

BY FAX / HAND (WITH ATTACHMENTS)

8th November 2011

Hon. Chamal Rajapaksa
Speaker of Parliament
Parliament of Sri Lanka
Sri Jayewardenepura
Kotte.

Hon. Speaker,

Hotel Developers Lanka Ltd. – Hilton Hotel Colombo

**Application No. 52/2011/CO for Arrangement and Compromise under Part X of the
Companies Act No. 7 of 2007
made today, 8.11.2011, to the High Court (Civil) of the Western Province**

I attach copy of the Petition filed in the above Application, invoking the jurisdiction of the High Court (Civil) of the Western Province, under and in terms of the Companies Act No. 7 of 2007, which is the applicable normal and regular law for the re-arrangement and compromise of a company.

I was overseas from 20.10.2011 to 4.11.2011 and on my return, found that my Office had received on 2.11.2011 the Financials of the aforementioned Company for the year ended 31.3.2010. Thus, I invoked the jurisdiction of the court of law promptly.

Hence, the matter of re-arrangement and compromise of the aforementioned Company is to be dealt with by the judiciary in accordance with the ordinary regular law of the land, and by no means can such right and/or power be alienated to be dealt with under extraordinary and/or arbitrary process by another organ, the executive, which is an alienation of the sovereignty of the people, prohibited by the Constitution - *vide* the under-mentioned ‘dicta’ of the Determinations by a 7-Member Bench of the Supreme Court of Sri Lanka.

Since I was overseas I was totally unaware of the 'Expropriation Bill', which had been submitted to the Supreme Court, as an 'Urgent Bill', thereby depriving the citizens of the country, the constitutional right to be heard by the Supreme Court on such matter of national and public importance. Unless it is a national calamity warranting an urgency, there is no *unfettered* power to be arbitrarily exercised by the Cabinet of Ministers.

In the given circumstances, I cite the following ‘dicta’ from the Determinations made in October 2002 by a 7 Member Bench of the Supreme Court on the aborted 18th and 19th Amendments to the Constitution, ***which I believe have cast a precedent***. The Supreme Court Bench comprised, then Chief Justice, Sarath N. Silva, and Justices J.A.N. De Silva (former Chief Justice), Shirani Bandaranayake (present Chief Justice), S.W.B. Wadugodapitiya, A. Ismail, P. Edussuriya and H.S. Yapa. *I'm sure your Library would have copies of the full Determinations.*

- **“Therefore, shorn of all flourishes of Constitutional Law and of political theory, on a plain interpretation of the relevant Articles of the Constitution, it could be stated that any power that is attributed by the Constitution to one organ of government cannot be transferred to another organ of government or relinquished or removed from that organ of government; and any such transfer, relinquishment or removal would be an “alienation” of sovereignty which is inconsistent with Article 3 read together with Article 4 of the Constitution”.**
- **“It necessarily follows that the balance that had been struck between the three organs of government in relation to the power that is attributed to each such organ, has to be preserved if the Constitution itself is to be sustained”**
- **“The transfer of a power which attributed by the Constitution to one organ of government to another; or the relinquishment or removal of such power, would be an alienation of sovereignty inconsistent with Article 3 read with Article 4 of the Constitution”**

- **"The power that constitutes a check, attributed to one organ of government in relation to another, has to be seen at all times and exercised, where necessary, in trust for the People. This is not a novel concept. The basic premise of Public Law is that power is held in trust. From the perspective of Administrative Law in England, the 'trust' that is implicit in the conferment of power has been stated as follows:**

'Statutory power conferred for public purposes is conferred as it were upon trust, not absolutely – that is to say, it can validly be used only in the right and proper way with Parliament when conferring it is presumed to have intended' – (Administrative Law 8th Ed. 2000 – H.W.R. Wade and C.F. Forsyth p, 356) '

- **"It had been firmly stated in several judgments of this Court that 'rule of law' is the basis of our Constitution".**
- **"A.V. Dicey in Law of the Constitution postulates that 'rule of law' which forms a fundamental principle of the Constitution has three meanings one of which is described as follows:-**

'It means, in the first place, the absolute supremacy or predominance of regular law as opposed to the influence of arbitrary power, and excludes the existence of arbitrariness or prerogative, or even of wide discretionary authority on the part of the government. Englishmen are ruled by the law, and by the law alone '

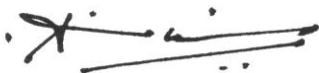
- **"If there is one principle which runs through the entire fabric of the Constitution, it is the principle of the Rule of Law and under the Constitution, it is the judiciary which is entrusted with the task of keeping every organ of the State within the limits of the law and thereby making the Rule of Law meaningful and effective - (Cited from Indian Judgment)"**
- **"The Constitution does not attribute any unfettered discretion or authority to any organ or body established under the Constitution"**
- **"We have to give effect to this provision according to the solemn declaration made in terms of the Fourth Schedule to the Constitution to "uphold and defend the Constitution" "**

You would recall that in 2003, I, as a citizen, was denied being heard in my challenge to an all-encompassing amnesty, since I had not filed my challenge within the narrow time of 7 days, during which period the Bill was not available to the public.

Later having persuaded the then President to refer the same under Article 129 of the Constitution for an Opinion of the Supreme Court, whereat I made extensive submissions, it was *inter-alia* pronounced, to have violated the Universal Declaration of Human Rights and the International Covenant on Civil and Political Rights, and that amnesties had been granted to those who had contravened laws and thereby defrauded public revenue causing extensive loss to the State. The People's Alliance Government, which assumed Office thereafter, promptly repealed the impugned law.

In the foregoing circumstances, the *inalienable* sovereignty being in the people, it is beyond comprehension, as to why, citizens are being questionably denied the constitutional right to be heard in the law making process, which has consequences on the nation and the public.

Yours truly,



Nihal Sri Ameresekere

cc. Prime Minister
Leader of the Opposition
Leader of the House