PUBLIC INTEREST *SANS* ANY POLITICAL RESPONSIBILITY !

PUBLIC INTEREST ACTIONS BY NIHAL SRI AMERESEKERE, AT HIS OWN COSTS AND EFFORTS, HAVE DONE MUCH MORE FOR THE COUNTRY THAN BY ANY OF THE POLITICIANS, WHO HAVE ENJOYED LUXURY DUTY FREE VEHICLES, ALLOWANCES AND PERQUISITES, WITH POLITICS TODAY HAVING BECOME A LUCRATIVE PROFESSION, TO THE DAMAGE AND DETRIMENT OF THE MASSES.

1. Nihal Sri Ameresekere has investigated and published around 150 incisive investigative Articles, *vis-à-vis,* on privatizations mooted by World Bank, IMF, ADB, *et al*, including the Plantations, Air Lanka, Sri Lanka Telecom, etc., which had caused colossal losses to the State as disclosed in series of Books he has authored.

2. In 2003 on the privatization of Sri Lanka Insurance Corporation Ltd., for Rs. 6050 Mn., PricewaterhouseCoopers and Ernst & Young had been paid by the Government of Sri Lanka professional compensation of over Rs. 170 Mn., which at value as at 31.3.2018 amounts to around Rs. 990 Mn., free of taxes.

   As a result of the public interest litigation caused to be instituted by Nihal Sri Ameresekere, he got back for the Government of Sri Lanka, the Sri Lanka Insurance Corporation Ltd., reckoned to be valued as at 31.3.2018 over Rs. 100,000 Mn., including also the valuable Lanka Hospitals PLC, as a result of the privatization being annulled as unlawful, illegal and fraudulent by the Supreme Court of Sri Lanka in SC (FR) Case No. 158/2007. *Hon. Attorney General had opposed this action.*

3. On the other hand, in 2001 on the privatization of the National Insurance Company Ltd., Arthur Anderson, who were the fraudulent Auditors of the Enron fraud had been paid by the Government of Sri Lanka around Rs. 135 Mn., which at value as at 31.3.2018 is over Rs. 920 Mn., free of taxes for a Sale consideration in 2001 of only Rs. 450 Mn., i.e. professional compensation 30% of the Sales Value !

4. In 2003 on the privatization of Lanka IOC Ltd., Ernst & Young had been paid by the Government of Sri Lanka professional compensation of over Rs. 55 Mn., free of taxes and at value as at 31.3.2018 would amount to over Rs. 305 Mn., whilst Lanka IOC Ltd., had been given the right valued at US $ 30 Mn., to engage other private filling stations, without any payment.

   Nihal Sri Ameresekere's consequent action on this privatization reduced by around Rs. 5,000 Mn., in 2005, value as at 31.3.2018 Rs. 20,000 Mn., of Subsidies claimed as per a dubious 'pricing formula' by LIOC from the Government of Sri Lanka, with future Subsidies being stopped forthwith. Hon. Attorney General had supported this action

5. On the Oil Hedging Deals on foreign litigations against Ceylon Petroleum Corporation and Government of Sri Lanka by the 3 relevant Banks, professional compensation and costs incurred, *as a consequence of foolhardy stance taken by the Hon. Attorney General* preventing public interest actions by Nihal Sri Ameresekere, which had been instituted to prosecute in Sri Lanka, as reported had amounted to over Rs. 1500 Mn., whilst also losing the Standard Chartered Bank Claim of US $ 160 Mn., + Interest against Ceylon Petroleum Corporation, and the Deutsche Bank Claim of US $ 80 Mn., + interest against the Government of Sri Lanka.

   Citibank's Claim of US $ 192 Mn., (value as at 31.3.2018 Rs. 30,000 Mn.,) + interest was overcome it is believed due to certain endeavours by Nihal Sri Ameresekere in publishing a Book globally distributed on this specific matter at that very time, and also the Claim of US $ 160 Mn., of Standard Chartered Bank had been reduced to US $ 60 Mn., i.e. US $ US $ 100 (value as at 31.3.2018 Rs. 15,700 Mn.,) as a consequence of strategic advice given by Nihal Sri Ameresekere to the Exchange Control Department, as morefully set out in his attached Letter dated 11.10.2017 to the Auditor General, with copy to COPE Chairman, also questioning, as to how payments had been made to these Banks, without enforcement of foreign Orders in Courts of Sri Lanka ? (Total saving by Nihal Sri Ameresekere US $ 292 Mn., i.e. SL Rs. 45,600 Mn.)

6. Annulment in 2004 as a result of Nihal Sri Ameresekere's endeavors of the perverse all-encompassing amnesty *'in the guise of a tax amnesty'*, had prevented the write-off of around Rs. 200,000 Mn., value as at 31.3.2018 Rs. 836,835 Mn. in State Revenues as had been reported and other losses, and also prevented the erosion of the rule of law and good governance. *Hon. Attorney General had persistently opposed this action*. The Supreme Court of Sri Lanka Pronouncement, *inter-alia*, had stated thus –

"*It is inimical to the rule of law, violative of the 'Universal Declaration of Human Rights and International Covenant on Civil & Political Rights', and it had defrauded public revenue, causing extensive loss to the State*"

7. On another public interest action caused to be instituted by Nihal Sri Ameresekere, the Government of Sri Lanka got back the Colombo Port Oil Bunkering Infrastructure Facility & Monopoly reckoned to be valued at around Rs. 21,000 Mn., as at 31.3.2018, as a result of privatisation being annulled, as unlawful, illegal and fraudulent by the Supreme Court of Sri Lanka in SC (FR) No. 209/2007, and the Board of Investment Approval dubiously granted for tax exemptions had been retrospectively revoked. *Hon. Attorney General had opposed this action.*

8. Challenge by Nihal Sri Ameresekere to the Appropriation Bill of 2008, resulted in the disclosure of the total correct borrowings by the Government of Sri Lanka by the inclusion of the Second Schedule to the Bill, and exposing cognizable hidden transactions by the Treasury, through a purported allocation as 'Development Activities', which the Supreme Court of Sri Lanka referred to as a '*budget within a budget*'. Hon. Attorney General had supported this action.

9. In 2003, Nihal Sri Ameresekere, acting in the public interest challenged in the Supreme Court of Sri Lanka, the Amendments to the Debt Recovery (Special Provisions) Act No. 2 of 1990 and Recovery of Loans by Banks (Special Provisions) Act No. 4 of 1990, resulting in the Supreme Court of Sri Lanka striking down both Amendment Bills and even castigating the main Statutes, and stating as follows: *Hon. Attorney General had opposed these actions.*

"these are 'harsh, oppressive and unconscionable'; and 'denying access to justice' guaranteed under the Constitution of Sri Lanka, and that the 'law should not strengthen, the strong, and weaken, the weak'."

10. Nihal Sri Ameresekere had discovered that Export Proceeds remittances back to Sri Lanka are not monitored by the Controller of Exchange due to the Controller of Exchange's such power having been removed by questionable Gazettes of 1993/94. The Controller of Exchange at Nihal Sri Ameresekere's behest had carried out a *'voluntary survey'* and 50% of the Exporters had reported that only 81% of the Export Proceeds during a quarter had been repatriated by end of next quarter, whilst 10% had admitted such Export Proceeds to have been spent or retained abroad. It was estimated that at a 10% leakage at current values Sri Lanka would have lost Foreign Exchange of US $ 20,000 Mn., (at value as at 31.3.2018 amounts to Rs. 3,150,000 Mn.) and US $ 30,000 Mn., (at value as at 31.3.2018 amounts to Rs. 4,700,000 Mn.), if at 15% leakage, buffeted by the foreign exchange worker remittances during such period amounting to US $ 68,300 Mn.

"*IMF Article VIII Status Countries such as China and India do enforce repatriation and even surrender requirements. On his representations, this was rectified in 2016. The Exchange Controller once again had been empowered to monitor repatriation of Export Proceeds. Ironically, Sri Lanka borrows from such countries.*" !

Documentary evidences are available at :

- **www.consultants21.com**
- **www.consultants21books.com**

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19.4.2018

WHY HAD CRIMINAL PROSECUTIONS NOT BEEN INSTITUTED FOR THE MISAPPROPRIATION OF STATE PROPERTY IN ANY OF THESE CASES PROVEN IN THE SUPREME COURT OF SRI LANKA, DISREGARDING SPECIFIC DIRECTIONS DO SO BY THE SUPREME COURT OF SRI LANKA ?

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BY COURIER

11th October 2017

Mr. H.M. Gamini Wijesinghe, FCA, MA (Econ), BSc (Pub.Ad)(Sp)
Auditor General
Auditor General's Department
306/72, Polduwa Road
Battaramulla.

Dear Mr. Wijesinghe,

Purported Derivative / Hedging Deals

During a telephone conversation, Chairman, Parliamentary Committee on Public Enterprises (COPE), Hon. Sunil Handunnetti, M.P, intimated to me that you were preparing a Report, and to submit to you the facts known to me, since I have authored 2 Books, on the legal actions I had taken in this regard.

Accordingly, I forward copies of the 2 Volumes of the Book, which contain all relevant facts and data, which I had come to know. Shall be pleased to afford any clarifications or explanations thereon.

Essentially on the objections taken by the Hon. Attorney General of 'time bar', the 2 litigations I had instituted in May and June 2009, respectively, seeking also *anti-suit* injunctions to prevent foreign legal proceedings, the Supreme Court refused to grant Leave, recording that I should have filed my actions by end February 2009, as I had been present in the Supreme Court on 28.1.2009, when 2 previous actions filed by others in 2008 in this regard had been terminated. I was present in the Supreme Court to seek to intervene in the said actions, but it did not come to that stage. *Hon. Attorney General assured in open Court that he would succeed in defending the foreign legal proceedings, including recovering costs.*

Such Judgment of the Supreme Court to have filed my 2 actions before end February 2009 was an impossibility, since my first action was on Standard Chartered Bank, in violation of the Exchange Control Act, remitting US $ 120 Mn., in May 2009, which fact was confirmed by the Affidavit of the Controller of Exchange, and my other action to prevent foreign legal proceedings was filed in June 2009, only after the foreign legal actions had been instituted. In fact, Ceylon Petroleum Corporation received Summons from the High Court of Justice United Kingdom only in June 2009.

Such facts made a *mockery* of the Supreme Court refusing Leave to Proceed as had been stated, raising the question of accountability of the judiciary and the Hon. Attorney General ?

1. Standard Chartered Bank Claim US $ 161,733,500/- + interest - Today's Value Rs. 25,069 Mn.

   Standard Chartered Bank was Awarded their Claim by the High Court of Justice United Kingdom, which is disclosed that Ceylon Petroleum Corporation had been continuously advised by a private law firm, Nithya Partners, and significantly not by the Hon. Attorney General, as is the normal case.

   On my suggestion made to an Official of the Exchange Control Department, the Controller of Exchange imposed a fine of US $ 245 Mn., on Standard Chartered Bank for the transfer of monies on the Capital Account in violation of the Exchange Control Act, against which Standard Chartered Bank filed a Writ Application in the Court of Appeal. In such context, I am led to believe that Standard Chartered Bank Claim was settled at US $ 60 Mn., *i.e. a saving of over US $ 100 Mn.*

   Question arises as to how Standard Chartered Bank's UK High Court Order had been accepted by Ceylon Petroleum Corporation, without, to my knowledge the UK High Court Order having been Ordered and Decreed to be enforced in Sri Lanka in terms of the Reciprocal Enforcement of Judgments Ordinance No. 41 of 1921 ?

2. Citibank Claim of US $ 195,458,093/- + interest - Today's Value Rs. 30,296 Mn.

Citibank's Claim referred to Arbitration before the London Court of International Arbitration was heard by a 3 Member Arbitral Tribunal and rejected, *as totally flawed* transactions, even in the face of the above Judgment of the High Court of Justice United Kingdom having been tendered before them !

I had published in US, the first Volume of my Book on these illegal 'Derivative / Hedging Deals' and globally distributed. I verily believe that the Arbitral Tribunal sitting in Singapore had been apprised of my Book, demonstrating the illegality of these betting / speculative transactions, *thus a saving of more than US $ 195 Mn.*

3. Deutsche Bank Claim of US $ 60,368,993/- + interest - Today's Value Rs. 9,357 Mn.

Deutsche Bank Claim considered by a 3 Member Arbitral Tribunal of the International Centre for Settlement of Investment Disputes was lost by the Government of Sri Lanka, with 2 Members holding in favour of Deutsche Bank and one Member strongly dissenting.

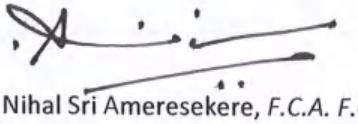
It is a travesty of international norm, that a betting or speculative Claim of US $ 60 Mn., had been interpreted as 'an investment' in terms of the Sri Lanka German Promotion and Reciprocal Protection of Investment Treaty, whereas 'an investment' ought to have been for economic value. In fact the dissenting Award states Deutsche Bank's investment, if at all, could only have been US $ 2.5 Mn., which was their maximum exposure under the particular speculative contract.

Hereto question arises, as to why such Award was not enforced according to Sri Lankan Law as provided for in Article 11 (3) of the said Treaty ?

4. Total Professional Compensation and costs incurred, as per COPE Report of August 2016 has been Rs. 1,232.2 Mn., (At today's value would exceed Rs. 1,500 Mn. ?)

Question arises, as to whether Committees had been appointed to examine the same and Cabinet Approval granted for payment ?

Sincerely,



Nihal Sri Ameresekere, *F.C.A. F.C.M.A., Fellow C.M.A., C.G.M.A., C.F.E.*
Associate Member, American Bar Association
Co-ordinator, International Association of Anti-Corruption Authorities
Ex-Board Member, International Consortium on Governmental Financial Management

cc. Hon. Sunil Handunnetti, M.P.
Chairman
Committee on Public Enterprises
Parliament of Sri Lanka
Sri Jayawardenepura
Kotte