

IN THE SUPREME COURT OF THE
DEMOCRATIC SOCIALIST REPUBLIC OF SRI LANKA

AFFIDAVIT FOR SC (FR) CASE NO. 404/2009
AS DIRECTED BY YOUR LORDSHIPS' COURT

In the matter of an Application
under Article 126, read with
Articles 17, 3, 4, Chapters III
and VI of the Constitution of
the Democratic Socialist
Republic of Sri Lanka

Nihal Sri Ameresekere
167/4, Vipulasena Mawatha
Colombo 10.

PETITIONER

S.C. (FR) No. 404/2009

Vs

1. Ceylon Petroleum
Corporation
109, Rotunda Tower
Galle Road,
Colombo 3.
2. Sumith Abeysinghe
Secretary to the Treasury
The Secretariat
Colombo 1.
3. Standard Chartered
Bank
Sri Lanka Branch
37 York Street,
Colombo 1.

Head Office at 1
Basinghall Avenue
London EC2V 5DD, U.K.
4. Citibank
Sri Lanka Branch
65C, Dharmapala
Mawatha
Colombo 7.

Head Office at
Citigroup Center
153, East 53rd Street,
16/F, Zone 19
New York, NY 10022,
U.S.A.

5. Deutsche Bank AG
Sri Lanka Branch
86 Galle Road
Colombo 3.

Head Office at
Theodor-Heuss-Allee
70 60486, Frankfurt,
Germany.

6. Commercial Bank of
Ceylon PLC
Commercial House
21, Bristol Street
Colombo 1.

7. People's Bank
75, Sir Chittampalam
A. Gardiner Mawatha,
Colombo 2.

8. Mr. E.A.
Hettiarachchi
Controller of
Exchange
Exchange Control
Department
Central Bank of Sri
Lanka
7th Floor, 30
Janadhipathi
Mawatha
Colombo 1

9. Hon. Attorney
General
Attorney General's
Department
Colombo 12.

RESPONDENTS

TO: HIS LORDSHIP THE CHIEF JUSTICE AND THEIR LORDSHIPS & LADYSHIPS THE OTHER HONOURABLE JUDGES OF THE SUPREME COURT OF THE DEMOCRATIC SOCIALIST REPUBLIC OF SRI LANKA

I Kimarli Fernando holder of National Identity Card No.647451470V of No.14/2 Ward Place Colombo 07 do hereby solemnly, sincerely and truly affirm and declare as follows:

1. I tender this Affidavit in response to the Notice issued on the direction of Your Lordships Court dated 20th July 2009. under the hand of the Registrar of Your Lordships' Court requiring me to disclose information within my personal knowledge on matters set out in Petition in SC (FR) No. 404/2009.
2. I affirm to the facts herein contained of my own personal knowledge and belief and from documents available with me.
3. a) I am currently employed as the Chief Executive Officer and Director of Pan Asia Bank, located at 450 Galle Road Colombo 3.
b) I serve as a Director Sri Lanka Bankers Association (SLBA) appointed by the Commercial Banks
c) I serve as a Director of several Companies
d) I am a holder of LL.B (Hons) Degree from the London School of Economics, UK and a Barrister-at-Law from Lincoln Inn, UK. Attorney-at-Law, Sri Lanka, Child Psychology Diploma, Sri Lanka and Post Graduate Certificate Course in Human Resources Management from the Post Graduate Institution of Management, Sri Lanka.
e) I am the author of "Company Law of Sri Lanka" 2nd Edition, a reference book for students and practitioners. I was also responsible for the publication of the book "Barrier Free Access" for Standard Chartered Bank, a first in Sri Lanka and a guide to comply with the law and spirit of inclusion of those with disabilities in the work place.
4. a) I was in employment of Standard Chartered Bank in Sri Lanka (SCB) from July 01, 2003 to February 2008, as the Head of Client Relationship responsible for all corporate relationship including lending to corporate, public and the multi national sectors.
b) Under this responsibility the Ceylon Petroleum Corporation (CPC) also fell within my purview.

- c) As the Head of this function, my prime responsibilities included marketing of various banking facilities to optimize banks revenue, while managing risks and people talent.
 - d) I was also the Head of the Banks Diversity and Inclusion in Sri Lanka - a key initiative in the Standard Chartered Group in January 2007.
5. a) The SCB Sri Lanka and CPC relationship has been very cordial and the bank has been providing trade facilities for the importation of crude oil.
- b) The CPC relationship was lucrative in terms of earnings to the bank and they have been meeting their commitments in a timely manner.
- c) However, these facilities were within their day-to-day requirements and repayment capacity and capability of CPC, and structured after a thorough due diligence.
6. a) SCB Sri Lanka and Group Credit was however concerned that the bank did not have any guarantee or even a letter of comfort from the government of Sri Lanka for the facilities extended by SCB.
- b) The SCB was of the opinion that CPC had a poor cash flow and the internal risk rating was poor due to weak financials.
- c) I recall that the credit committee of SCB had declined our request for increased facilities to accommodate import of oil and other working capital facilities, as they perceived CPC as a high risk, and profits that the bank made from CPC was not adequately rewarding as CPC was willing to pay only thin margins due to competition from other banks.
7. a) It was in the latter part of 2006, the Standard Chartered Banks product teams based in Singapore, India and Dubai suggested marketing oil hedging instruments to CPC.
- b) As the local team was not, initially, aware of the details of the oil hedge product, several persons from Standard Chartered Banks overseas office visited Sri Lanka to solicit the support of the local management team and the management of CPC to enter into oil hedging transactions.
8. a) Initially, the explanations provided were less complex and were short tenors. I saw that the product team's focus was more on the earning opportunity for Standard Chartered Bank in Sri Lanka and Globally.

- b) The SCB local office projected a commission of approximately one billion Rupees in Sri Lanka, and looked at commissions to be booked at one billion rupees overseas.
 - c) I noticed that the CEO Mr. Clive Haswell was very adamant that the oil hedging deals were concluded as soon as possible given the commissions for the bank. This was mainly because the banks earnings are directly linked to the CEO and the other top management's bonus.
9. I was aware that the CEO Mr. Clive Haswell did not have prior experience of working in risk management, corporate or as a CEO and explained to him at least the following as I recall.
- a) The oil hedging transaction can expose CPC to unbearable losses if the oil prices decline because there was no down side protection for CPC.
 - b) I explained that CPC did not have the understanding and expertise to consider the risks involved.
 - c) I highlighted that CPC and Sri Lanka can be exposed to severe foreign exchange exposure and repayment will need capital outflow from the country, which requires the approvals of the Central Bank of Sri Lanka as per exchange control guidelines.
 - d) I explained that no sensible private sector company will enter into such risky oil hedging instrument which appeared to me one sided and that to me the transactions appeared extremely speculative.
10. a) I recall my discussions with Mr. Asantha De Mel the former Chairman of CPC at his office on the 24th of October 2007 and he informed me that he has no appetite to lose money and he had no interest on one year structures and looked for short tenors.
- b) He also said that he expected the banks to guide him daily to ensure that the transaction has value and profits.
I attach hereto in this connection four e-mails all dated 26th October 2007 compendiously **marked X 1** and two e-mails dated 21st November 2007 and 22nd November 2007 also compendiously **marked X 2**
11. a) I also noted that CPC had refused to sign the ISDA, which is the basic document for the agreement.
- b) In fact the first oil hedging transaction between CPC and SCB was concluded with no ISDA Agreement in place.

- c) I was told that CPC had delayed to get Attorney General's approvals.
 - d) However, SCB suggested that CPC obtain external legal firm assistance.
 - e) There was no subsequent Attorney General approval for ratification of the documentation.
 - f) However, CEO Clive Haswell's views were that the risks were worth it given the commissions exceeding millions of dollars to the bank.
12. a) I was also aware that Standard Chartered Bank was preparing to make presentation to the Central Bank of Bangladesh on these oil hedging products, which they subsequently rejected even after a much attractive proposal was made to them.
- b) Mr. Chanaka Peiris from Standard Chartered Bank Global Markets in Sri Lanka was to visit Bangladesh for this purpose.
13. a) I am a corporate banker who has always believed that banking business should be done under the highest ethical environment meeting our local and international regulatory and compliance standards.
- b) It was in this context that I opposed the oil hedging transactions and signed approved credit applications on the terms that there should be no mis-selling and that there should be adequate disclosure.
- c) I made a separate note on these needs. I recall this led to the Senior Credit Officer, Mr. Robert Green, based in Singapore calling on my phone one evening and asking me why I was getting worried.
14. a) I was under severe pressure by the CEO Mr. Clive Haswell to sign the credit application but I made it mandatory that the CEO and Mr. Rukshan Dias Head Global Markets, who was strongly supporting the requirements of the CEO to sign the credit application.
- b) I also made it a condition that the CEO takes personal responsibility that the regulators and the government understand the risks versus the limited benefits that the bank could offer.

15. a) The CEO Clive Haswell was of the very strong view that oil prices will not fall during a 12 month period.
 - b) He also strongly believed that if State Banks were involved, SCB's interest would be safeguarded.
 - c) SCB decided to approach Bank of Ceylon and Peoples Bank. Mr. Rukshan Dias the Head of Global Markets during this period said that he could convince and get Peoples Bank on board as he had prior working relationships with Mr. Wasantha Kumar and Kapila Ariyaratne of Peoples Bank.
 - d) The CEO said that if the State Banks are hooked to the transaction, the Central Bank of Sri Lanka would not find State Banks having violated the guidelines.
16. a) From our internal meetings and discussions at SCB, I gathered that the CPC Chairman, initially was not keen to proceed with oil hedging.
 - b) The CEO Mr. Clive Haswell and Head Global Markets Mr. Rukshan Dias were very keen to get a deal closed fast.
 - c) With a view to convincing me and some of the senior staff in Client Relationships, a training session was arranged for us by an Indian gentleman from SCB India.
 - d) At this meeting, I highlighted that CPC's financials are not sound and in fact we are having issues even getting approvals for opening of LC's. and that the client being a corporation is not sophisticated enough to understand complicated products, and it will be a lengthy process to obtain the necessary clearance from the CPC Board, Attorney General, CBSL, Minister of Petroleum, Cabinet and the Finance Minister who was then the President.
 - e) The CEO, Mr. Clive Haswell got very angry and annoyed with my views. He thought, that I was not allowing the bank to make more money.
 - f) The CEO Mr. Clive Haswell said I should not try to be a product expert and should just support the process. He said we will all get rewarded if I support the transaction.
 - g) SCB was moving towards making LKR 1 billion from CPC and this would have been the highest revenue recorded from a customer in Sri Lanka.

- h) However, I stood by my values and principles and told the CEO, MR. Clive Haswel that the bank could lose our license, if CBSL eventually finds out. In addition, there was a reputation risk and a risk of us losing our jobs.
 - i) The CEO, Mr. Clive Haswel insisted that these transactions will be done with or without me.
- 17.
- a) Then there was a strategy agreed by the CEO, Mr. Clive Haswell and Head Global Markets, Mr. Rukshan Dias to somehow get the Chairman of CPC convinced.
 - b) CPC Chairman's personal account was with SCB and I recall the CEO requesting me to ignore a CBSL rule and allow exchange for the Chairman's trips. I also recall one instance when the CEO, Mr. Clive Haswell came with the paper and got my signature.
 - c) During this time Mr. Rukshan Dias became very close to Mr. Clive Haswell as he obliged and did what ever he desired.
 - d) The CEO then successfully recruited the daughter of the CPC Chairman, Asantha de Mel and placed her under Head Global Markets, Mr. Rukshan Dias himself.
 - e) Expecting CBSL to be a hindrance, SCB hired the son of a Senior Official of CBSL and also placed him under the Head Global Markets Mr. Rukshan Dias, normally a restricted area for the bank.
 - f) Both these recruitments violated the banks internal requirements to first place an internal job watch and then advertise in the local press, giving equal opportunity to all candidates. In fact neither was done.
 - g) From internal discussions I became aware that the CPC Chairman was entertained by SCB Senior Officials.
- 18.
- I recall that on one of the trips to Singapore, Head Global Markets, Mr. Rukshan Dias was accompanying CPC Chairman, Mr. Ashantha De Mel and I was requested to join but I declined. Instead, Head Global Markets, Mr. Rukshan Dias and Mr. Dushan Cassie Chetty, relationship manager accompanied him.
- 19.
- a) After sometime the CEO, Mr. Clive Haswell informed me that they have successfully managed the Chairman CPC.

- b) However, they still needed my signature to proceed. At one stage a paper was submitted for my signature. I declined to sign the paper since we would be in violation of the CBSL guidelines and because of CPC's weak financials and moreover CPC had also refused to sign the ISDA, which is a basic documentary requirement.
- c) At the management meeting I was pulled up and ridiculed by the CEO, Mr. Clive Haswell, who said I am dragging my feet and blocking very remunerative deal with CPC. He indicated that I am ignorant of the oil hedging product.
20. a) CEO Mr. Clive Haswell realized that my position of not supporting the oil hedging transaction would not allow the bank to earn several millions dollars of profits.
- b) However, my reasons for not supporting was because I felt it was mis-selling coupled with several breaches of the Central Bank guidelines.
- 21.a) As a SCB employee I was also bound by the SCB's 'Group Code of Conduct', copy of which, I attach hereto **marked X 3**.
- b) SCB's 'Group Code of Conduct' stipulated my responsibilities as an SCB employee to include *inter-alia* the following :
- comply with local laws
 - an employee is responsible for compliance and the Bank is a guest in each country and can be asked to leave
 - do not be afraid to speak up or compromise compliance for revenue
 - i.e. 'taking shortcuts', for example, to achieve revenue targets may expose the Bank to risk. The penalty would be severe for anyone doing this.*
 - openness and transparency must be our watchwords, when dealing with our regulators
 - ensure that products are suitable for customers
 - i.e. the basic rule we must not sell an unsuitable product to a customer, that is a product that does not meet their needs. Doing so is mis-selling and may expose the Bank to regulatory penalties, reputational damage and legal action by customers .*
 - advertise products fairly and truthfully
 - reject bribery and corruption
 - i.e. Bank opposes all forms of bribery and corruption*
 - *you should not offer or provide any kind of unofficial or unorthodox payment or benefit to government officials and others with decision-making power over the Bank's*

affairs or offer to pay an employee of a customer or a potential customer for their business.

- identify your customer and know your customer
- fraud involves obtaining a benefit (often financial) by deception
- Bank relies on each one to make a Judgment of what is right and proper in any particular situation

22. I regret to have to say that my values and the CEO Mr. Clive Haswell's expectation unfortunately were not in the same direction.

The Affirmant herein above mentioned having read over and understood the contents hereof, and having admitted the correctness thereof, affirmed to and signed at Colombo on this 24th day of July 2009

Sgd

BEFORE ME

Sgd

JUSTICE OF PEACE

True Copy

V. W. Kularetna Associates

Attorneys at Law for Party Noticed

25 AUG 2009

AFFIDAVIT

IN THE SUPREME COURT OF THE DEMOCRATIC SOCIALIST REPUBLIC OF SRI LANKA

*In the matter of an application
under Article 126 read with Articles
17, 3, 4, Chapters III and VI of the
Constitution of the Democratic
Socialist Republic of Sri Lanka*

Nihal Sri Amarasekera
167/4, Vipulasena Mawatha
Colombo 10

Case No. SC [FR] 404/2009

Petitioner

-Vs-

1. Ceylon Petroleum Corporation
109, Rotunda Tower
Galle Road
Colombo 3
2. Sumith Abeysinghe
Secretary to the Treasury
The Secretariat
Colombo 1
3. Standard Chartered Bank
Sri Lanka Branch
37, York Street
Colombo 1

Head Office at 1, Basinghall
Avenue, London EC2V 5DD,
U.K.
4. Citibank
Sri Lanka Branch
65C, Dharmapala Mawatha
Colombo 7

Head Office at Citigroup
Center, 153, East 53rd Street,
16/F, Zone 19,
New York, NY 10022, U.S.A.
5. Deutsche Bank AG
Sri Lanka Branch
86, Galle Road, Colombo 3

Head Office at Theodor-
Heuss-Allee 70, 60486,
Frankfurt, Germany

6. Commercial Bank of Ceylon
PLC
Commercial House
21, Bristol Street, Colombo 1
7. People's Bank
75, Sir Chittampalam A
Gardiner Mawatha,
Colombo 2
8. Mr. E A Hettiarachchi
Controller of Exchange
Exchange Control
Department
Central Bank of Sri Lanka
7th Floor, 30, Janadhipathi
Mawatha, Colombo 1
9. Hon. Attorney General
Attorney general's
Department
Colombo 12

Respondents

TO: HIS LORDSHIP THE CHIEF JUSTICE AND THE OTHER HONOURABLE JUDGES OF THE
SUPREME COURT OF THE DEMOCRATIC SOCIALIST REPUBLIC OF SRI LANKA

I, Ashantha L F de Mel of 1/9, Parakumba Place, Colombo 6 being a Christian do hereby
make oath and state as follows:

1. I am the Deponent abovenamed and depose to the matters herein contained
from my own personal knowledge. I make this affidavit in compliance with the
Order of the Honourable Supreme Court dated 14th July 2009 and Notice dated
20th July 2009 received by me from the Supreme Court.
2. I state that the Petitioner is seeking to contend [as per the averments in the
Petition], *inter alia*, that
 - (a) the relevant hedging transactions were "deals in the nature of
'speculating' and/or 'gambling' and/or 'betting' and/or 'wagering' "
and are therefore unlawful and illegal activities;
 - (b) the 1st Respondent was not authorised or empowered to enter into such
arrangements;

- (c) the 3rd Respondent has induced and/or enticed and/or compromised public officers into entering into 'questionable deals', thereby perpetrated a fraud on the 1st Respondent – it is implicit from the averments in the Petitioner that I am one of the public officers [as the then Chairman of the 1st Respondent] who was allegedly induced/enticed/compromised.
3. I state further that it is implicit from the averments in the Petition that the Petitioner is seeking to make out, *inter alia*, that
- (a) I did not have the proper authority to enter into the relevant transactions on behalf of the 1st Respondent;
- (b) that I accepted inducement/enticement from the Banks to enter into the relevant transactions on behalf of the 1st Respondent, thereby implying that I accepted bribes and/or otherwise implicating me in acts of bribery and corruption.
4. I state at the onset in this connection that
- (a) I acted at all times material within the confines of the authority vested in me as Chairman of the 1st Respondent;
- (b) I acted at all times material in accordance and compliance with the approvals granted by the Cabinet of Ministers and the Board of Directors of the 1st Respondent Corporation;
- (c) at all times material the Board of Directors of the 1st Respondent, the Central Bank [through its observer on the board of the 1st Respondent], and the Strategic Enterprise Management Agency [through its observer on the board of the 1st Respondent] were kept informed of details pertaining to the relevant hedging transactions;
- (d) I acted at all times material in the best interests of the 1st Respondent Corporation and the Country;
- (e) I never accepted any inducement and/or enticement and/or other form of gratification from the banks concerned or from any other person/organisation;
- (f) I have not contravened any provision of law in respect of the transactions entered into by the 1st Respondent under my Chairmanship;
- (g) I vehemently deny any involvement in any act or acts of bribery, corruption or other illegal activity.
5. Without prejudice to the foregoing, I shall hereinafter proceed to provide information relating to the hedging arrangements within my personal knowledge as directed by Your Lordships' Court.

Background to the hedging arrangements

6. As far back as July 2006, the former Chairman of the 1st Respondent had been requested by Dr. Thenuwara, Director of Economic Research of the Central Bank, to participate at a presentation by Deutsche Bank on Crude Oil Hedging mechanisms.

A true copy of a letter in this connection dated 31st July 2006 is produced herewith marked as X1.

7. This was followed by a further letter to the then chairman of the 1st Respondent [following a discussion between the Chairman and the Governor of the Central Bank] confirming that it would be useful if a mechanism was to be developed to hedge against high oil prices. A paper developed by the Central Bank was also attached to this letter, together with a specimen letter calling for quotations for different hedge instruments.

True copies of the said letter dated 30th August 2006 together with the annexures thereto are produced herewith marked as X2, X2(a) and X2(b).

8. The said paper developed by the Central Bank [marked as X2(a)] discusses the basic hedging mechanisms available for consideration. The paper refers to 3 frequently used alternatives [the examples given below are included for the benefit of Your Lordships' Court].

- (i) **Crude Oil Swap** – under this mechanism, a fixed price will be agreed upon [between the CPC and the relevant financial institution]. If the market price goes above the fixed price, the bank will pay CPC the difference, while if the market price fell below the fixed price, CPC would have to pay the difference to the bank. The instrument required the payment of a premium by CPC [similar to an insurance premium].
- (ii) **Crude Oil Cap** – Under this mechanism a 'strike' price or 'cap' is agreed upon. If the market price rises above the cap, the bank would pay the difference to CPC. However, if the market price falls below the cap, CPC can opt to purchase from the market at the market price without paying the difference to the bank. The mechanism however requires the payment of a premium for every barrel under the arrangement.
- (iii) **Zero-Cost Collar** – Under this mechanism a maximum strike price and a minimum floor price are agreed upon. No premium is payable [hence the term 'zero-cost']. If the market price rises above the strike price, the bank pays the difference to CPC. If the market price hovers between the strike price and the floor price, neither party makes any payment to the other. If the market price falls below the floor price, CPC has to pay the difference to the bank.

9. In X2(a), the Central Bank had analysed potential gains to CPC under the above alternative mechanisms based on past and forecasted oil prices, and concluded that the best option for CPC would be the Zero-Cost Collar option. In fact at paragraph 6.2 [under the heading 'Deciding on suitable hedging instrument'] it has been stated as follows:

*"The main objective of Sri Lanka entering the derivative market is to avoid potential price instability arising from high volatility in international oil prices. The ZC collar will provide protection from rise in oil price beyond the agreed maximum strike price without payment of premia. There will be losses only if price falls below the minimum floor price. **Therefore the best option for Sri Lanka at the initial stage will be ZC collar hedging. ...**" [emphasis added]*

10. Consequently, the Governor of the Central Bank, Mr. Ajith Nivard Cabraal, made a presentation to the Cabinet of Ministers on the 6th of September 2006 on hedging under the topic 'Maintaining Stability in a Volatile Global Oil Market', which was followed by a discussion. Consequently the Cabinet decided that a study group should be formed consisting, *inter alia*, of officials from the Central Bank, Ministry of Finance and Planning and Ministry of Petroleum and Petroleum Resources Development to study the subject further and report to the Cabinet so that a decision could be taken.

A true copy of a document in this connection confirming the said Cabinet Decision is produced herewith marked as **X3**.

I also produce herewith a true copy of a letter dated 20th September 2006 addressed to the Secretary of the Ministry of Petroleum and Petroleum Resources Development by the Secretary to the Treasury, marked as **X4**.

11. Consequently, a study group was appointed as directed by the Cabinet to study the subject and report back to the Cabinet.

A true copy of a letter dated 19th October in this connection addressed to members of the study group by the Secretary to the Treasury is produced herewith marked as **X5**.

12. Thereafter the Study Group appointed as aforesaid submitted their report to the Secretary of the Treasury on or about the 16th of November 2006.

True copies of the covering letter in this connection dated 16th November 2006 and the said report are produced herewith marked as **X6** and **X7** respectively.

13. According to the Report of the Study Group, the following recommendations were made:

- (i) CPC to hedge purchase of petroleum products, both crude oil and refined product, in the international market.
- (ii) Use Zero-cost Collar as the hedging instrument with the upper bound based on market developments.
- (iii) Commence hedging with smaller quantities for a shorter period and gradually increase the quantity and duration.

- (iv) Grant authority to CPC to call for quotations for oil hedging, decide on future prices and purchase hedging instruments from reputed banks.
- (v) Grant authority to CPC to change the instrument based on the developments in the market.

14. Consequently, the 1st Respondent called for quotations from several banks based on the zero-cost collar mechanism for hedging its oil purchases.

I produce herewith in this connection true copies of letters calling for quotes from banks, marked as **X8(a)**, **X8(b)**, **X8(c)**, **X8(d)** and **X8(e)**.

A true copy of a letter dated 11th December 2006 addressed by me to the Secretary to the Treasury notifying the quotations received, is annexed hereto marked as **X9**.

15. Thereafter, in or around January 2007, I suggested to the Hon. Minister of Petroleum and Petroleum Resources Development that an expert in the oil hedging field be hired since the hedging mechanism required expertise and hands-on experience.

A true copy of a letter dated 9th January 2007 addressed in this connection by me to the Hon. Minister is produced herewith marked as **X10**.

16. I state that since there was some delay in obtaining the necessary approvals and proceeding with the recommended hedging arrangements, the Governor of the Central Bank and I exchanged a series of correspondence, wherein the Governor impressed upon me the need to urgently enter into suitable hedging arrangements.

True copies of letters dated 10th January 2007 addressed by the Governor of the Central Bank to me, 11th January 2007 addressed to the Governor by me, 16th January 2007 addressed by the Governor to me and 23rd January 2007 addressed by the Central Bank to me in this connection are produced herewith marked as **X11(a)**, **X11(b)**, **X11(c)** and **X11(d)** respectively.

17. Consequently the Hon. Minister of Petroleum and Petroleum Resources Development submitted a Memorandum to the Cabinet dated 13th January 2007 seeking the approval of the Cabinet to implement the above recommendations of the Study Group.

A true copy of the said Cabinet Memorandum is produced herewith marked as **X12**.

I also produce herewith a true copy of a document dated 31st January 2007 issued by Hon. Mahinda Rajapakse, in his capacity as the Minister of Finance and Planning stating that he has no objection to the above proposal, marked as **X13**.

18. I state the Cabinet of Ministers consequently, on or about the 17th of January 2007, **approved the proposals and directed that the same be implemented without delay.**

A true copy of the Cabinet Approval in this connection is produce herewith marked as X14.

19. Thus and otherwise I state that the Cabinet of Ministers, based on the recommendations of the study group, unambiguously granted approval for the CPC to,
- (i) hedge purchase of petroleum products, both crude oil and refined product, in the international market;
 - (ii) use Zero-cost Collar as the hedging instrument with the upper bound based on market developments;
 - (iii) commence hedging with smaller quantities for a shorter period and gradually increase the quantity and duration;
 - (iv) to call for quotations for oil hedging, decide on future prices and purchase hedging instruments from reputed banks;
 - (v) change the instrument based on the developments in the market;
20. It is therefore manifestly clear that the decision to enter into hedging arrangements based on the zero-cost collar mechanism was a decision of the Cabinet of Ministers based on recommendations of the Central Bank and a specially appointed study group. What must also be noted is that at the time the primary concern was the increasing oil prices, hence the recommendation and direction that the hedging instrument be upper bounded based on market developments.
21. I state that consequently, the board of directors of the 1st Respondent discussed the proposed arrangements at length and approved the 1st Respondent entering into hedging arrangements with Citibank, Standard Chartered Bank, Deutsche Bank, Peoples Bank and Commercial Bank. In this connection I state as follows:
- (a) All master hedging agreements [ISDA agreements] entered into with banks were cleared with M/s Nithya Partners, a leading firm of commercial lawyers, prior to execution.

True copies of correspondence in this connection exchanged between the 1st Respondent, M/s Nithya Partners and the relevant banks is produce herewith compendiously marked as X15.
 - (b) A representative from the Central Bank sat in on all board meetings and was kept abreast of all developments pertaining to the hedging arrangements.
 - (c) Mr. P L K Karunaratne, DGM-Finance of the 1st Respondent, was the 1st Respondent's expert on financial matters, and all hedging arrangements were first cleared with him. In fact, I placed my signature on the agreements only after the said DGM-Finance had first cleared the document and signed same.
 - (d) The board of directors of the 1st Respondent authorised me and the said DGM-Finance to sign all documents on behalf of the 2nd Respondent.

I produce herewith in this connection true copies of minutes of the meetings of the board of directors of the 1st Respondent held during February and March 2007 marked as **X16** and **X17**.

I also produce herewith true copies of certified extracts of board resolutions authorising the 1st Respondent to enter into the relevant hedging agreements and for me and the said Mr. Karunaratne to sign the agreements on behalf of the 1st Respondent, marked as **X18**, **X19** and **X20**.

22. Thus and otherwise I state that at all times material I acted within the scope of the authority granted to me, with the approval and sanction of the board of directors and in the best interests of the 1st Respondent. Furthermore, all hedging transactions entered into by the 1st Respondent were within the scope of the approval granted by the Cabinet of Ministers referred to herein above.

23. I state although much has been said about the losses being suffered on the hedging transactions, what must be borne in mind is that the said transactions had been in operation for over 18 months. **Until August/September 2008 the 1st Respondent was gaining on the hedging transactions due to the high world oil prices.**

24. Hedging transactions were entered into to protect against a steep rise in oil prices. It could not have been anticipated at the time that the prices of oil would crash so drastically. In this connection I state that even financial analysts the Goldman Sachs Group, the foremost authority on oil price forecasts, **in both August and September 2008 maintained that according to their forecasts the price of oil would be USD 149 per barrel by year end 2008.**

I produce herewith the said forecasts of the Goldman Sachs Group for August and September 2008, marked as **X21** and **X22** respectively.

25. I state that even in November 2008, when the Cabinet was considering the unexpected and unanticipated situation that had arisen with regard to the hedging arrangements pursuant to a crash in global oil prices, I was appointed to the 'Hedging Risk Management Committee'. The terms of reference for the said committee were, *inter alia*, to negotiate with hedge providers to restructure the hedge positions and evaluate the risk of active hedge contracts in relation to price forecasts.

I produce herewith true copies of draft cabinet decisions in this regard marked as **X23(a)** and **X23(b)** respectively together with Cabinet Memorandum dated 17th November 2008 and the terms of reference for the Hedging Risk Management Committee marked as **X24(a)** and **X24(b)**.

26. I state in hindsight, the zero-cost collar option may not have been the best option given the present scenario. While the 'crude oil cap' option, where for the payment of a premium no losses would be incurred on the downside may have served the 1st Respondent better given the present situation, such option was considered to be not viable given the 1st Respondent's cash flow situation [the premium was payable upfront]. **It was in this background that the Central Bank and the study group recommended the zero-cost collar option.**

27. I state that **even Lanka IOC**, the other player in the market **entered into similar if not identical hedging agreements with hedge providers. Therefore Lanka IOC, which is an independent private entity, also took similar commercial decisions to hedge the risk of high oil prices.** This demonstrates that the decisions taken by the 1st Respondent in respect of the hedging agreements were commercially reasonable given the then market forecasts for oil.

I produce herewith in this connection a true copy of a document dated 10th July 2008 issued by Citibank to Lanka IOC PLC, marked as **X25**.

28. I state that the Central Bank in its Annual Reports for 2006 and 2007 has expressly noted the achievements of the 1st Respondent including the entering into of the hedging agreements. In the said report the Central Bank has clearly referred to the number of agreements entered into and the risk mitigating income earned by the 1st Respondent from such agreements during the year.

I produce herewith true copies of the relevant pages from the Central Bank Annual Reports for 2006 and 2007, marked as **X26(a)** and **X26(b)**.

29. I state that as per the averments in the Petition, the allegations of inducement/enticement against me are based on the contention that the banks, more particularly the 3rd Respondent Standard Chartered Bank, paid my air travel costs [paragraph 10 of the Petition]. In this connection I state as follows:

(a) In order for us to determine what hedging options were appropriate for the 1st Respondent, it was necessary for us to obtain a proper understanding of the nature of derivatives and how hedging transactions operated in the international market.

(b) For this purpose, it became necessary for us to participate in training/familiarisation programmes arranged by the relevant banks and also to meet with the relevant officials of the banks at their offices.

(c) I state in this connection that in my capacity as chairman of the 1st Respondent, I was sent overseas as per the details given below:

(i) Two trips to Singapore and once to Dubai – arranged by Standard Chartered Bank to meet with its officials at its regional offices.

(ii) One trip to London arranged by Citibank for a training programme on derivatives and an informative visit to the London International Commodities Exchange

(iii) One trip to New York and Houston arranged by Citibank for a familiarisation visit to an oil rig [in Houston] and a visit to the New York Mercantile Exchange

(iv) One trip to Singapore arranged by Deutsche Bank to its regional offices to familiarise myself with the derivatives product

(v) One trip to Singapore arranged by People's Bank to meet with officials of Goldman Sachs.

- (d) The banks concerned sponsored only my airfare and hotel accommodation in connection with the above trips and all trips were of short duration – most only lasting one or two days.
- (e) All the aforesaid foreign trips were on official business in connection with my duties as chairman of the 1st Respondent.
- (f) In addition to the above mentioned trips, the Indian Regional Office of Standard Chartered Bank extended an invitation to me to participate at a CEO's conference held in Goa, India. This was a client event named "Incredible India 60". Participants' families were also hosted by the Indian regional office of the Bank and consequently my wife and daughter also accompanied me. We travelled on economy class to Goa and back. Over 100 other CEOs from the region together with their families also participated at the event.

30. In all of the circumstances I deny that I was part of any 'unprofessional' inducement and/or enticement as has been alleged by the Petitioner. At no stage have I accepted any gratification, inducement, enticement or bribe in the performance of my public duties, neither has any allegation or stricture been cast against me in that regard.

31. I state that at various times insinuations have been made to the effect that I personally gained from the hedging transactions. Aspersions were also cast upon my daughter. I state that my daughter, Stephanie de Mel followed **an internship programme** with Standard Charters Bank for just over one and a half months in January/February 2008 [i.e. well after the hedging contracts were entered into] as part of her University requirement. There was nothing irregular or underhand about such internship, and such internships are offered by most banks and companies to University students.

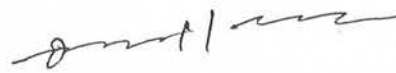
I produce herewith in this connection two letters issued by Standard Chartered Bank to my daughter, marked as **X27(a)** and **X27(b)** respectively.

32. In all of the circumstances I state that

- (a) I acted at all times with the approval of the Cabinet of Ministers and the Board of Directors of the 1st Respondent;
- (b) I consulted and obtained the advise of experts and those experienced in the subject when taking all decisions;
- (c) I kept the board of directors of the 1st Respondent informed at all times of the position in respect of the hedging agreements;
- (d) I acted at all times in the best interests of the 1st Respondent Corporation;
- (e) I acted at all times in accordance with good business practice, took all precautions and followed all requisite protocols in relation to the hedging agreements entered into by the 1st Respondent.

33. I reserve the right with the permission of Your Lordships' Court to tender such further affidavits/information if so required.

The contents of the foregoing affidavit having been read and understood by the deponent abovenamed sworn to and signed at Colombo on this 21st day of August 2009



Before me

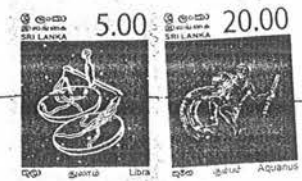


Justice of the Peace

K. JAYASIRI

Justice of the Peace
(All Island)

Regd. No. 03/11/WP/AL/1273
115 Mulfordorp Street
COLOMBO-12



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Mallawarachchi Associates
Attorneys - at - Law for Plaintiff
Defendant / Petitioner / Respondent

IN THE SUPREME COURT
OF THE DEMOCRATIC SOCIALIST REPUBLIC OF SRI LANKA

In the matter of an Application under Article 126 read with Articles 17, 3,4 Chapters III and IV of the Constitution of the Democratic Socialist Republic of Sri Lanka.

Nihal Sri Amerasekera,
167/4, Vipulasena Mawatha,
Colombo 10.

S.C. [FR] Application No. 404/2009

PETITIONER

-Vs-

1. Ceylon Petroleum Corporation,
109, Rotunda Tower,
Galle Road, Colombo 3.

2. Sumith Abeysinghe,
Secretary to the Treasury,
The Secretariat,
Colombo 1.

3. Standard Chartered Bank,
Sri Lanka Branch,
37, York Street, Colombo 1.

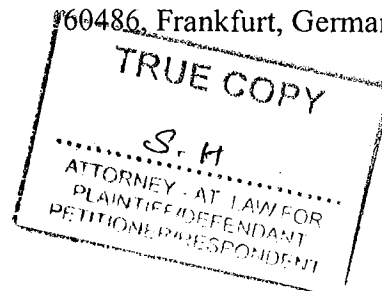
Head Office at 1 Basinghall Avenue,
London EC2V 5DD,UK.

4. Citibank,
Sri Lanka Branch,
65C, Dharmapala Mawatha,
Colombo 7.

Head Office at Citigroup Center,
153, East 53rd Street, 16/F Zone 19
New York, NY 10022, USA.

5. Deutsche Bank AG,
Sri Lanka Branch,
86, Galle Road, Colombo 3.

Head Office at Theodor-Heuss-Allee- 70
60486, Frankfurt, Germany.



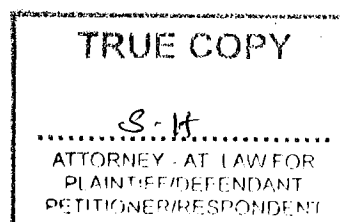
6. Commercial Bank of Ceylon PLC,
Commercial House,
21, Bristol Street, Colombo 1.
7. People's Bank,
75, Sir Chittampalam A.Gardiner Mawatha,
Colombo 2.
8. Mr.E.A.Hettiarachchi,
Controller of Exchange,
Exchange Control Department,
Central Bank of Sri Lanka,
7th Floor, 30 Janadhipathi Mawatha,
Colombo 1.
9. Hon. Attorney General,
Attorney-General's Department,
Colombo 12.

RESPONDENTS

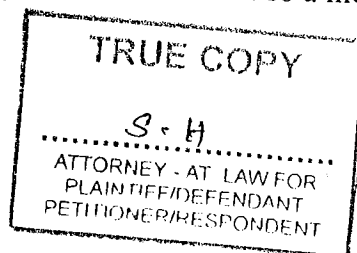
TO: HIS LORDSHIP THE CHIEF JUSTICE AND THEIR LORDSHIPS THE
OTHER JUDGES OF THE SUPREME COURT OF THE DEMOCRATIC
SOCIALIST REPUBLIC OF SRI LANKA.

I, Peduru Merenna Lalith Kierthie Karunanratne of 380/90, Bullers Lane, Colombo 7,
being Buddhist, do hereby solemnly, sincerely and truly declare and affirm as follows:

1. I am the affirmant abovenamed.
2. I affirm to the contents of this affidavit from my personal knowledge and
from documents, records and correspondence in my possession.
3. I state that I am an Associate Member of the Institute of Chartered
Accountants of Sri Lanka and hold a Master's degree in Business
Administration (MBA) from the Postgraduate Institute of Management of
the University of Sri Jayewardenepura. I have held several senior
managerial positions in the private sector including Eswaran Brothers,
Uni-Walker Packaging Ltd., and Samuel Sons & Co, Ltd. The certificates
and letters of commendation are consolidated and annexed hereto marked
X-1.



4. I joined the Ceylon Petroleum Corporation (hereinafter referred to as CPC) on the 1st February 2005 as the Deputy General Manager-Finance. A true copy of my letter of appointment is annexed hereto marked X-2.
5. I state that my participation in the hedging transaction in these proceedings is stated as follows:
- a. On the 6th September 2006, the Governor of the Central Bank of Sri Lanka had made a presentation to the Cabinet of Ministers on "Maintaining Stability in a Volatile Global Oil Market" highlighting the importance of entering into hedging arrangements to maintain the stability of domestic oil prices;
 - b. Thereafter, the then Secretary to the Treasury suggested that a committee comprising of officers of the Ministry of Petroleum and Petroleum Resource Development, the Central Bank of Sri Lanka, Treasury, State Banks and the Ceylon Petroleum Corporation be set up to explore and formulate the mechanism for the hedging arrangement. A true copy of the letter dated 20.9.2006 written to the Secretary to the Ministry of Petroleum and Petroleum Resource Development by the then Secretary to the Treasury, in this regard, is annexed hereto marked as X-3.
 - c. In response to the aforesaid letter, the Secretary to the Ministry of Petroleum and Petroleum Resources Development nominated me and Mrs. Kanthi Wijetunge, Additional Secretary to the Ministry for the proposed committee. A true copy of the said letter dated 9.10.2006 containing my nomination, is annexed hereto marked X-4. The other member nominated by the Secretary in this letter was also a member of the Board of Directors of the CPC;



d. The committee/ study group comprised of the following members:-

Y.M.W.B. Weerasekera-

Assistant Governor of the Central Bank

- Dr.H.N.Thenuwara

Assistant Governor of the Central Bank of Sri Lanka

- Saliya Rajakaruna

Chief Financial Officer of the Bank of Ceylon

- Kapila Ariyaratne

Head of Corporate and Institutional Banking of the Peoples
Bank

- Kanthi Wijetunge

Additional Secretary to the Ministry of Petroleum and
Petroleum Resources Development

- Lalith Karunaratne

Deputy General Manager (Finance) of the CPC

I state that out of the aforesaid members, Mr Sailya Rajakaruna and Mrs. Kanthi Wijetunge are also members of the Board of Directors of the CPC;

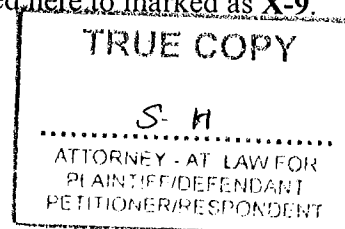
e) The committee made certain recommendations in its report, a true copy the said report dated 16th November 2006 is annexed hereto marked X-5, which was submitted to Secretary to the Treasury.

5). The Board of Directors of the CPC passed a resolution on 26.3.2007 approving and authorizing the Corporation to enter into ISDA Master agreements with the 3rd respondent having considered the contents of the said agreements which was presented to the Board. The Board also authorized the Chairman/ Managing Director Mr. Ashantha De Mel and myself in my capacity as DGM(Finance) to sign the said agreements any other agreements incidental thereto, for and behalf of the Corporation. The Board of Directors affirmed in the said resolution that they have carefully considered and understood the nature and risks of the ~~transaction contemplated~~ by the

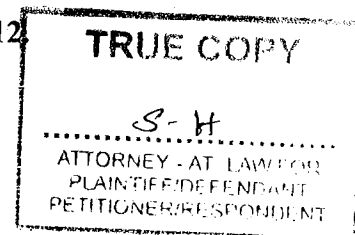
TRUE COPY
S. H
.....
ATTORNEY - AT LAW FOR
PLAINTIFF/DEFENDANT
PETITIONER/RESPONDENT

agreements and believe that such transactions were appropriate for and in the interest of the Corporation. A true copy of the Board Resolution is annexed hereto marked X-6.

6. I state that I was one of the signatories to the confirmation sheets, which accompanied the main International Swap Dealers Association Inc.(ISDA Agreements),of my office as Deputy General Manager (Finance) and as authorized by the Board of Directors of the CPC. However, all the ISDA Agreements were signed by two directors of the CPC and I was not a signatory to any of those.
7. I state that, by letter dated the 4th December 2008, the Secretary to the Ministry of Petroleum and Petroleum Resource Development requested the Chairman of the CPC to hand over immediately all the documents relating to the hedging transactions to the Ministry. A true copy of which is annexed hereto marked as X-7.
8. I state that in compliance with the aforesaid request, all the original documents relating to the transactions were handed over to the Ministry on the 15th December 2008 which was acknowledged by Mrs. Kanthi Wijetunge, who has made an endorsement on the letter issued by the Chairman of the CPC at the time of handing over of the files. A true copy of the letter dated 13.12.2008 written by the Chairman to the Secretary Ministry of Petroleum and Petroleum Resource Development with Mrs. Wijetunge's endorsement thereon is annexed hereto marked as X-8.
- 9). The 3rd Respondent had written to the Chairman, CPC on 2nd October 2007 inviting the chairman and me to visit their dealing room on 15th and 16th of October 2007. The Chairman instructed me to participate and to obtain leave through the line ministry, Ministry of Petroleum and Petroleum Resources Development. A true copy of the letter of invitation dated 2.10.2007 written to the Chairman CPC by Mr Rukshan Dias, Head of Global Markets, Sri Lanka, containing the endorsement of the chairman instructing me to obtain leave approval from the ministry is annexed here to marked as X-9.



- 10). Accordingly I traveled to Singapore with the chairman CPC on 14th October 2007 and returned back to Sri Lanka on 17th October 2007. As per the invitation letter the 3rd respondent bore the cost of airfare and hotel accommodation.
- 11). I state that the discussions at the dealing rooms has helped the Chairman and myself to understand how a derivative transition is taken place, what information a trader uses and to observe the styles, practices and beliefs of various derivative traders. The Chairman and myself also had discussions with credit officers, market researchers and senior bank officers who had significant exposure in dealing in derivatives and risk management aspects.
- 12). On the 3rd October of 2007, I received an e-mail from the 3rd respondent indicating the travel details to Goa and the Chairman requested me to obtain leave to participate at the client event of Standard Chartered Bank in Goa. A true copy of the E-mail containing the said endorsement of the chairman is annexed marked X-10. A true copy of the Agenda held on 21st October 2007 is annexed hereto marked X-11.
- 13). The Chairman informed me that the 3rd Respondent had informed him that members of the family of the invitees could accompany the invitees and that their airfare will be borne by the bank. He further said that this facility is not only for both of us and that they would provide the same facility for all of their clients who would participate in this event. Therefore, I traveled to Goa with my wife and child whose air fare (economy class) as well was borne by the 3rd respondent.
- 14). I state that bore the cost of food of my wife and child amounting to Indian Rs.20,549.90 (equivalent to Sri Lankan Rs. 58,901.72). True copies of bills are consolidated and annexed hereto marked as X-12.



15) I state that at all material times I have exercised due diligence and care in the discharge of my duties and has not been subjected to any disciplinary action during my tenure at the CPC save and except having being sent on compulsory leave as at present.

The foregoing affidavit having been]
duly read over and explained to the]
affirmant abovenamed and the affirmant]
appearing to have understood the]
contents hereof, affirmed to and signed]
at Colombo on this 26th day of August]
2009.]



601160137 v



BEFORE ME



JUSTICE OF THE PEACE

B. ASELA DE SILVA
Attorney - at - Law & Notary Public
Commissioner for Oaths
No. 34/27, St. Sebastian Hill
Colombo 12, Sri Lanka.
T.P.: 0112431829 / 0112804589

TRUE COPY
S. H
ATTORNEY - AT LAW FOR
PLAINIFF AND DEFENDANT
PETITIONER AND RESPONDENT

**IN THE SUPREME COURT OF THE DEMOCRATIC
SOCIALIST REPUBLIC OF SRI LANKA**

**In the matter of an application under Article
126, read with Article 17, 3, 4 Chapter iii and
vi of the Constitution of the Democratic
Socialist Republic of Sri Lanka.**

**NIHAL SRI AMARASEKERE
167/4, Vipulasena Mawatha,
Colombo 10.**

PETITIONER

Case No: SC (FR) 404/09

- VS -

- 1. CEYLON PETROLEUM
CORPORATION,
No: 109, Rotunda Tower,
Galle Road,
Colombo 3.**
- 2. SUMITH ABEYSINGHE
Secretary to the Treasury,
The Secretariat,
Colombo 1.**
- 3. STANDARD CHARTERED BANK
Sri Lanka Branch,
No: 37, York Street,
Colombo 1.**

Head office at –
No: 1, Basinghall Avenue,
London EC2V 5DD,
U.K.

- 4. CITI BANK
Sri Lanka Branch,
No: 65C, Dharmapala Mawatha,
Colombo 7.**

Head Office at –
City Group Centre,
No: 153, East 53rd Street,
16/F, Zone 19,
New York, N.Y 10022,
U.S.A.

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Head Office at –
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60486, Frankfurt,
Germany.
6. **COMMERCIAL BANK OF CEYLON
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Commercial House,
No: 21, Bristol Street,
Colombo 1.
7. **PEOPLE'S BANK**
No: 75, Sir Chittampalam A. Gardiner
Mawatha,
Colombo 2.
8. **MR. E.A. HETTIARACHCHI**
Controller of Exchange,
Exchange Control Department,
Central Bank of Sri Lanka,
7th Floor,
No: 30, Janadhipathi Mawatha,
Colombo 1.
9. **HON. ATTORNEY GENERAL,**
Attorney General Department,
Colombo 12.

RESPONDENTS

**TO: HIS LORDSHIP THE HONOURABLE CHIEF JUSTICE AND THE OTHER
HONOURABLE JUDGES OF THE SUPREME COURT OF THE
DEMOCRATIC SOCIALIST REPUBLIC OF SRI LANKA.**

STATEMENT

In compliance with the Order of Your Lordship's Court dated 14th July 2009, I, KAPILA PRASANNA ARIYARATNE of No. 118/1A, New Airport Road, Ratmalana, Senior Deputy General Manager (Corporate & International Banking) of the People's Bank, the 7th Respondent above-named state as follows:-

With reference to paragraph (c) of the prayer to the Petition of the Petitioner, I wish to expressly state that I had no detailed knowledge of the hedging transactions entered into between Ceylon Petroleum Corporation [hereinafter referred to as the CPC] and Standard Chartered Bank other than the fact that such agreements were in existence. This information I gathered from references to these transactions made by CPC officials at the Review Meetings (involving other institutions and state banks as well and not limited to People's Bank and CPC) held at the Ministry of Finance from time to time and from various newspaper articles.

However since it is not very clear if my statement is to be limited to my knowledge of the transactions between Standard Chartered Bank and CPC and also because insinuations had been made with regard to the visit to the Dubai Office of Standard Chartered Bank in which I participated and where the air fare was met by Standard Chartered Bank, I set out below the full details of my involvement in the original committee appointed by the Secretary to the Treasury to make recommendations, Hedging Transactions undertaken by the People's Bank and the visit to Standard Chartered Bank, Dubai.

Hedging Transactions

As informed by the letter written by the Secretary to the Treasury dated 19th October 2006, Governor of the CBSL had made a presentation to the Cabinet of Ministers on 6th September 2006 on "Maintaining stability in a volatile global oil market" suggesting several alternatives. The Cabinet had decided that the suggestions made therein should be further studied by a group of officials from CBSL and other relevant agencies and accordingly the Secretary to the Treasury vide his letter dated 19th October 2006 appointed a seven member committee to make recommendations on the alternatives suggested by the presentation made by the Governor. I, Kapila Ariyaratne (at that time Head - Corporate and Institutional Banking, People's Bank) was appointed as a member of this seven member committee.

To the best of my knowledge, the committee met on three occasions. I was not able to attend all the meetings personally as I was away from the country during 1st to 3rd November 2006 and then 8th to 10th November 2006 on official business. However, the draft reports and views were exchanged electronically via e-mail during this period. The committee deliberations were concluded and the recommendations were submitted to the Secretary to the Treasury vide their letter dated 16th November 2006.

Thereafter, to the best of my knowledge, with the Cabinet of Ministers approving these recommendations and CPC began hedging part of their fuel purchases in February 2007.

On 6th August 2007, a meeting was arranged by People's Bank with the Singapore offices of investment Bankers Goldman Sachs Group and Sumitomo Mitsui Banking Corporation to explore the possibilities of providing crude oil hedging services to CPC. The meeting was attended by then Chairman CPC Mr. Ashantha De Mel while I represented People's Bank. Although proposals were submitted by Goldman Sachs to CPC through People's Bank based on discussions held during this forum, no transactions were concluded and negotiations were discontinued shortly thereafter since the CPC did not find the proposals to their liking.

After many requests from CPC, Treasury and Petroleum Ministry Officials, PB Treasury Dept. structured and sold a hedging contract to CPC on 15th August 2008. This is covered on a back to back basis with a reverse transaction with Commercial Bank of Ceylon. A second deal was done on 9th October 2008 with back to back cover for market risk management being obtained through a contract with Commerzbank, Frankfurt,

While as Head of Corporate Banking and as a member of the Bank's Board Executive Credit Committee and Asset and Liability Management Committee, I was aware of and concurred with the actions being taken by our Treasury, I had no direct involvement in the structuring of the transactions, which was undertaken by our (PB) Treasury Dept. being in line with their field of expertise and responsibility.

However, in this context I would like to state that the hedging transaction was a product that was demanded by a valuable customer and provided by PB. The price ranges were determined as acceptable by CPC and to the best of the bank's knowledge there was no undue risk being taken on by CPC given the forecasts for the movements in oil prices at that time and the fact that only up to one third of their total requirement was being hedged.

In view of the allegations and insinuations made by the Petitioner, it is pertinent to mention here, that at no time had People's Bank been involved with Standard Chartered Bank in structuring or selling hedging transactions to CPC.

Visit to Standard Chartered Bank, Dubai sponsored by Standard Chartered Bank

In October 2008 an invitation was received from Standard Chartered Bank (SCB) for Mr. N. Vasanthakumar and me for a sponsored visit to their Regional Head Office in Dubai, UAE.

SCB being one of our major correspondents and the importance of the relationship assuming greater importance with their takeover of Amex (which was our number one correspondent for many years) and considering the opportunity to access their economic research and commodity trading expertise and learn from them, acceptance of the invitation was recommended by the CEO/GM and approved by the Executive Operations Committee and thereafter ratified by the Board of Directors.

The tickets were provided by SCB on Emirates Airlines Business Class (which is the class of travel approved for officers of this grade in the PB) and accommodation was at the Grand Hyatt Hotel, Dubai.

We arrived in Dubai on the afternoon of the 6th of October 2008 and over the next two days met with the Regional Head of Research - Global Markets, Oil Products Analyst - Global Markets and Director - Commodity Marketing of the SCB Regional Office. Our discussions ranged from the prevailing economic crisis and its implications on the Asian markets, the ways and means of emerging from the crisis as seen by SCB as well as the outlook for petroleum product pricing, the fundamentals driving the prices and supplies and the geo politics and logistics that would impact future pricing. We were also briefed on their commodity derivative product capabilities and expertise.

In addition to these meetings with SCB, we had separate meetings with representatives of our other correspondent banks, namely, Mashreq Bank and Barclays Bank with whom matters of mutual business interests were discussed with the focus on establishing/enhancing funding lines for PB.

We returned to Sri Lanka on the 9th October 2008 evening.

The visit to Dubai sponsored by SCB was undertaken with due authority and the full knowledge of the CEO/GM and the Board of Directors of People's Bank and it is not unusual for the bank officers to receive and accept such invitations from various correspondent banks.

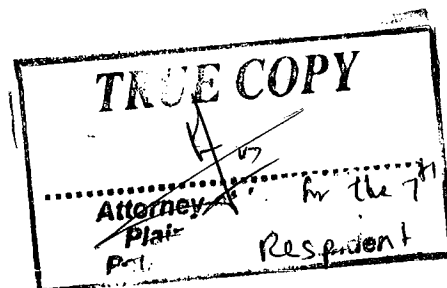
It is pertinent to point out at this juncture that of the two hedging transactions done by People's Bank with CPC, the first was concluded on the 15th August 2008, covered on a back to back basis with a reverse transaction with Commercial Bank of Ceylon. The second transaction deal was concluded on 9th October 2008 with back to back cover for market risk management being obtained through a contract with Commerzbank, Frankfurt.

I also wish to place on record that at no point of time was I employed with SCB. However I was employed at ANZ Grindlays Bank up to December 1992 prior to the take over of ANZ Grindlays Bank by SCB.

I hope the foregoing will bear ample evidence to the fact that at no time was I compromised, induced or enticed by Standard Chartered Bank or any party whatsoever with regard to hedging transactions the People's Bank had entered in to with Ceylon Petroleum Corporation.

On this 28th day of July 2009,


Kapila Ariyaratne



25 AUG 2009

**IN THE SUPREME COURT OF THE DEMOCRATIC
SOCIALIST REPUBLIC OF SRI LANKA**

In the matter of an application under Article 126, read with Article 17, 3, 4 Chapter iii and vi of the Constitution of the Democratic Socialist Republic of Sri Lanka.

NIHAL SRI AMARASEKERE
167/4, Vipulasena Mawatha,
Colombo 10.

PETITIONER

Case No: SC (FR) 404/09

- VS -

1. **CEYLON PETROLEUM CORPORATION,**
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2. **SUMITH ABEYSINGHE**
Secretary to the Treasury,
The Secretariat,
Colombo 1.
3. **STANDARD CHARTERED BANK**
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No: 75, Sir Chittampalam A. Gardiner Mawatha,
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9. **HON. ATTORNEY GENERAL,**
Attorney General Department,
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RESPONDENTS

**TO: HIS LORDSHIP THE HONOURABLE CHIEF JUSTICE AND THE OTHER
HONOURABLE JUDGES OF THE SUPREME COURT OF THE
DEMOCRATIC SOCIALIST REPUBLIC OF SRI LANKA.**

STATEMENT

In compliance with the Order of Your Lordship's Court dated 14th July 2009, I, **Namasivayam Vasantha Kumar** of 227/6A, Nirmana Mawatha, Nawala, Nugegoda, Senior Deputy General Manager (Treasury & Investment Banking) of People's Bank, the 7th Respondent above named state as follows:

I became aware that Ceylon Petroleum Corporation (CPC) entered into Hedging Agreements with four (04) Banks namely Standard Chartered Bank (SCB), Citibank, Deutsche Bank, and Commercial Bank of Ceylon, through newspapers and the references made at several Government Borrowing Programme meetings held at Government Treasury wherein references were made by the Chairman-CPC with regard to such transactions. Other than that, I was unaware of any details about such transactions.

At the various meetings held at Govt. Treasury, whenever the Chairman-CPC mentioned about the gains CPC had made due to the hedging transactions entered into with Foreign Banks, the Treasury officials would query why the State Banks couldn't offer such products to CPC. As a result, the People's Bank Treasury Unit commenced discussions with the CPC and structured and sold a hedging contract to CPC on the 15th of August 2008 and covered the risk on a back to back basis with Commercial Bank of Ceylon. As the head of the said Unit, I submitted a detailed paper to our Assets and Liability Management Committee (ALCO) on 13th August 2008 and obtained ALCO approval for this transaction. A similar transaction was done on 9th October 2009 with the CPC and covered the risk on a back to back basis with Commerzbank AG, Frankfurt. On conclusion of these deals we reported details of the same to the Central Bank of Sri Lanka.

At this point, I must mention that these transactions were structured at the request of CPC and price ranges were duly negotiated upon considering the forecast prevalent at the time for crude oil price movement. We have not taken any undue risk on CPC.

Contrary to the allegations made by the Petitioner, I wish to point out that at no time had People's Bank jointly or in collaboration with the SCB, structured or dealt with hedging transactions with the CPC. The official visit made by me to SCB's Regional head office in Dubai was not connected with any oil hedging transactions done by the People's Bank with CPC.

SCB extended an invitation to me and Mr. Kapila Ariyaratne, Senior Deputy General Manager (Corporate & International Banking) in October 2008, to visit their Regional Head Office in Dubai, UAE.

People's Bank Treasury's main US \$ correspondent bank was American Express Bank (AMEX). SCB then took over Operations of Amex and as a result our relationship with SCB had become very significant. Furthermore, the opportunity given to us to learn of their best practices, economic research and commodity trading expertise were considered favourably and accordingly the CEO/GM of the People's Bank recommended that the Bank should accept the invitation and it was approved by the Executive Operation Committee (EOC) and ratified by the Board of Directors.

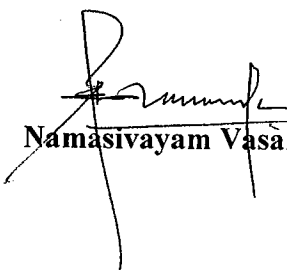
SCB provided us Business Class tickets on Emirates Airlines and accommodation at the Grand Hyatt Hotel, Dubai.

We were in Dubai from 6th to 8th October 2008. During this visit we had meetings with the Regional Head of Research – Global Markets, Oil Products Analyst – Global Markets and Director- Commodity Marketing of the SCB Regional Office. We had extensive discussions on the topic of Global Economic crisis and its implications on the Asian Markets including how to manage the crisis and forecast on crude oil prices etc.

Apart from these meetings with SCB officials, we visited Mashreq Bank and Barclays Bank and had discussions on establishing foreign exchange dealing limits and placement lines. We returned to Sri Lanka on 9th October 2008.

I also state that at no point of time was I employed at Standard Chartered Bank.

August 21, 2009



Namasivayam Vasantha Kumar