be able to meet the client because that would be quite an impressive thing for the client?

AS:

Well, erm, there are two...the Hinduja family consists of 4 brothers which is of a generation... let's say ...between 60 and 65. And then they have 4 cousins of next generation which is the 3rd generation. In this case the people involved in the transportation business, which is Ashok Leyland, that's father and son, and they're both located in London, so if they are available of course we can arrange a meeting.

MT:

Fantastic, what are their names, which are they?

AS:

The name of the father is GP and the name of the son is Dheeraj.

MT:

Ok, that's great, and they're aware of the project?

AS:

Yes, well at least Dheeraj is well aware, err yes, both are well aware of the project.

MT:

So they're involved... that's great.

AS:

Yes

MT:

And obviously if the client could meet them that would be great

AS:

Yes we're totally committed to Sudan, no doubt.

ITEM 2.

Following the first conversation Newsnight spoke to Mr Spare on a number of occasions , to further clarify what Mr Spare meant by "involved behind the scenes" and to what extent others might be involved in the Sudan deal. In the conversation of the 2nd of June 05 Mr Spare said

AS: Er as it happens so that I have also personally been involved to some degree in supporting this from here. But basically my function is to er...from a board level is to strategise with the company. Er, normally we are not involved in the operation of the company. So it is the company Ashok Leyland itself that will make the quotes, that will negotiate the prices and all that.

MT:
OK great. So you are the person who knows everything at this end of it.

AS:
Yes

MT:
That's fantastic, so you are the person who got the strategy together at this end of it?

AS:
Yes, I can take let's say the political call for the company and er I can also have a decisive influence on the company , how they behave.

ITEM 3.

Following these conversations BBC Newsnight (posing again as potential clients, representing a charity that needed Stallion 4 x 4 trucks for potential relief work in Sudan) then arranged to meet Mr Spare. The meeting took place in a London Hotel on the 8th of June 2005 and was secretly filmed. The following are extracts from the conversations that occurred in the hotel room.

EXTRACT ONE

MT:
I know that Landrover Leyland, when we talked on the phone, you said you had been involved, sort of behind the scenes on this dealing of... near Khartoum and I wonder if you might just talk us through that.

AS:
Yeah, well this was... we had been looking at Sudan for quite some time and this came in connection with an exhibition in Delhi a couple of years ago, when we were approached by a Sudanese party. As a matter of fact they were representatives of this company, GIAD, visiting India because there were government discussions between Sudan and India about financial assistance.

MT: Right.

AS:
And from there it went on and I remember very well a visit made by the transport minister to our plant in (INDISTINCT) just outside Bangalore, it was a Sunday, because I was there the day after, I didn't meet him, but I was there the day after because they were all charmed by him. And we established a very good contact between the company and this transport minister, also the management, the President of the company... is run like an ordinary company.

MT:
Right.

AS:
... President and managing director Also the Sudanese ambassador in Delhi was involved actively. We had some competitors involved also, but for some reason, they picked us. I think the reason was they had a close look at the vehicle and found that this is the right vehicle, it's not too high and not too low, it's right.. well they can afford it... it's a useful vehicle and it would serve their purpose.

MT:
Landrover Leyland were involved across that deal with Ashok?

AS:
Well, we were... fundamentally this company Ashok Leyland is operating on it's own. I mean this is...err.. fully fledged company, they have an export department as they call it, doing all this. But we are always trying to help out from my side, I am on the board of Ashok Leyland and...especially when it comes to creating relations and maintaining relations, sometimes London is a very good place to be.

EXTRACT TWO

When asked if it was possible to order trucks from the GIAD factory in Sudan Mr Anders Spare replied;

AS:
I suppose so, I suppose so. This is for the army [the current Sudan deal] and I'm absolutely convinced that this is not one for true army purposes, this is more for civilian purposes [the Newsnight proposed deal].

EXTRACT THREE

MT:
And..how involved was Dheeraj in this?

AS:
Oh he is very much involved, I mean we... we're dealing with the company everyday.

MT:
So he knows the factory, he knows the deals...

AS:
He knows everything.

EXTRACT FOUR

MT:

Have yourself and the UK end, do you need licences to be doing this?

RN:(one of the Newsnight team)

Yeah, I suppose...

AS:

We are not the seller, the seller would be Ashok Leyland...

MT:

Right okay. Okay.

RN (one of the Newsnight team)

So that's India, right.

AS:

So, basically maybe this is not needed. That is my guess...If it's not us... a UK company sending them, there's no requirement for a licence, I would guess, I don't know.

ITEM 4.

The following is an extract from a phone call with Dheeraj Hinduja from the 9th of June 05.

MT:

Have you been actively involved in that North Sudan factory?

DH:

NO

MT:

Right OK but you know the deal though

DH:

Yes of course but our management really deals with this and from our family side we don't really get involved on the day to day affairs. But where there is an intervention needed we always there.

MT:

OK so it would be fair to say that you have an overview to it.

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DH:
Sure of course

MT:
I suppose that that would mean , basically what the client wants to know is can we come to you if something goes wrong, that is what it is all about

DH:
Of course, you have my number, I'm always available, never a problem You contact me directly. From our family side we look after the activities of Ashok Leyland and are very much approachable

MT:
OK that is great. Were you involved in the strategy end of it, of how Ashok became involved in it, not the day to day running?

DH:
Oh of course of course, 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 was structured.

ITEM 5

The following extracts are from that conversation on the 23rd June 2005.

Extract 1.

MT:
So no one from the British end of the Hinduja Group has been involved in this Sudanese deal at all.

AS:
No.

MT:
No-one at all?

AS:
As a matter of fact, I am not aware of the deal at all except from press information. But I haven't verified whether that was true or not.

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Extract 2

AS:

Ashok Leyland is a perfectly autonomous company. Quoted on the... A quoted company in India and has a complete set of management to run the operations and the business. If you want some information about their business, that's where you should... then you should talk to them.

MT:

So you are not a director, you have not had any dealings with the deal for Sudan...

AS:

No

MT:

You only know about it through the press..

AS:

Yes, erm well...

MT:

You have had no involvement through it what so ever?

AS:

No, No.

MT:

Erm

AS:

Well, involvement? Well as far as I know from the press releases I have seen it is not a done deal. But I am just guessing.

MT:

So you don't know for sure whether it is a done deal or not.

AS:

From the press release it seems to be a negotiation that has been going on, but I would... I mean Sudan how many deals are being done in Sudan? I don't know of any.

MT:

But you do know Ashok Leyland are doing a deal there.

AS:

No

ENDNOTES

¹ Jane's Defence Weekly March 23, 2005. Ashok Leyland expands its markets further

² Economist Intelligence Unit: Country ViewsWire, March 1, 2005. India industry: Ashok Leyland to supply trucks to Sudan.

Ashok Leyland has signed an agreement to supply army trucks and buses to the Sudan Defence Ministry in a deal worth US\$10m. The company will initially supply 100 Stallion trucks and 100 Falcon buses. The deal could develop into an annual supply of 500 trucks and 500 buses. Ashok Leyland recently clinched a deal to supply 3,322 trucks to Iraq, the largest ever order for commercial vehicles from India. The Hinduja group and Iveco, who together own 51% of Ashok Leyland, recently signed a new shareholder agreement. The new agreement is expected to significantly enhance cooperation between ALL and Iveco, both in terms of exploring new markets and sharing technology.

¹ www.bharat-rakshak.com/LAND-FORCES/Army/Logistics/MV5.jpg

¹ "Ashok Leyland is registered under the Indian Companies Act, 1956 and is governed by Indian Laws. We have been legally advised that the said agreement is not in violation of any Indian law."

http://www.prdomain.com/companies/a/ashok_leyland/news_releases/200507july/nr_ashok_leyland_20050704.htm

¹ <http://www.ashokleyland.com/images/downloads/presentations/annualreport9900.pdf> **Defence Supplies**

¹ <http://www.hindu.com/2005/04/29/stories/2005042907691700.htm>

¹ <http://www.ashokleyland.com/newsdisplay.jsp?newsid=100&year=2005&monthval=4> 28 April 2005

¹ <http://www.hindu.com/2005/04/29/stories/2005042907691700.htm>

¹ Export growth could be a driver of volumes: ALL's export performance has been quite strong in FY05. This included the Iraq order of ~3,200 CVs in FY05. The company has signed a US\$10m agreement with GIAD Auto, to supply 100 Stallion 4X4 army trucks and 100 Falcon buses to the Sudan defence ministry.