

BY COURIER

5th November 2012

URGENT / IMPORTANT

Palitha Fernando Esqr., P.C.
Hon. Attorney General
Attorney General's Department
Hultsdorf Street
Colombo 12.

Dear Attorney General,

Purported Oil Hedging Deals

Please accept my congratulations and best wishes on your appointment.

I was quite *perturbed* upon reading a news report in *The Sunday Times* of yesterday, quoting you to have stated that talks were on going between Ceylon Petroleum Corporation and Standard Chartered Bank, to reduce the payment to US \$ 60 Mn., (Rs. 7.8 Bn.). The report stated that the payment owed to Standard Chartered Bank is US \$ 160 Mn., plus US \$ 20 Mn., as interest.

The report further stated attributing to you, that since talks were going on there was no need to make an Appeal to a British Court. Such announcement now is different to what was reported by Reuters on 27th July 2012, that you were looking at the possibilities of appealing in the House of Lords, with Minister Petroleum Industries, Susil Premajayantha, also quoted to have confirmed the same. The said *dismissed* Appeal was against the UK High Court Order of 11th July 2011.

I am indeed *intrigued* by the foregoing, in that, the Controller of Exchange by Order dated 16th March 2011 had imposed a fine of Rs. 27.57 Bn., for alleged violation of the Exchange Control Act, as disclosed in the Court of Appeal Writ Application No. 409/2011 *vide* - para 67 thereof, filed on 16th June 2011 by Standard Chartered Bank against the Controller of Exchange, which Application is *pending*. This fine at the prevalent rate of exchange of US \$ 1 = Rs. 130/- amounts to US \$ 212.1 Mn., *which is much greater* than the aforesaid Claim of US \$ 180 Mn.

Upon two public interest Applications SC (FR) Nos. 404 & 481/2009 made by me, having been *per-incuriam* dismissed on 11th May 2010 on *misleading* submissions on 'time bar' made by Counsel, including your predecessor in Office, Mohan Peiris, P.C., in a series of Books I published abroad, I published a Book which was globally released in June 2011, *exclusively* on these purported Oil Hedging Deals in Sri Lanka titled – '*Derivative / Hedging Deals by Citibank, Standard Chartered Bank, Deutsche Bank, with Sri Lanka Government's Petroleum Corporation - Dubious & Illegal ?*' *vide* www.consultants21.com/publications. The Citibank Claims arbitrated upon by the London Court of International Arbitration, holding proceedings in Singapore, was lost by the Citibank, as per Order dated 31st July 2011, notwithstanding the aforesaid Order dated 11th July 2011 of the UK High Court, *having been tendered therein*.

Over the last weekend, it was reported that the Deutsche Bank Claim of US \$ 60 Mn. + Interest against the Government was awarded in favour of the Deutsche Bank in Arbitration proceedings before the International Centre for Settlement of Investment Disputes (ICSID), under the Treaty between Sri Lanka and Germany concerning the Promotion and Reciprocal Protection of Investments, passed into law on 18th February 2003 by a 2/3rd majority in Parliament, in terms of Article 157 of the Constitution.

I am at a loss to understand, as to how this happened, since the said Treaty covers Investments, specifically defined such as equity, debt and service and investment contracts, and, *inter-alia*, includes a claim for money or claim to performance *having economic value*, whereas to my understanding, no such *economic value* was *received* by the Ceylon Petroleum Corporation or the Government.

As you are aware, under ICSID Rules, in terms of Article 52, the Award is final and binding, which is limited to Corrections in terms of Article 56 or to Supplementary Decisions in terms of Article 57 to decide on *any question which had been omitted to be decided in the Award*.

The foregoing commits very large scales of monies of national economic proportions. It is *beyond comprehension*, as to why your predecessor in Office, Mohan Peiris P.C., opposed my Applications to invoke the jurisdiction of the Supreme Court of Sri Lanka, to have prevented the foregoing foreign legal proceedings, through anti-suit injunctions, as had been prayed for.

It is even more *baffling*, as to how the stance of *illegality* of the said transactions was taken by him, whilst at the same time those involved in the perpetration of such illegality had not been taken to task and *arraigned* before the law, and some of them had even been taken overseas to give evidence, whilst they *admittedly* had been previously compromised, through foreign jaunts sponsored by the said Banks !

Costs of defending foreign legal proceedings are not disclosed to the public, but based upon an answer given in Parliament by Minister of Petroleum Industries, Susil Premajayantha in August 2012, I reckon the same to be in the region of Rs. 500 Mn. Is this not indeed *catastrophic*, when compared to the fact that the Budget for the entire year's operation of 2013 of the Attorney General Department is only Rs. 434 Mn., and Capital Expenditure of only Rs. 29.3 Mn., as per the Appropriation Bill 2012 ?

I do appreciate that you are *unaware* of the past facts, and hence I set out the following:

1. In SC (FR) Application Nos. 535 & 536 instituted in November 2008, the Supreme Court *promptly* issued interim orders, *suspending* the operation of these speculative transactions, *ultra-vires* the Ceylon Petroleum Corporation Act, and even ordered the removal of the relevant Minister and Chairman, and further directing investigations to be carried out by the Commission to Investigate Allegations of Bribery or Corruption and the Criminal Investigation Department. The proceedings were terminated on 29th January 2009 since the Government did not comply with certain other interim orders *vis-à-vis* petroleum prices.
2. Subsequently, having come to know in May 2009, that the Standard Chartered Bank had remitted US \$ 107 Mn., which had been put in issue by the Controller of Exchange in May 2009, I filed SC (FR) Application No. 404/2009, i.e. within 30 days of the occurrence thereof.
3. Subsequently, also coming to know that the aforesaid foreign Banks had instituted legal proceedings in foreign jurisdictions, I instituted SC (FR) Application No. 481/2009 on 25th June 2009 i.e. within 30 days of the occurrence thereof.
4. Nevertheless, your predecessor in Office opposed the grant of leave in both my Applications filed in the public interest, making *misleading* submissions on grounds of 'time bar', whilst 'assuring' the Supreme Court and me in *unequivocal terms*, with *effusing confidence*, that he would successfully defend and win the foregoing foreign legal proceedings, notwithstanding me having pointed out that, he was on the *defensive*, whilst I was on the *offensive*.

I cite the Supreme Court proceedings of 14.7.2009 *viz*:

"Mr. Mohan Peiris, P.C., A.G., too informs Court that he vehemently objects to the leave to proceed being granted as he is defending the actions filed abroad vigorously and the arbitration."

I also cite the following 'extracts' of my attached Letter dated 24th June 2010 addressed to your predecessor in Office, Mohan Peiris. P.C., for you to be apprised of the contents thereof:

"You would recollect that you made specific submissions to Court, that I should 'lay my head at rest', impliedly leaving you to deal with this matter in foreign jurisdictions.

You would also recollect that on the last day 11.5.2010, you repeated the same submissions, that I should 'lay my head at rest', **ironically whilst at the same time concurring with my submissions.**

This only reveals that you, as the Attorney General, curiously **vehemently opposed** this matter of such vital public importance, being proceeded with and adjudicated upon, with public hearings before the Supreme Court of our country, exercising the judicial power of the people, **which indeed is quite mysterious and baffling !**

On 11.5.2010, you submitted to the Supreme Court, **that you fully concurred with my submissions, particularly the stances taken and the arguments adduced by me**, and assured that you had taken all such stances and arguments, and even more, in the foreign legal proceedings commenced by Deutsche Bank against the Government of Sri Lanka before ICSID, and by Citibank before the London Court of International Arbitration, and by Standard Chartered Bank in the High Court of U.K., both against CPC. Significantly, none of the Counsel appearing for the Respondents Banks were able to demonstrably refute and/or controvert the facts and the applicable law, which were adduced.

By your submissions, you held out an **unqualified assurance and guarantee**, that you will most certainly succeed in the above foreign legal proceedings against the Government of Sri Lanka and the CPC, and that **therefore no payments, whatsoever, would thereby have to be made from public funds to the Respondents Banks**, under these illegal deals as admitted by you, and accordingly that **you would also recover the costs, reckoned to be in the region of Rs. 150 Mn.** incurred utilizing public funds, to defend these foreign legal proceedings, in retaining foreign Counsel and Experts, including costs incurred in overseas travel by you and other Counsel.

In addition, on 11.5.2010 you **reiterated** to the Supreme Court the averments in the Statement of Objections of the CPC, settled by you, in SC (FR) Application No. 404/2009, concurring with my stances taken in the said Application, that - **'the said transactions are illegal, ultra-vires and/or unauthorized and that the Respondent Banks had misrepresented the true nature of the these transactions and that they are inter-alia null and void and/or unenforceable'**.

Does not such stance on your part demonstrate the reality that you did not want the truth and facts being disclosed to the public, whereas this involves colossal funds of the public ? "

I also attach copy of my Letter dated 13th August 2012 addressed to the Minister of Petroleum Industries, Susil Premajayantha, the contents of which *are self-explanatory*

Yours truly,

Nihal Sri Ameresekere

cc. Hon. Susil Premajayantha, M.P., Minister of Petroleum Industries

Mr. Lalith Weeratunga, Secretary to H.E. the President – *For H.E. the President, as the Minister of Finance and responsible for the Attorney General's Department, to be apprised*