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**BY COURIER**

12<sup>th</sup> May 2014

Mr. H.A.S. Samaraweera, FCA, B.Com. (Sp.) ACMA  
Council Member, Institute of Chartered Accountants of Sri Lanka  
Auditor General  
Auditor General's Department  
306/72, Polduwa Road  
Battaramulla.

Dear Mr. Samaraweera,

### **Purported Oil Hedging Deals by Ceylon Petroleum Corporation (CPC)**

I was indeed appalled by the headline in the *Daily Mirror* of today, disclosing that you had reported that the Central Bank had paid on behalf of CPC, a colossal sum of Rs. 480 Mn., as Legal Fees in defending actions instituted in foreign jurisdictions.

One such legal proceeding having been against the Government, I verily believe that payment had been made also by the Treasury, and that some payment had been made directly by the CPC. In this context, I pose the question, as to whether Rs. 480 Mn., had been the total Legal Fees paid ?

It is of relevance to draw the comparison of the total recurrent annual expenditure of the entire Attorney General's Department, as per the relevant Appropriation Acts passed by Parliament, in respect of the Years 2008 to 2012 – viz:

2009	Rs. 381 Mn.
2010	Rs. 399 Mn.
2011	Rs. 419 Mn.
2012	Rs. 372 Mn.

Since, your observation, as the Auditor General, appears to be in the nature of a questioned stricture, I believe that in the public interest, you ought be apprised of the salient facts.

There were 3 foreign Banks, who had been at the forefront of these purported Oil Hedging Deals, and legal proceedings by way of Court action and Arbitrations had been instituted in foreign jurisdictions by these foreign Banks.

Upon coming to know in May 2009, that one of the Banks had remitted US \$ 107 Mn., in violation of the provisions of the Exchange Control Act, I promptly filed in such regard, a Fundamental Rights Application in the Supreme Court, within one month. Thereafter, when I came to know in June 2009, that the said foreign Banks had instituted proceedings in foreign jurisdictions, I promptly filed a further Fundamental Rights Application in the Supreme Court, within one month, seeking anti-suit injunctions to prevent legal proceedings in foreign jurisdictions, and to exercise my right to litigate in my own country in the public interest.

I attach a copy of my Letter dated 24.6.2010 addressed to then Hon. Attorney General, Mr. Mohan Peiris P.C., who personally handled these legal proceedings. I quote the following paragraphs therefrom;

"Also on 14.7.2009, your Submissions to the Supreme Court had been recorded in the Supreme Court Minutes thus - ***"Mr. Mohan Peiris, P.C., A.G., too informs Court that he vehemently objects to the leave to proceed being granted as he is defending the actions filed abroad vigorously and the arbitration."*** (Emphasis added). You would recollect that you made specific submissions to Court, that I should 'lay my head at rest', impliedly leaving you to deal with this matter in foreign jurisdictions.

You would also recollect that on the last day 11.5.2010, you repeated the same submissions, that I should 'lay my head at rest', ***ironically whilst at the same time concurring with my submissions.***

This only reveals that you, as the Attorney General, curiously ***vehemently opposed*** this matter of such vital public importance, being proceeded with and adjudicated upon, with public hearings before the Supreme Court of our country, exercising the judicial power of the people, ***which indeed is quite mysterious and baffling !***

On 11.5.2010, you submitted to the Supreme Court, ***that you fully concurred with my submissions, particularly the stances taken and the arguments adduced by me,*** and assured that you had taken all such stances and arguments, and even more, in the foreign legal proceedings commenced by Deutsche Bank against the Government of Sri Lanka before ICSID, and by Citibank before the London Court of International Arbitration, and by Standard Chartered Bank in the High Court of U.K., both against CPC. Significantly, none of the Counsel appearing for the Respondents Banks were able to demonstrably refute and/or controvert the facts and the applicable law, which were adduced.

By your submissions, you held out an ***unqualified assurance and guarantee,*** that you will most certainly succeed in the above foreign legal proceedings against the Government of Sri Lanka and the CPC, and that ***therefore no payments, whatsoever, would thereby have to be made from public funds to the Respondents Banks,*** under these illegal deals as admitted by you, and accordingly that ***you would also recover the costs, reckoned to be in the region of Rs. 150 Mn.*** incurred utilizing public funds, to defend these foreign legal proceedings, in retaining foreign Counsel and Experts, including costs incurred in overseas travel by you and other Counsel.

In addition, on 11.5.2010 you reiterated to the Supreme Court the averments in the Statement of Objections of the CPC, settled by you, in SC (FR) Application No. 404/2009, concurring with my stances taken in the said Application, that - ***'the said transactions are illegal, ultra-vires and/or unauthorized and that the Respondent Banks had misrepresented the true nature of these transactions and that they are inter-alia null and void and/or unenforceable'.***

In circumstances of such *vehement* objections, and particularly objections on baseless 'time-bar', including by Counsel representing the Banks, whilst private Counsel appearing for the relevant Regulatory Officers of Central Bank, having expressly not adduced such 'time-bar' objection, the Supreme Court tragically misdirected itself, to determine, that I should have filed my Applications within one month of 27.1.2009, on which date some other Fundamental Rights Applications filed, had been terminated by the Supreme Court in view of a dispute with the Government on petroleum prices, after having *ex-facie* issued restraining orders in the first instance. Within one month of 27.1.2009 meant ***before 27.2.2009.***

The above two matters upon which I filed my two Fundamental Rights Applications in May 2009 and June 2009 respectively did not exist in February 2009 for me to have filed any such actions, rendering such determination by the Supreme Court to have been a 'fiction'. I had filed Applications well within the one month of the occurrence of the aforesaid impugned matters complained of, as was well and truly known to the Hon. Attorney General.

The Commercial High Court Case of UK was lost, with I believe a Claim of US \$ 160 Mn., awarded against the CPC. However, having sought my advice, the Exchange Control Department, having imposed a penalty in relation to the aforesaid violation of the provisions of the Exchange Control Act, such Claim awarded, I believe was mitigated to around US \$ 60 Mn.

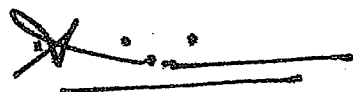
The other legal proceeding in Singapore before the London Court of International Arbitration for a Claim of around US \$ 190 Mn., was lost by the Bank, I verily believe in the circumstances of a Book I published globally on such 'Derivative / Hedging Deals', raising the question of the dubiousness and illegality thereof?

The third arbitral proceedings instituted before the International Centre for Settlement of Investment Disputes, under the Agreement for the Promotion and Protection of Investments against the Government, was also lost with an Award I believe of US \$ 80 Mn., in favour of the Bank.

In the foregoing facts and circumstances, I cannot remain a silent party. There has to be public accountability for the colossal loss of such public funds, including the colossal payments of foreign exchange made to the said two Banks, putting in issue, the question of accountability on the part of those, who had dabbled in these deals, thereby causing such colossal loss of public funds.

It is deeply regrettable, that the Supreme Court was precluded from going into the merits of my two Fundamental Rights Applications referred to above, in my own country, having been, with due respect, misdirected on a supposed 'time-bar' issue, which was not so, whereby I verily believe this colossal loss has been caused to public funds; *which otherwise, I verily believe could have been prevented.*

Yours truly,



Nihal Sri Ameresekere, F.C.A. F.C.M.A., C.M.A., C.G.M.A., C.F.E.

Associate Member, American Bar Association

Director, International Consortium on Governmental Financial Management (ICGFM)

Member, International Association of Anti-Corruption Authorities (IAACA)

cc: Mr. Arjuna Herath, President, Institute of Chartered Accountants of Sri Lanka  
Editor, Daily Mirror