

BY COURIER

31st August 2007

Mr. Ranil Wickremesinghe, M.P.,
Leader of the Opposition & Leader, UNP,
115, 5th Lane,
Colombo 3.

Dear Leader of the Opposition / Leader, UNP,

US \$ 500 Million Bond Issue by the Government

I write with reference to the apprehensions you have publicly articulated on the undesirability of the Government to borrow such a large amount of US \$ 500 million, as foreign commercial loan.

As to whether such foreign commercial borrowing, initially speculated for a 5-year tenure, now for a 10-year tenure, is to be invested in economic infrastructure, as held out, which generally would have 'pay-back' periods varying between 20 to 40 years, and not 10-years, or whether such borrowing is to re-pay foreign debts deferred to be payable during 2007, consequent to the 'moratorium' for the 2-years 2005 and 2006, afforded after the devastating Tsunami of December 2004, no doubt, are very pertinent issues.

Your concerns and apprehensions have been publicly pronounced, giving 'leadership' to raise a 'public outcry', even addressing a Letter dated 24.8.2007 to J.P. Morgan Chase, USA, the speculated issuer of the Government Bond for US \$ 500 million.

What shockingly amazes me, is that you chose, for reasons best known to you, not to so act, when I, as a citizen, was compelled to institute a public interest litigation, to prevent a 'large scale of foreign funds' from being 'deviously siphoned out of the country', under Government Guarantees, which the Supreme Court, upholding my action, prevented. Your party's influential and high profile Mr. K.N. Choksy P.C., M.P., a Defendant in my action, endeavoured to have such payment somehow made, not only giving writings in that regard, but also even futilely attempting to have my public interest litigation dismissed, asserting in Court, as a Defendant, that as a citizen of this country, I had no right to bring such an action, to prevent such payment.

Though the alleged claims, regardless of my objections as a professional Accountant, were endorsed, as claimed, by Mr. K.N. Choksy P.C., M.P., my sustained actions, amidst obstructions and pressures, achieved for the Government in June 1995 a write-off amounting to Jap. Yen 17,586 million, then equivalent to US \$ 207 million. At an average of 6% p.a. interest this amounts to a value of US \$ 417 million today, whilst in terms of the depreciating exchange rate, this would tantamount to US \$ 477 Million today. The Central Bank will confirm, that at the time I instituted litigation, the country's foreign reserves were in a perilous state, *which you too concurred with !*

Notwithstanding representations then made to you, not only did you choose to turn a 'blind eye' to the foregoing, well known in the public domain, but you regardlessly, also went on to subsequently startlingly install Mr. K.N. Choksy P.C., M.P., as the Finance Minister of this country !

As a consequence, he presented an 'all encompassing' perverse 'Tax Amnesty' of 2003 to Parliament, under the 'guise' of the Inland Revenue (Special Provisions) Act No. 10 of 2003, with questionable amendments effected at the Committee Stage, denying any opportunity, whatsoever, for the public of this country to have been educated on such perverse Act, or to have challenged the provisions thereof ! The Supreme Court on a Reference, held the same, not only to be violative of the Constitution, but sadly indicted the same, as '*having defrauded public revenue causing extensive loss to the state*' ! Were you also not a party to this ?

In comparison to your current public stance and actions in relation to a proposed commercial borrowing of US \$ 500 million by the Government, how is it that, you chose to be silent and not take any action, whatsoever, on the foregoing, *one of which is comparable and the other far worse*, but acted otherwise ?

Yours truly,



Nihal Sri Ameresekere

cc: Minister Karu Jayasuriya, M.P. / then Deputy Leader, UNP – *Did you not also act in concert ?*

BY COURIER

4th May 2007

Mr. Ranil Wickremesinghe, M.P.
Leader, United National Party,
115, 5th Lane,
Colombo 3.

Dear Ranil,

In the context of your own actions, morefully set out herein, I am indeed amazed at your questioning in the public domain, the 'suitability' of Mr. Gotabaya Rajapakse, to function as the Secretary, Ministry of Defence, *vis-à-vis*, his expertised competence therefor, which, however, I am not competent to comment on !

Nevertheless, such stance taken by you, compels me to cite in comparison, the appointments made by you of Mr. K.N. Choksy P.C., M.P., as the Minister of Finance and Mr. R. Paskaralingam, as Advisor to you as the Prime Minister, during the period December 2001 to April 2004, in the very teeth of the following facts set out briefly, *well and truly known to you !*

1. In the action I instituted *vis-à-vis* the Hilton Hotel, wherein, amongst others, Mr. K.N. Choksy P.C., M.P. was a Defendant, the District Court issued interim injunctions preventing any payments, even under the Government Guarantees, *inter-alia*, observing that *they were issued to prevent the devious siphoning out of a large scale of foreign exchange from the country, and that persons, who had gained influence in society, exercising such influence, (this particularly referred to Mr. K.N. Choksy P.C., M.P.) had prevented the raising of questions, whereas generally a company would raise questions and would not allow other parties to act arbitrarily; and if the position set out is correct, then this is actually an instance of acting in fraudulent collusion.* The Plaintiff was settled by Late Mr. P. Navaratnarajah Q.C., a respected and reputed Lawyer, who had consistently appeared for the UNP, and Mr. K. Kanag-Isvaran P.C. The Hon. Attorney General, in the interest of the country, did not oppose my action.
2. I instituted the said action, only after having had the concurrence of Late State Minister for Defence, Ranjan Wijeratne, then Secretary General of UNP. Regardless of the fact that Mr. K.N. Choksy P.C., M.P. was impleaded, Minister Ranjan Wijeratne, *upholding the 'rule of law' impartially*, raised this matter in Cabinet, resulting in Late President R. Premadasa directing Late Mr. C. Gunasingham, his Economic Advisor, to examine the matter. Consequently, as directed by Late President R. Premadasa, his Secretary, Mr. K.H.J. Wijayadasa required Mr. R. Paskaralingam, then Secretary, Ministry of Finance to take warranted action on behalf of the Government. Intriguingly, Mr. R. Paskaralingam did not take such action ! *In fact, you commended me on my action, stressing its importance in view of the then depleted foreign reserves of the country !*
3. Consequently, the Supreme Court affirmed the interim injunctions, *inter-alia*, observing that *I had a reasonable and real prospect of success, and not fanciful, even in the light of the defences raised in the pleadings, objections and submissions of the Defendants, and that in the given circumstances, the Government could not be indifferent, having made itself eventually responsible, as Guarantor, for the re-payment of monies borrowed.* This landmark Supreme Court Judgment was reported in the Commonwealth Commercial Law Reports.
4. Subsequently, a Special Presidential Commission, comprising a Supreme Court Judge and 2 Judges of the Court of Appeal, was appointed to investigate, *among other matters*, into this. The Commission was assisted by the CID and the Hon. Attorney General. After recording evidence of 24 Witnesses, including Officials of the Ministry of Finance, UDA, Ceylon Tourist Board, Colombo Municipal Council, Ceylon Electricity Board, Fire Brigade and Fort Police, and after having obtained a Report from a Panel of 3 Chartered Architects, the Commission issued Show Cause Notices on Mr. K.N. Choksy P.C. M.P., Mr. R. Paskaralingam and 2 others, setting out several charges against them, framed by the Hon. Attorney General, on the following grounds:

"The aforesaid acts of commission and/or omission on your part were fraudulent and were detrimental to the interests of the said Company and/or the Government of Sri Lanka, in its capacity as the major Shareholder, causing financial loss and damage to the said Company and/or the Government of Sri Lanka"

"Having regard to the matters set out hereinabove, you are hereby required to show cause as to why you should not be found guilty of misuse or abuse of power and/or corruption and/or commission of fraudulent acts in terms of Section 9 of the Special Presidential Commission of Inquiry Law No. 7 of 1978, as amended "

5. Thereafter, the Commission discovered irrefutable evidence of criminality, subsequently conceded by the UDA to be so. With one of the Commissioners falling critically ill, the Inquiry was not concluded, and the Warrant of the Commission expired.
6. Consequently, the Hon. Attorney General having advised to investigate, the CID recorded my Statement / Complaint, as far back as March 2004.
7. In addition, I complained to the CID *vis-à-vis* the Offence of 'aiding and abetting' i.e. 'attempting' to commit an offence, in terms of Section 10 of the Offences Against Public Property Act No. 12 of 1982, by Mr. K.N. Choksy P.C. M.P., Mr. R. Paskaralingam, *et al.* In this instance, the attempt to fraudulently somehow cause the payment of a large scale of foreign exchange from the Government, *under Government Guarantees*, including by cheating, forgery, false certification of records and accounts, etc.

I quote Section 10 of Offences Against Public Property Act No. 12 of 1982 -

- "10. Any person who attempts to commit an offence punishable under this Act, or to cause such an offence to be committed, and in such attempt does any act towards the commission of the offence, shall be punished with such imprisonment of either description as is provided for the offence and with such fine, as is provided for the offence."

I am advised that the offence of 'aiding and abetting' stands on its own, even if the principal act attempted had not been committed / prevented from being committed.

Mr. K.N. Choksy P.C. M.P., acted as aforesaid, whilst being a Member of Parliament, thereby knowingly disqualifying himself, as adjudicated in another case by the Superior Courts, to have been a Member of Parliament in terms of Article 91 (1) (e) of the Constitution, attracting penalty imposed by Article 100 of the Constitution.

8. My action resulted in considerable write-offs and prevented the payment by the Government, *under Government Guarantees*, a sum of Jap. Yen 17,586 Mn., (then equivalent to US \$ 207 Mn. Sri Lanka Rs. 10,200 Mn., and at 12.5% interest, now equivalent to over Rs. 40,400 Mn. !)
9. Mr. K.N. Choksy P.C. M.P. having prevented an independent physical examination, *thereafter notwithstanding my objections with reasons given therefor as a professional Accountant*, questionably endorsed in writing that the entire payment be made *under the Government Guarantees*, and subsequently futilely attempted to jeopardise my action, resorting to misuse and abuse of political power, including attempting to bring upon undue influences and pressures even on the Hon. Attorney General, who without status, acting at the behest of the Mr. K.N. Choksy P.C. M.P. and Mr. R. Paskaralingam attempted to oppose my action in the Superior Courts, *having not opposed in the District Court !* Undue influences and pressures were brought to bear on me through President D.B. Wijetunga, and even on my professional assignments on World Bank and USAID funded Government projects, with intent to stymie and stifle my action, which was in the interest of the country !

10. Whilst as a civic and constitutional duty (*vide – Article 28 of the Constitution, which you are under oath to uphold*) to protect, and combat the misuse and waste of public property, in this instance, a large scale of Government monies in foreign exchange, I instituted civil action, you would no doubt agree, that it is the obligation and duty of the State to take prompt and effective criminal action, regardless of the personalities concerned and/or any socio-political considerations ! Then Minister of Justice reiterated in public the Government's commitment that punitive action will be taken by the legal machinery against the offenders, in combating the pillage and plunder of public resources in this instant case ! Subsequently, he informed Parliament that show cause notices on fraudulent and detrimental acts to the interest of the Government had been served by the Special Presidential Commission on several persons, as aforesaid, and that the matter is proceeding !

The importance of dealing with the scourge of the cancerous menace of corruption was amply borne out by the statements articulated in Parliament by the then Minister of Justice in presenting anti-corruption legislation in October 1994 – *"Apart from the financial implications, there is also the question of an overweening sense of cynicism, discerning discriminating thinking people in our country have expressed profound dissatisfaction with the extent to which corruption and bribery have taken root in our country. If this spirit of cynicism is not addressed there is definite danger to the stability and tranquillity of political and social institution in our country. That is why the Government was convinced that there should be a vigorous response to the issues of bribery and corruption."*

You, in October 1994, as the then Leader of the Opposition, in supporting such anti-corruption legislation in unambiguous terms stated in Parliament thus – *"In fact, the whole question of bribery and corruption raises many fundamental questions in a democratic society. We have all got to recognize that corruption is a cancer of democracy, as one of the biggest problems that we face, when elected representatives and officials of the Government, who are also public servants – when their decisions are effected not by matters of political consideration, but by pecuniary gains and financial gains"*.

Notwithstanding the foregoing facts, *which you were well and truly aware of*, you, yourself, casting aside the very same question of 'suitability', in the Government formed in December 2001, having appointed Mr. K.N. Choksy P.C., M.P. as Minister of Finance and Mr. R. Paskaralingam (*who had 'self exiled' himself from the country !*), as the Advisor to you as the Prime Minister, nevertheless ironically, you now castigatingly raise the questions of 'suitability' *vis-à-vis* the Secretary, Ministry of Defence ! I believe you so appointed Mr. K.N. Choksy P.C., M.P. and Mr. R. Paskaralingam to 'shield' and afford them refuge under political power and status, to thwart the enforcement of the law against them ! With conniving Ministers and some who held public office, were not the resultant consequences of such appointments, as set out below, disastrous ?

- i) The mooring and enactment of a perverse 'Amnesty' presented by Finance Minister K.N. Choksy P.C., M.P., in the 'guise' of a purported 'Tax Amnesty', which condoned anti-social activities, such as smuggling, distilling illicit brew, boot-legging, dealing in narcotics, drug peddling, human trafficking, money laundering, gun running and facilitated terrorism financing, etc., and which was denounced by the Supreme Court, as antithetic to the 'rule of law' and violative of the International Covenant on Civil and Political Rights, and that it had defrauded public revenue causing extensive loss to the State, estimated then at about Rs. 200,000,000,000; *compelling its repeal !*
- ii) As investigated and reported by COPE to Parliament, the following dubious major transactions, causing extensive loss to the State i.e the public, reckoned to be over Rs. 25,000,000,000, warranting action in terms of the Offences Against Public Property Act No. 12 of 1982 and the Bribery & Corruption laws;
 - a) Divestiture of Government Shareholding in Sri Lanka Insurance Corporation Ltd., by a Tender Board not approved by the Cabinet, to 2 parties (*one party unknown overseas party, not in existence previously*) not evaluated, selected and approved by the Cabinet through due process, that too on an 'indicative business valuation', without taking into reckoning the market valuations of valuable large extents of freehold property in the Colombo city and in outstation cities, and on the basis of surreptitiously adjusted Accounts impacting adversely on consideration to the Government; and which transaction stands non-concluded !

- b) Divestiture of Government Shareholding in Lanka Marine Services Ltd., without Cabinet Approval, to a pre-selected party, without competitive bids and without taking into reckoning a valuable large extent of Land in the Colombo city, on the basis of a 'business valuation', which too, had not taken into reckoning the unapproved grant of a 'monopoly' contrary to law and other concessions, which had been denied to the other parties, who sought qualification.
- c) Divestiture of Government Shareholding in one segment of the petroleum retail marketing sector, (LIOC), to a 'pre-selected' party, without any competitive 'bids', whatsoever, having been called for, on a dubious 'pricing formula' affording unjustifiable profits by way of Government subsidies, that too, with the right to enter other segments of the retail network, without taking into reckoning the cognisable valuation that had been placed on such a 'right'.

The *Daily Mirror* of 23.4.2007 and 28.4.2007 attributed statements to Mr. K.N. Choksy P.C. M.P., *opposing even before being made known*, the Government's main constituent party's proposals for discussion, *vis-à-vis* the national crisis ! *I have no recollection, whatsoever, of him having taken any such public stance on the LTTE's ISGA Proposals !* Though professing to be a constitutional expert, the *perverse 'Amnesty'* presented by him was determined by the Supreme Court to be unconstitutional, violative of fundamental rights and a fraud on the public, *resulting in its repeal !*

In his aforesaid statements, he has, *inter-alia*, stated that even the President ought to be subject to the laws of the country; *quite rightly so !* Therefore, in like manner, ought not Mr. K.N. Choksy P.C., M.P., himself, to be subject to the laws of country, *whereas did he not intercede, intriguingly with the 'aid' of another, and 'plea bargain' with the former President, not to pursue the aforesaid prosecution against him, on the 'make believe', that the proposed draft Constitution of 2000 would be supported, thereafter displaying active co-operation in that behalf: whereas you caused it to be 'put on fire' ?*

Inasmuch as you have questioned the 'suitability' of Mr. Gotabaya Rajapakse, to be Secretary, Ministry of Defence, and mooted his removal, ought you not therefore, to give credibility and credence to your such stance, even at this very belated stage, *moreso particularly as a Vice Chairman of the International Democrat Union*, expel forthwith Mr. K.N. Choksy P.C., M.P. from the UNP and remove him as an appointed Member of Parliament, and request the IGP and CID to strictly enforce the 'rule of law', against Mr. K.N. Choksy P.C., M.P. and Mr. R. Paskaralingam, *et al.* without any fear or favour on charges framed by the Hon. Attorney General made against them by the Special Presidential Commission, including on losses attempted to be caused and/or caused to the Government ? *If not, why ?*

I was indeed appalled at Mr. K.N. Choksy P.C., M.P. consistently and sustainedly opposing, *to the detriment of the interests of the country*, my actions in the very interests of the country as aforesaid, *even endeavouring to cause me harm*, whereas, as a Member of Parliament, ought he not have upheld the national and public interest uppermost ? *Nevertheless, how could one have expected 'patriotism', or chastised for 'traitorousness' ?*

Yours truly,



Nihal Sri Ameresekere