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BY COURIER

4th May 2010

Hon. Susil Premajayantha, M.P.
Minister, Petroleum and Petroleum Resources Development
80, Sir Ernest De Silva Mawatha
Colombo 7.

Dear Minister,

Purported 'Oil Hedging Deals' by Ceylon Petroleum Corporation (CPC)

My attention was drawn to the *Daily Mirror* reports of April 27, 2010 and April 30, 2010, copies of which are attached for easy reference. The reports contain statements attributed to you to be made known to the public, and had not been refuted.

I have filed SC (FR) Applications Nos. 404 & 481/2009 impugning the purported 'Oil Hedging Deals', which Applications are pending to be supported; with the Supreme Court having already ordered the tendering of Statements by 8 persons involved, as prayed for in Petition in SC (FR) No. 404/2009. Consequently, the Affidavit filed in the Supreme Court by one principal officer of a foreign Bank involved, corroborated my assertions, and exposed the intentional illegal scam, knowingly perpetrated on CPC, targeted for unconscionable unlawful gain.

As per the first newspaper report of April 27, 2010, it is stated that you had directed all payments by the Petroleum Ministry be suspended, until an audit into all payments and purchases upto March 31, 2010 is completed. I presume that this does not include the CPC, which is a separate legal entity, having to meet its day to day operational obligations, and your powers in relation thereto being stipulated in Section 7 of CPC Act No. 28 of 1961, as amended, *inter-alia*, with the Parliament having conferred on you power to order investigations and to call for reports thereon.

Diametrically contrary to the foregoing stance of causing an audit to be carried out, in the subsequent newspaper report of April 30, 2010 you have been quoted to - 'have given top priority to the hedging deal issue and attempt to work out a strategy to settle the dispute in a mutual and agreeable manner'. The question arises as to why, akin to the foregoing, you have not called for an audit into this scandalous scam, before launching thereinto, when you have been conferred statutory power by Parliament to cause investigations and call for reports thereon; it having also been reported that the CID had already taken over the relevant documents for commencement of investigations ?

Your kind attention is also drawn to Section 5 of the Public Corporations (Financial Control) Act, which is a re-production of Section 2 of the Finance Act No. 38 of 1971, where commitments of capital expenditure in excess of Rs. 500,000/- warrant the approval of the Minister of Finance & Planning. The foregoing purported claims under consideration by you, had not been included, to my knowledge, in the Budget of CPC in terms of the said Statutes, nor disclosed in the Fiscal Position Reports, including the Pre-Election Budgetary Position Report, published for the information and evaluation of the public, as statutorily mandated by the Fiscal Management (Responsibility) Act No. 3 of 2003, enacted by Parliament for the due and proper fiscal management of public funds held in trust, with transparent disclosure and accountability to the people.

In fact, on these very purported contracts, in Cases SC (FR) Nos. 535 & 536/2008 previously instituted by some other Petitioners, the Supreme Court had promptly *ex-facie* granted interim orders, restraining any payments, whatsoever; and in the light of disclosure of compromising of public officers involved by the Banks concerned, had directed the Bribery Commission to investigate thereinto.

Should you cause an audit and/or investigation to be carried out as aforesaid into the foregoing, it would be revealed, that the principal officers concerned had been provided with foreign trips by all 3 foreign Banks involved (in some instances with families) to several countries, prior to the execution of these purported contracts, to be educated on such sophisticated scams, including also your predecessor Minister in Office, to Houston and New York, USA, as revealed by documents filed in Supreme Court.

It is revealed that, Citibank and Deutsche Bank have commenced arbitration proceedings in the London Court of Arbitration and before the World Bank's International Center for Settlement of Investment Disputes, respectively, whilst Standard Chartered Bank, has instituted legal action in the High Court of UK. Your reported assertion that the huge compensation claims are US $ 261 Mn., (Rs. 30 Bn.) is a gross under statement, in the context of facts known, with the purported claims also carrying commercial rates of interest, on a daily compounding basis. Ought not such be reckoned in the context of the reported loss of Rs. 12.3 Bn. in 2009 by CPC, as per the Central Bank Report ?

In SC (FR) No. 481/2009 it is averred that the legal and other costs incurred in defending the above actions upto October 2009 was in the range of over Rs. 100 Mn., which are public monies, citing payments of Rs. 325,000/- per hour to Senior Lawyer/s, Rs. 135,000/- per hour to Junior Lawyer/s, and Rs. 485,000/- per day for Hedging Expert/s, which stand unrefuted. The Vote on Account for the first 4 Months of this year reveals a Budget for the entire Attorney General's Department of only Rs. 126.9 Mn., and a Budget for the Judges of the Superior Courts of only Rs. 15.5 Mn.

Copies of the Petitions, Statements by Respondent Banks, other Respondents, including the CPC, Statements by certain persons and Counter Affidavit, would be available with the CPC for your examination. CPC in its Affidavit filed through the Hon. Attorney General has, *inter-alia*, stated – 'these transactions are inter-alia, illegal, ultra-vires, and/or unauthorized and that the .Respondents (Banks) have misrepresented the true nature of the transactions, and the transactions are inter-alia null and void and/or unenforceable against the CPC'. I am advised that fraud and/or illegality unravels all, and that no right or legitimate expectation, whatsoever, could flow therefrom. You have also been reported to have stated that - 'Sri Lanka had taken the position that hedging agreements are ultra-vires and against bilateral and international norms on investment protection treaties'.

Pointedly, I recollect the pressures I had to face in relation to the fraud in the construction of the Hilton, where influential powerful Ministers and Secretaries endeavoured to make payments on sovereign Government Guarantees, said to have been discounted with a foreign Government Bank; whereas a Supreme Court Bench, presided by then Chief Justice G.P.S de Silva, with Justices A.R.B. Amerasinghe and K.M.M.B. Kulatunga, upholding the rule of law, injuncted such payments in 1992 on grounds of fraud, reiterating that such was a 'devious method of siphoning a large scale of foreign exchange from the country', and observing that 'the government could not be indifferent'. In this instance, there are no sovereign Government Guarantees involved, but are mere purported contracts by Banks, with their own Customer, CPC, to whom they owed a fiduciary responsibility, and who ordinarily would trust a Bank, to act in utmost good faith.

In the circumstances of I having apprised the Hon. Attorney General of the salient facts, it is surprising, that you have attributed a settlement to the Hon. Attorney General. I have been advised that in terms of the law, a necessity to make any payment, whatsoever, does not arise in any manner or howsoever.

These purported contracts involve large scale of public monies, and not private monies of anybody, whomsoever. I am advised that these are illegal contracts and are *ab-initio*, null and void and unenforceable, akin to similar scams perpetrated overseas, which have contributed to the recent global financial crisis, resulting in governments being called upon to bail out financial institutions.

The purported contracts do not involve the purchase of any oil, though so held out, and are mere 'lop-sided' betting / gambling deals, which I am advised are statutorily illegal in our country, where those involved in such activity, even in village homes, are arraigned before criminal courts.

I have consistently acted in the public interest to protect public funds that belong to the poor people of the country, held only in trust by Governments, as reiterated by the President.

Yours faithfully,

Nihal Sri Ameresekere

cc: Hon. Attorney General
Secretary to H.E. the President – *For the Minster of Finance to be apprised*

Hon. Vasudeva Nanayakkara, M.P., Attorney-at-Law – Intervenient-Petitioner in previous Cases
- For warranted action

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BY COURIER

13th August 2012

Hon. Susil Premajayantha, M.P.
Minister of Petroleum Industries
No. 80, Sir Ernest De Silva Mawatha
Colombo 7.

Dear Minister,

Purported Oil Hedging Deals by Ceylon Petroleum Corporation (CPC)
SC (FR) Applications Nos. 404/2009 & 481/2009

& Purchase of Petroleum Oil of Questionable Quality

I refer to my Letter dated 4.5.2010 forwarding copies of the Petitions in the aforementioned two Applications. I subsequently telephoned you and you assured me that you will instruct Hon. Attorney General, Mohan Peiris P.C., to support my endeavours.

Previously, as had been requested by him, as per my Note dated 23.3.2010, I had forwarded copies of relevant diagnostic notes and documents to be of assistance to him and State Counsel defending the foreign litigations pertaining to the foregoing.

Rather than support me, Hon. Attorney General, Mohan Peiris P.C., *intriguingly* vehemently opposed me on a preliminary objection, on a purported 'time bar', I verily believe not wanting the facts pertaining to this matter of national economic proportions, being heard and exposed before the Supreme Court and the people of this country. Hence, you ought ascertain, as to who instructed him to so oppose me, whilst appearing for CPC, which came under your purview, as the Minister in charge.

Hon. Attorney General, Mohan Peiris P.C., asserted with supreme confidence in the Supreme Court, that he will successfully defend the foreign legal proceedings, and required me to *'lay my head at rest'*; I pointed out, that he was on the defensive, whereas I was on the offensive in instituting action to impugn these transactions, and for the Supreme Court of the country to deal with those involved, as warranted.

On the other hand, Dr. Harsha Cabral, P.C., who appeared for the Controller of Exchange and the Director of Bank Supervision, I believe on the instructions of the Governor, Central Bank of Sri Lanka, specifically intimated to the Supreme Court, that he was not taking such preliminary objection of 'time bar', thereby indicating that those statutory law enforcement authorities required the mattes to be adjudicated upon by the Supreme Court of Sri Lanka.

The aforementioned two Applications filed in the public interest were dismissed on 11.5.2010, with the Hon. Attorney General, Mohan Peiris P.C., vehemently opposing them, on the preliminary objection, that I should have invoked the jurisdiction of the Supreme Court, within one month from 27.1.2009, the date on which the Supreme Court, had terminated the proceedings, *having previously, inter-alia, suspended ex-facie the said purported Oil Hedging Deals,* of two previous Applications by other parties in SC (FR) Nos. 535 & 536/2008, in circumstances of the Government not having complied with certain interim orders made by the Supreme Court.

I consequently addressed my Letter dated 24.6.2010 to Hon. Attorney General, Mohan Peiris P.C., with copies to you, and Secretary to the President, for H.E. the President to be apprised. (*Copy of Letter attached for easy reference*.)

I had filed on 25.5.2009, SC (FR) Application No. 404/2009 *in completely new circumstances*, specifically upon the discovery that Standard Chartered Bank, in violation of the provisions of Exchange Control Act and disregarding specific direction given by the Central Bank, had remitted US $ 108 Mn., upto April 2009, which came to be known, only after the Exchange Controller's Letter dated 13.5.2009 addressed to the Standard Chartered Bank, putting them on notice of the said violation. My Application SC (FR) No. 404/2009 was thus made *within one month thereof* on 25.5.2009.

Thereafter on 25.6.2009, I filed SC (FR) Application No. 481/2009, upon coming to know on 2.6.2009, when the above SC (FR) Application No. 404/2009 was mentioned in the Supreme Court, that Standard Chartered Bank, Citibank and Deutsche Bank had commenced legal proceedings in foreign jurisdictions, as was disclosed by their respective Counsel. My Application SC (FR) No. 481/2009 was thus made *within one month thereof* on 25.6.2009.

Consequently, when the Secretary, Ministry of Finance & Secretary to the Treasury and the Hon. Attorney General filed Objections on 10.7.2009 in SC (FR) Application No. 404/2009, *it was disclosed for the very first time* that -

i) notice of initiation of Arbitration proceedings before the International Centre for Settlement of Investment Disputes had been given by Deutsche Bank in February 2009, and responded to in March 2009

ii) Citibank had resorted to Arbitration in the London Court of International Arbitration against CPC, and

iii) Standard Chartered Bank had filed action against CPC in the Commercial High Court of UK.

CPC appearing through the Hon. Attorney General, Mohan Peiris, P.C., also filed on 10.7.2009 Objections in SC (FR) Application No. 404/2009, *inter-alia*, disclosing that CPC had received on 24.6.2009 the Plaint of Standard Chartered Bank filed in the Commercial High Court of UK, and that Citibank too, had commenced Arbitration proceedings before the London Court of International Arbitration.

Pointedly, in the said Objections admittedly as advised by Hon. Attorney General, Mohan Peiris, P.C., CPC had affirmed that these purported Oil Hedging Deals were *inter-alia illegal* and *ultra-vires* and are *null and void* and *unenforceable*.

As set out aforesaid, it was an *impossibility* and a '*fiction*' for me to have been required to have file the above two Fundamental Rights Applications, within one month of 27.1.2009 i.e. by 27.2.2009, when, in fact, *the foregoing acts did not even exist at that time*. I filed the said two Applications within 30 days of my knowledge thereof, which the Hon. Attorney General, Mohan Peiris, P.C., could not have been unaware of.

By SC (FR) Application No. 481/2009, I sought *anti-suit injunctions,* citing two well-known authorities one in the Privy Council and the other in the House of Lords, namely, *SNI Aerospatiale v Lee Kui Jak & Another, and Spiliada Maritime Corp v Cansulex Limited*. Such *anti-suit injunctions* were to have restrained foreign legal proceedings, and accordingly would have confined the legal proceedings to my said two Fundamental Rights Application before the Supreme Court of Sri Lanka.

The *criteria* for the grant of such *anti-suit injunctions*, *inter-alia*, are the following – *vide* submissions I made before the Supreme Court:

" i) No standard fixed guidelines, but criteria which would be relevant to the particular Case
ii) The most natural and appropriate forum, and not necessarily the convenient
iii) The place where the principal transaction took place
iv) To ensure equitable and fair justice to all parties
v) The costs involved in litigating
vi) The availability of Witnesses
vii) To avoid multiplicity of litigations
viii) The unique facts of each case necessarily has to be taken into account

In this instance it is abundantly evident that the 3 foreign Banks have acted in concert and collusion, as borne out by the facts disclosed by their very own documents in dealing with their Sri Lankan Customer, CPC. The 3 foreign Banks have been operating under Licenses granted by the Central Bank of Sri Lanka, under and in terms of the Monetary Law and the Banking Act and is subject to several other Statutes of Sri Lanka.

Hence, natural and appropriate forum would be Sri Lanka, where in one litigation, this collusive transaction perpetrated in concert by 3 Banks and 2 other local Banks could be just and equitably adjudicated upon, inasmuch as the perpetrated transactions are illegal and unlawful in Sri Lanka

In the given facts and circumstances, a transaction/s of one Bank could not be isolated to be adjudicated upon, whether in London or Singapore, inasmuch as they are all interconnected by acts of collusion and concert, and ought be only adjudicated upon in Sri Lanka in the pending Applications before the Supreme Court, the highest judiciary of Sri Lanka."

It has been reported in the *media* that you have admitted that legal costs incurred to date on foreign legal proceedings on these has now amounted to about Rs. 467 Mn., whereas comparatively the budgeted operational costs for the entire year 2012 for the Attorney General's Department is only Rs. 372 Mn.

The Standard Chartered Bank Case was lost in the Commercial High Court of UK on 11.7.2011, precipitating a Claim of US $ 161.7 Mn., in 2008, *with a rate of reasonable commercial interest compounded on a daily basis*.

Ironically, whilst the defence taken by the Hon. Attorney General, Mohan Peiris, P.C., was that these were *ultra-vires* and *illegal* transactions, some of the very persons involved in such transactions had been taken to give evidence against the Banks, who peddled such transactions, whilst some of them had been afforded overseas trips, including your predecessor Minister in Office, to Houston and New York, US to be educated in such transactions, as was revealed by documents filed in the Supreme Court.

Whilst asserting this matter of national economic proportions to have been illegal, *intriguingly* the Hon. Attorney General, Mohan Peiris, P.C., did not cause any action to be taken against those involved on such illegality, thereby rendering *nugatory* such allegation of illegality !

After the Judgment by the Commercial High Court of UK against CPC, *The Sunday Times* of 17.7.2011 reported as follows:

> "The Country's stop legal officer Attorney General Mohan Peiris said that despite losing the disputed oil hedging deal case against Standard Chartered Bank in the London Commercial High Court, the Sri Lankan government was confident the decision would be reversed in an appeal to be file in the UK High Court of Appeal."

However, notwithstanding such public assurance given by the Hon. Attorney General, Mohan Peiris, P.C. the UK High Court Appeal was recently lost. It is known that an Appellate Court would be restricted to the evidence placed before the Primary Court.

In the meanwhile, among other Books, I had authored a Book comprehensively analysing these questionable Oil Hedging Deals, published by a leading US Publisher, *distributed globally*.

The Citibank Arbitration held in Singapore before the London Court of International Arbitration was dismissed on 31.7.2011 by a 3 Member Arbitral Panel, notwithstanding the aforesaid UK High Court Judgment of 11.7.2011 having been tendered to the said Arbitration Panel, who had dealt with the same in their unanimous Arbitral Award dismissing the Citibank's Claim of US $ 195.5 Mn., in 2009, *with a rate of reasonable commercial interest compounded on a daily basis*.

Just before the favourable Award delivered on the Citibank Arbitration, I had credible information that endeavours were made to have discussions to reach a settlement, which was reported in the *media*.

Persons who had been involved as was disclosed in the Supreme Court, in the foregoing *ultra-vires* and *illegal* transactions, as was the position taken by Hon. Attorney General, Mohan Peiris, P.C., among others, had been the following:

Ajith Nivard Cabraal, Governor Central Bank
P.B. Jayasundera, Secretary, Ministry of Finance & Secretary to the Treasury

The Members of the 'Study Group' appointed by P.B. Jayasundera, Secretary, Ministry of Finance & Secretary to the Treasury (*had admittedly met on 3 days within a period of one month*) and had recommended these transactions;

Y. M. W. B. Weerasekara, Asst. Governor, Central Bank of Sri Lanka
H.N. Thenuwara, Asst. Governor, Central Bank of Sri Lanka
Saliya Rajakaruna, Chief Financial Officer Bank of Ceylon
now Director / Chief Executive Officer, Nations Trust Bank
Kapila Ariyarathne, Head- Corporate & Institutional Banking People's Bank
now Deputy General Manager, Corporate & Institutional Banking, Nations Trust Bank
Kanthi Wijethunga, Addl. Secretary, Ministry of Petroleum & Petroleum Resources Development
Lalith Karunaratna, Deputy General Manager (Finance) Ceylon Petroleum Corporation
Chartered Accountant & Master of Business Administration
V. Kanagasabhapathy, Financial Management Advisor, Ministry of Finance & Planning
Chartered Accountant & Master of Public Administration

The Board of Directors of the Ceylon Petroleum Corporation, who held office when these transactions had been entered into, with the advice of Nithya Partners, Attorneys-at-Law, short circuiting the Attorney General, whose advice is ordinarily sought by public corporations, had been:

Ashantha De Mel	–	Chairman & Managing Director
Kanthi Wijetunga	–	Director
S.N.P. Palihena	–	Director
M.D. Wijegoonewardena	–	Director
M.I.M. Ali Sabry, P.C.	–	Director
D.Charitha Gooneratne	–	Director

Paragraph 330 (8) of the aforesaid UK Commercial High Court Judgment had stated thus:

> "330(8) The Master Agreement, including the terms of its Schedule, was considered by and negotiated between SCB and CPC's Chief Legal Officer (Geetha de Fonseka) and Nithya Partners, over a number of months."

Supreme Court on 14.7.2009 directed that Statements be tendered to the Supreme Court by the following persons, in terms of the following prayer (c) in SC FR Application No. 404/2009;

> "c) make Order to issue Notice on the following Officers of the 3rd Respondent Bank, to provide information within their personal knowledge, in relation to the Agreements referred to as 'Oil Hedging Agreements' entered into by the 3rd Respondent Bank, with the 1st Respondent (CPC), as referred to at paragraph 10(f) of the Petition, and also on the following persons, who have been involved in the 'Oil Hedging Agreements' and whose Air Travel Costs had been paid for by the 3rd Respondent Bank, as per paragraph 10(e) of the Petition,
>
> (i) Clive Haswell, Chief Executive Officer, of Standard Chartered Bank
> (ii) Kimarli Fernando, *former* Head of Corporate Client Relationships, of Standard Chartered Bank
> (iii) Nigel Beebe – Senior Credit Officer, of Standard Chartered Bank
> (iv) Rukshan Dias, Head of Global Markets, of Standard Chartered Bank
> (v) A. De Mel, *former* Chairman, CPC
> (vi) P.M.L. Karunarathne *former* Finance Manager, CPC,
> (vii) K. Ariyaratne, of People's Bank / Member, Committee on 'Oil Hedging'.
> (viii) Vasantha Kumar, of People's Bank. "

Kimarli Fernando aforesaid filed an Affidavit setting out that she had consistently objected to and had opposed these transactions.

Though the CID was reported to have raided the CPC Head Office and taken into custody documents, nevertheless no action, whatsoever, has been taken; nor have you taken any action, or caused any action to be taken *vis-à-vis* this matter of national economic proportions.

Furthermore, in the context of the intriguing procedure followed in the procurement of Petroleum Oil, I cite the following paragraph 13 and prayer (s) in my Petition in SC (FR) Application No. 481/2009 filed on 25.6.2009;

➢ "13. The Petitioner very respectfully brings to the kind attention of Your Lordships' Court that:

(a) Petroleum Oil Imports, which causes the public a huge burden, are being carried out in the most questionable and dubious manner.

(b) In one instance, in respect of the purchase of 220,000 to 300,000 Barrels of Gas Oil, Invitations for Offers **dated 4.6.2009** had been **faxed on the same night** by the Ministry of Finance & Planning, with the closing date and time for Offers being the following day **i.e. 5.6.2009 at 3.00 p.m.**

(c) According to practicalities and realities, making of such competitive Offers, is an impossibility; and that it is quite apparently evident that this has been a **'fix'.**

*A true Copy of Letter of Invitation for Offers dated 4.6.2009 of the Ministry of Finance & Planning is annexed marked **"P8"**, pleaded as part and parcel hereof"*

➢ "(s) make Interim Order directing the 2nd Respondent and/or the 1st Respondent (CPC) to tender to Your Lordships' Court formulated Guidelines with stipulated Time Schedules for the procurement of Petroleum Oil Products, to ensure transparency and competition, so that Petroleum Oil Products are procured at the most competitive prices, and that after approval by Your Lordships' Court of such Guidelines, with the Time Schedules, they be made public and always adhered to; and to make Order converting the Interim Order into a Permanent Order upon the Final Determination of this Application,"

In objecting to my aforesaid Application, Hon. Attorney General, Mohan Peiris P.C., also thereby objected to the foregoing. Though having been put on notice of the foregoing facts, apparently no remedial action had been taken or caused to have been taken by the CPC, Secretary, Ministry of Finance & Secretary to the Treasury and the Hon. Attorney General, who were all Respondents in the said Application.

Consequently, in July 2011 a *scandal* was reported in the *media* on the import of low quality Petrol, with the CPC reported to having paid compensation to consumers affected by the use thereof. At present you have acted to replace the CPC Board for a controversy *vis-à-vis* the import of low quality Diesel, which has affected motor vehicles, buses and trains.

Please clarify to the public, as to why no action has been taken against any of those involved *vis-à-vis* the foregoing transactions, with the Attorney General, himself, having asserted that they were *ultra-vires* and *illegal*; and you too being an Attorney-at-Law, thereby being able to well and truly comprehend the foregoing.

Yours truly,

Nihal Sri Ameresekere

cc: Mr. H.A.S. Samaraweera, Auditor General

Mr. Lalith Weeratunga, Secretary to the President, *for H.E. the President to be apprised*