

BY HAND

22nd October 2015

IMPORTANT

Mr. Arjuna Mahéndran
Governor
Central Bank of Sri Lanka
30, Janadhipathi Mawatha
Colombo 1.

Dear Arjuna,

It was nice to have met you and had a brief meaningful discussion at a social occasion.

In pursuant thereto, I attach copies of the Supreme Court 2 Special Determinations made in August 2003 on amendments attempted to be made to the -

- i. Debt Recovery (Special Provisions) Act No. 2 of 1990
- ii. Recovery of Loans by Banks (Special Provisions) Act No. 4 of 1990

I myself intervened and appeared in person and demonstrated the perverseness of these Statutes, which had been hurriedly enacted at the behest of N.U. Jayawardene, whose Company, Mercantile Credit Ltd., has been the biggest defaulter to the Central Bank and not dealt with.

The Supreme Court, *inter-alia*, citing Indian Judgments determined that harsh, oppressive and unconscionable law would be struck down by Courts, and that the law should not strengthen, the strong, and weaken, the weak; and that these Statutes are in violation of the access to justice in terms of Article 105(1) of the Constitution.

In Sri Lanka there is no judicial review of post enactment of Statutes, but this is a rare occasion that the existing Statutes had been severely criticized by the Supreme Court, warranting necessary changes to the said Statutes. I urge you to give due consideration thereto.

I also urge you to reconsider making available from the Long and Medium Term Fund, re-finance to Commercial Banks for the re-structuring of financially sick businesses and industries, as was done by Central Bank and handled by me previously with the then Director Bank Supervision, Y.A. Piyatissa, particularly when there are 4 or 5 Banks to one such Company.

The above facility was stopped after N.U. Jayawardene obtained Rs. 1750 Mn., in 1991 to re-finance Mercantile Credit Ltd., with a deficit working capital. These advances had not been re-paid as revealed in the 2005 COPE Report to Parliament.

The Companies Act No. 7 of 2007 - formulation of which I was actively involved in, at Chapters IX and X provide for financial restructuring of financially sick Companies, akin to the provisions of Chapter X and XI in the US. Such restructuring arrangements would be transparently dealt with under the judicial supervision of the Commercial High Court with all parties thereto being bound by the final outcome.

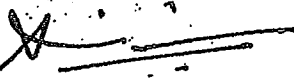
Hence, if the re-finance facility of short-term debts, with long-term debt at concessionary rates of interest can be made available once again by Central Bank to the Commercial Banks for the above purpose under the Long and Medium Term Fund, then even State Owned Companies, such as, Plantations, could be attempted to be transparently restructured under such judicial process.

If by amendment to the Public Corporations (Financial Control) Act, the above provisions of the Companies Act are made to be applicable, then State Owned Corporations too could be attempted to be restructured under such transparent judicial process.

I shall be pleased to pursue the above matters with you, with further discussions thereon.

Thanking you,

Best regards,



Nihal Sri Ameresekere

cc: Hon. Minister of Finance
Hon. Prime Minister