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“PIL: The Good, the Bad and the Ugly” - A rebuttal from Nihal’s lawyers

We write as instructed on behalf of our clients, Mr. Vasudeva Nanayakkara, Advisor to His Excellency the President, and Mr. Nihal Sri Ameresekere, a Professional Consultant; both public interest activists, in relation to the above Article, written suppressing his name by self-admittedly a person who had attended, a recent CEO Forum, organized by Lanka Business Online on – ‘Economic Impact of Public Interest Litigation’; professed to have consisted of several eminent speakers. Our Clients request you, in the public interest, to publish this reply in full, with equal prominence, as the aforesaid Article.

The Article, is replete with falsehoods, distortions, mala-fides, malicious and venomous statements, revealing only jealousy, frustration and depravity, and is obviously written, being stooge of those affected or afflicted or by a person directly affected or inflicted by one of the Judgments of the Supreme Court referred to herein, .

If the writer was so concerned, as he now evidently belatedly attempts to make out, over 1 ¼ years after the LMSL Judgment delivered on July 21, 2008, he ought to have intervened in the two singled out litigations concerning the privatisation of LMSL and SLIC, and have had the courage to have advocated his stances before the Supreme Court, personally or through Counsel. He did not do so, simply because the affected or afflicted persons stood defenceless in the face of disclosure of facts before the Supreme Court, which, as the Supreme Court pronounced, ‘shocked its conscience’. Even though belatedly this cowardly anonymous author, if he be so concerned, could now do so, before the Bribery Commission and the Criminal Investigation Department, who are conducting investigations, and courageously state his case, disclosing his identity !

Our Client, Mr. Nihal Sri Ameresekere is a proponent of privatisation and a private economy, nevertheless with requisite regulatory frameworks to safeguard and protect all stakeholders. He has steadfastly decried the pillage and plunder of the resources of the poor, held in trust on their behalf by Governments, as was amply demonstrated on the perverse Amnesty, in the guise of a ‘Tax Amnesty’, on which the cowardly anonymous author of the Article, whoever he may be, was mysteriously silent, whilst the Supreme Court pronounced the same to have been an extensive fraud perpetrated on the People of the country, and inimical to the Rule of Law.

The privatisation process carried out by those with amateurish knowledge on the subject had proven to be disastrous in our country, with public, employee and consumer confidence totally eroded; and the employees now

With reference to the Page 7 article titled “Public Interest Litigation: The Good, the Bad and the Ugly” published in last week’s The Bottom Line issue, Nihal Ameresekera’s lawyers Abdeen Associates has sent the following statement

even opposing the mere warranted restructuring of public enterprises. Scandalous and dubious 'very private transactions' concerning public property, is simply not privatisations. Our said Client, Mr. Nihal Sri Ameresekere declined to participate in the aforesaid Forum, purely and simply because he did not wish to associate, with some of those on the Panel, who had carried out such scandalous and dubious privatisations, causing colossal losses to the State and the People.

It is evident that the author of the Article had not been personally present in the Supreme Court during the Hearing of the 2 Cases, namely, vis-à-vis, LMSL and SLIC privatisations, which Judgments of the Supreme Court he is now attempting to belatedly decry, casting serious baseless aspersions on sitting Judges of the Supreme Court. Nor has the cowardly anonymous author apprised himself of the totality of the facts, whilst relying on 'third party hearsay', the basis for his fallacious stances. Some of the salient facts misrepresented in the said Article and elsewhere are set out hereinbelow.

1. The documents filed with the Petition of our Client Mr. Vasudeva Nanayakkara as disclosed therein were public documents, circulated to Members of the Parliamentary Committee on Public Enterprises (COPE), as contained in Reports on LMSL and SLIC dated 27.10.2006 and 25.10.2006, respectively, submitted by PERC, long after our said Client, Mr. Nihal Sri Ameresekere had relinquished Office, as Chairman PERC in November 2005. This gives the lie to several baseless, false, mala-fide and malicious allegations venomously made by the cowardly anonymous author against our Client, Mr. Nihal Sri Ameresekere.

2. Nevertheless, it is contended that the public have a right to information, particularly on the disposal of their own assets, as is the international norm in civilised democracies. Squealing in the public interest is recognised by Courts of law. Disclosure of Enron and Worldcom scandalous corporate frauds were as a consequence of squealing, with the fraudsters jailed.

3. The Supreme Court Judgments in both the LMSL and SLIC Cases, endorsed the findings in the Report to Parliament by the Parliamentary Committee on Public Enterprises (COPE), comprising of several Lawyers, acting on a bi-partisan basis, chaired by Mr. Wijeyedasa Rajapakshe, President's Counsel, which found both these transactions to be unlawful, illegal and fraudulent, with severe strictures made on the conduct of certain parties.

4. The fallacy that affected Respondents were not given adequate time is proven by the fact that the Supreme Court did afford in the LMSL Case, the President's Counsel of the main Respondent, an opportunity for a further Affidavit to be filed to clarify certain issues, which had arisen during the Hearing in the Supreme Court. Such opportunity was not availed of, obviously because such facts could not be refuted or denied under oath !

5. Likewise in the SLIC Case, the Addl. Solicitor General was requested by the Supreme Court to ascertain, as to why the former Chairman PERC had acted in such manner, and as to whether he had been coerced into so acting. The response on the next day by the Addl. Solicitor General was that his instructions were that IMF had been exerting pressures !

6. Several Respondents named, who were directly involved in the transactions had questionably evaded and avoided filing affidavits to have refuted and/or denied the facts adduced before the Supreme Court, supported by documents and affidavit of our Client, the Petitioner, Mr. Vasudeva Nanayakkara; admittedly because the said Respondents were unable to deny under oath such facts adduced to the Supreme Court, whereby such facts stood conceded and admitted!

7. As a Respondent, our Client Mr. Nihal Sri Ameresekere, who in fact was so named as a former Chairman of PERC, contrary to what the cowardly

anonymous author had stated was bound to disclose to Court all facts within his knowledge and assist the Supreme Court, which he did; whilst very openly supporting the Petitioner, our Client Mr. Vasudeva Nanayakkara, which gives the lie to the allegation by the cowardly anonymous author that our Client Mr. Nihal Sri Ameresekere remained in the shadows !

8. The statement that our Client, Mr. Nihal Sri Ameresekere was totally pre-occupied in gathering information on each and every privatisation transactions handled by PERC, points a revealing finger at the identity of the cowardly anonymous author, since he has been well and truly aware that at that time, at the request of the World Bank, PERC had, in fact, carried out a survey to assess the successes and failures of privatizations. One of the Letters adduced before the Supreme Court discloses that LMSL, though being a subsidiary of a listed public company, had evaded and avoided in submitting the Annual Accounts, which had been requested by PERC from all institutions, which had been privatised.

9. For the cowardly anonymous author to have stated that the Supreme Court brushed aside explanations of reputed and experienced investment banks and accounting firms is sheer bunkum, in that, in the LMSL Case the reputed and experienced investment bank admitted in the Supreme Court that their valuation was flawed and incomplete; and the reputed international accounting firm in the SLIC Case absconded from even appearing, whilst the local associate was left to face the flak !

10. The Enron, Worldcom, Parmalat and recent scandalous corporate frauds and financial debacles speak volumes of the conduct and actions of the so-called reputed investment banks and international accounting firms, which the cowardly anonymous author apparently does not wish to even know.

11. For the cowardly anonymous author to have stated that the Supreme Court had accepted documents across the floor, without any supporting affidavit from our Client, Mr. Nihal Sri Ameresekere is sheer tommyrot of 'third party baseless hearsay'. In one instance, as requested by Court, Government Tender and Procurement Guidelines, a public documentation, had been tendered, and copies given to Respondents' Counsel. The 'third party baseless hearsay' clearly refers to Notes with oral submissions and written submissions, which any party in Supreme Court is entitled to submit. The Supreme Court Hearings were inter-partes and not ex-parte, as has been curiously endeavoured to made out.

12. To have stated that key documents were suppressed, the cowardly anonymous author had relied on a false and questionable newspaper article, which showed such alleged suppressed 'document', revealing that 'it bore the stamp of the Attorney-at-Law, as a true copy', thereby proving that it was, in fact, a copy of a document filed in the Supreme Court, disclosing such allegation to be mischievous and fraudulent !

13. Addl. Solicitor General representing the Attorney General having access to all official documents of the State did not deny the genuineness of any of the documents tendered to the Supreme Court. All necessary parties having been Respondents before the Supreme Court, did not deny the veracity of the documents and they were at liberty to have submitted whatever, documents they wished to have adduced. All relevant and salient documents were before Court, with a preponderance of evidence in both LMSL and SLIC Cases.

14. The cowardly anonymous author of the Article has miserably failed to comprehend that public officers are bounden in duty, law and by the Constitution to carry out administrative and executive actions strictly in conformity with guidelines and regulations of the State, the law and the Constitution, violation of which gives rise to a cause of action under fundamental rights jurisdiction, irrespective of the transaction, with no

regard, whatsoever, to the social status and standing of personalities concerned.

15. Contrary to the sheer insult to the Supreme Court Judges, that they could not comprehend complex commercial transactions, the Judgments reveal that the Supreme Court Judges, had in fact, well and truly capably, meticulously studied and understood the complexity and the slithery 'maneuverings' of these dubious transactions, which had defrauded the State i.e. the People, of billions of rupees, which were rightfully restored to the State; and accepted by the Government, without any demur ! Even an attempt to prevent the revenue authorities from collecting the correct taxes after the Judgment in the LMSL Case, was thwarted by the Supreme Court.

16. The cowardly anonymous author's suggestion to resort to the appointment of fact finding commissions in cases involving public interest is well taken. Accordingly it is suggested that as a matter of utmost priority and public interest, that the questionable and complex SAGT transaction, perpetrated under shrouded secrecy be transparently investigated at public hearings by such a Commission, and recommendation made to the Supreme Court for any warranted action thereon, based on the findings, as suggested by the cowardly anonymous author.

The foregoing clearly demonstrate, that the author, has evidently played the role of a 'professional stooge' of those affected or afflicted or is a person, who himself is affected or inflicted, acting in a desperate attempt to 'whitewash' and 'debunk', the grave and serious crimes of the pillage and plunder of public property, further impoverishing the poor, whose such property is held in sacred trust on behalf of the People, as has been repeatedly endorsed by the Supreme Court, and His Excellency the President. To have defrauded public property is a heinous crime and to attempt to cover-up even after Judgments by the highest judiciary is despicably far worse.

Fundamental rights litigation in terms of the 1978 Constitution has now been prevalent for over 30 years. From that time, fundamental rights litigations, not only by affected individuals, but also of public concerns, including issues such as environment, etc., had been entertained, and in like manner dealt with by the Supreme Court, including the curtailment of the tenure of office of a former President and the perquisites; and the estoppel of the phosphate project, subject to laid down criteria, etc. Fundamental rights litigations over such 30 years had been on the basis of affidavit evidence, and not mere oral and written submissions, as misleadingly stated by the cowardly anonymous author. Significantly, it has then been good and no complaints had been made over such a long period of over 30 years, when such cases were conducted in instances of abduction, torture, rape, etc.

It has ironically become bad and ugly, only when it affected prestigious and affluent corporates and high profile personalities in the two Cases LMSL and SLIC, persons such as the author, has got mysteriously agitated, clearly on behalf of those affected or afflicted or in fact being one such person himself. This amply demonstrates that the cowardly anonymous author is acting with ulterior motive for extraneous purposes to frustrate the exercise of the judicial power of the people who are sovereign and their sovereignty inalienable.

There are several other judicial proceedings conducted on affidavit evidence, and in the case of parate execution the constitutional right of a party of access the judiciary under Article 105 of the Constitution is denied, whilst the banks have usurped the powers of the judiciary ! Why has there been no complaint and rectification, in the very face of the decrying of such unconstitutionality by the Supreme Court Determinations delivered in 2003 ?

Article 28 of the Constitution of our country imposes on every person in Sri Lanka the obligation and duty to perform fundamental duties; in terms of Article 28 the performance of which fundamental duties is inseparable from the exercise and enjoyment of fundamental rights and freedoms. One of the fundamental duties cast upon every person as per Article 28(d) is to preserve and protect public property and to combat the misuse and waste of public property. Hence, the Indian Cases cited by the cowardly anonymous author has no relevance or bearing in relation to the 'day light robbery' of public property, prohibited by the Constitution, which give rise even to civil arrest. The Chief Justice of India very recently pronounced that the property of such persons should be seized by the State.

The principle that every person is a constituent party of the Consolidated Fund, and that the right to invoke the judicial power of the People to protect public property and to combat the misuse and waste thereof was clearly upheld in the SLIC Judgment. How could one surreptitiously and stealthily and collusively rob public property, and then take a defence that after the lapse of one month, that one cannot be arraigned before the highest judiciary, by a person invoking the judicial power of the People. The need for such action only arises, since the law enforcement authorities shirk to enforce the rule of law, due to socio-political influences and subservience, as amply demonstrated by the Article of the cowardly anonymous author.

The attempt by author to question the impeccable credentials and bona-fide motives of our Client, Mr. Nihal Sri Ameresekere is a futile and puerile attempt out of sheer mental depravity and desperation, in the absence of any other credible defence, whatsoever. The internationally recognised qualifications of our said Client and his dedicated and committed public interest activities, including the Hilton Case, which also involved influential and powerful personalities, are transparently disclosed on the website – www.consultants21.com, with our said Client having been recognized and acclaimed by international organizations, which combat the cancerous scourge of fraud and corruption, which however the cowardly anonymous author, without any shame is clearly attempting to peddle and to shield those who defraud public property and corrupt persons from being arraigned before Courts of law.

Our Client Mr. Nihal Sri Ameresekere is at present pursuing two important litigations in the public interest concerning the scandalous purported Oil Hedging deals, now pending before the Supreme Court, with the Supreme Court having already directed the recording of statements of certain persons, revealing startling disclosures and material contradictions made under oath by certain high profile persons. To our Client's understanding the foreign legal costs of defending 3 foreign arbitrations and litigations by the Attorney General have now reached nearly Rs. 100 million of public monies.



The article titled "Public Interest Litigation:

Our Client verily believes that the author of the Article has made such futile and puerile attempt to discredit our said Client, Mr. Nihal Sri Ameresekere and cause substantial prejudice, to traitorously endeavour to betray the interests of our country and shield the foreign banks, who

The Good, the Bad and the Ugly” published last week was written by Sasrutha Perera. We had inadvertently omitted his name from the article. have made claims which would total well over US \$ 1000 million, which our Client believes on

‘illegal contracts’, unenforceable in a court of law.

Articles such as the foregoing or any other course of action or intimidation by affected or afflicted parties, whomsoever, will not deter our Client, Mr. Nihal Sri Ameresekere from pursuing the cause to combat fraud and corruption, and the pillage and plunder of public resources, further impoverishing the poor People of the country, inasmuch as, similar endeavours by socio-politically influential and affluent parties to stultify and stymie such actions have been faced during the last 20 years in acting in the public interest.

The Article by the author is well described by the famous words of Sir Walter Scott – ‘Oh what a tangled web one weaves, when one first perceives to deceive !’.

**Yours faithfully,
Attorneys-at-Law
Abdeen Associates**



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