

JAPAN – SRI LANKA COLLABORATION !



**HOW DID SUCH TRAGI-COMEDY HAPPEN
OVER SEVERAL YEARS,
WITH LEGAL LUMINARIES INVOLVED ? !**

**CONTEMPTUOUS CONTEMPT OF CONSENT DECREES
ORDERED AND ENTERED BY COMMERCIAL HIGH COURT ?**

**HAD NOT THE STATE, JUDICIAL OFFICERS, ATTORNEY
GENERALS, ELECTED AND SELECTED SENIOR PUBLIC
OFFICERS AND OTHERS, INCLUDING MEDIA, ACTED IN
CONTEMPT OF COURT OF CONSENT DECREES, WHICH
HAD BEEN ORDERED AND ENTERED BY COMMERCIAL
HIGH COURT, WITH THE STATE HAVING INTERVENED TO
ENTER INTO AGREEMENTS, AS RECORDED IN THE
CONSENT DECREES ?**

PREAMBLE


Nihal Sri Ameresekere had been a Promoter, Subscriber and Director of Hotel Developers (Lanka) Ltd., (HDL), owning Company of Colombo Hilton Hotel, from its inception. When Nihal Sri Ameresekere had raised questions on serious irregularities and wrong-doings in the construction of the Hilton Hotel by the Japanese Consortium, he had been encouraged to litigate by then Deputy Secretary to the Treasury K. Shanmugalingam, then Director General External Resources Akiel Mohammed and then World Bank Country Director Hari Aggrawal.

The foregoing had been in the circumstances of Sri Lanka facing an international '**cross-default**' with the Japanese Consortium having given Notice of Default of the State Guarantees given to them, **which value exceeded the value of the Foreign Exchange Reserves at that time**, to the Secretary, Ministry of Finance & Treasury R. Paskaralingam, when the foreign exchange reserves of Sri Lanka **previously had been even in the negative**. Hence, then Attorney General Sunil de Silva P.C., Secretary, Ministry of Finance & Treasury R. Paskaralingam endorsed the litigation by Nihal Sri Ameresekere.

The Enjoining Order preventing payments to the Japanese Consortium, staying the State Guarantees, had been faxed immediately to the Office then Sri Lanka IMF Director Dr. L.E.N. Fernando, to be used by Secretary, Ministry of Finance & Treasury R. Paskaralingam and Deputy Secretary to the Treasury K. Shanmugalingam, who were then in Washington negotiating with IMF and World Bank.

PRESIDENT R. PREMADASA & STATE DEFENCE MINISTER RANJAN WIJERATNE HAD ENDORSED NIHAL SRI AMERESEKERE'S ACTIONS

The following Letters by then State Minister of Defence Ranjan Wijeratne and Letter by K.H.J. Wijedasa, Secretary to the President, on the direction of President R. Premadasa, are given below:



Ranjan Wijeratne, M.P.
Minister of Plantation Industries

15th November, 1990

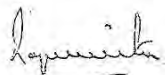
His Excellency R. Premadasa,
President of Sri Lanka,
Presidential Secretariat,
Colombo 1

Your Excellency,

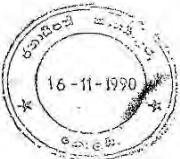


HILTON HOTEL

Further to the comments I made at the meeting of the Cabinet of Ministers on Wednesday 14th November, 1990, for your Excellency's information I am attaching a copy of a letter dated 14th November, 1990, addressed to me by Mr. Nihal Sri Ameresekere, who has filed the injunction against the Contractors/Architects, together with the attached documents.

Yours sincerely,



Ranjan Wijeratne
Minister of Plantation Industries
& Minister of State for Defence

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THE PRESIDENTIAL SECRETARIAT

Mr R Paskaralingam
Secretary/Finance

Hilton Hotel

170-12-19
15th of the February
1990
Minister of Finance

EA/1721d
December 17, 1990.

I am forwarding a copy of a letter dated November 15, 1990, sent to His Excellency the President by the Hon. Ranjan Wijeratne, Minister of Plantation Industries, and Minister of State for Defence, on the above subject.

I am also forwarding copies of the enclosures sent by the Hon. Minister, including a letter dated November 14, 1990, sent by Mr Nihal Sri Ameresekere.


I should bring to your attention in this connection certain considerations that have been placed before His Excellency the President with regard to this matter.

One is that if public concern has not been openly expressed so far, it is because the subject has been sub judice from the outset. Another is that if the District Court action should lead to a determination that a fraud did take place, the question will be asked as to why the company in which the government has a majority stake did not take legal action itself. A further question would be why once Court action was taken, the company kept aloof although it carries primary responsibility to its shareholders and to the public to litigate the matter. Arising from this, it could be asked as to why it was left to a minority shareholder to take action to prevent public funds being utilised to pay for a fraudulent deal. This would have been the result if the Japanese companies had called in the government guarantee.

With regard to Japanese Government sensitiveness in the matter, it has been pointed out that there has been growing public concern in Japan over frauds involving Japanese companies and public personages. No Government in Japan, therefore, would like to be seen giving comfort to Japanese companies involved in frauds abroad.

In the light of these considerations, His Excellency has directed action by you to take up to Cabinet the question of the stand Government should take with regard to the Court action now proceeding.

I would appreciate if His Excellency's direction could have your attention please.



(K H J Wijedasa)
Secretary to the President

Ministry of Plantation Industries, 95/75, Vauxhall Lane, Colombo 2.
Telex: 21276, JEDB - CE Telephone: 541539

LITIGATIONS

Sri Lanka Government and the Japanese Government colluded to cover-up a colossal fraud perpetrated on the Government of Sri Lanka by Mitsui & Co. Ltd., and Taisei Corporation of Japan, together with Japanese Architects Kanko Kikaku Sekkeisha, Yozo Shibata & Associates (KKS), where the Supreme Court of Sri Lanka upheld a strong prima-facie case of fraud in a case instituted by Nihal Sri Ameresekere, preventing any payments being made to Mitsui & Co. Ltd., and Taisei Corporation, KKS by HDL and by the Government of Sri Lanka under the State Guarantees given. *Case No. HC(C) 116/96(1) (D.C. Colombo Case No. 3155/Spl) reported in Commonwealth (Commercial) Law Reports – [1992] LRC (Comm) @ 636 – Ameresekere v Mitsui & Co. Ltd. and Others and in [1993] 1 SLR @ 22*

In addition, Nihal Sri Ameresekere instituted a Case against HDL, enjoining the adoption of the Annual Accounts of HDL, which the Attorney General did not contest. *Case No. HC(C) 134/96(1) (D.C. Colombo Case No. 3231/Spl).*

EVIDENCE OF PRESSURES EXERTED BY THE JAPANESE GOVERNMENT !

THE EMBASSY OF JAPAN
IN THE DEMOCRATIC SOCIALIST
REPUBLIC OF SRI LANKA
20, Gregory's Road
Colombo 7.
18 February, 1993

D/EA
Phone report regarding Hilton Hotel
S/ff
4/2/93
S/ff
18/2/93
JTC

Mr. R. Pankaralingam
Secretary
Ministry of Finance
Colombo 1.

Dear Mr. Pankaralingam,

I write to thank you very much for the excellent lunch hosted by you yesterday. The discussions we had were both very interesting and fruitful. May I, however, mention that I hope such meetings in the future will be held much earlier for the coming years as it would be very useful to both Japan and Sri Lanka.

With regard to the pending case I spoke to you about yesterday, I would be most grateful if you could please see that there would be a definite settlement to this before you leave for Japan and USA, as I feel that with you being out of the island, nothing positive will be done. I would also like to mention that the longer it takes for a settlement, the worse the situation gets.

Thanking you for your understanding and cooperation at all times.

Yours sincerely,
Massaki Kuniyasu
Massaki Kuniyasu
Ambassador of Japan

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MINISTRY OF FOREIGN AFFAIRS, Republic Building, Colombo 1, Sri Lanka

8 April 1994

Secretary
Cabinet Sub-Committee on Investment
BOI
Colombo 1.

Hilton Hotel

Mr. I. Hashimoto, Charge de Affaires a.i. of the Japanese Embassy in Colombo, recently called on Mr. R.C.A. Vandergert, State Secretary, Ministry of Foreign Affairs. During their discussion the Charge de Affaires made reference to the Hilton Hotel dispute.

I am sending herewith an extract of a note prepared by Mr. Vandergert, on his meeting with the Japanese Charge de Affaires. I shall be glad if this is brought to the notice of the Cabinet Sub-Committee on Investment at its next meeting.

G. Wijayasiri
G. Wijayasiri
Director-General/Economic Affairs

Extract Note

Secretary,

Last afternoon Mr I Hashimoto, C.d'A. of Japanese Embassy, called on me.

2. While it was predominantly a courtesy call, he referred to the following matters, which I think need a studied response from the appropriate agency of government:-

i. Referring to the ethnic conflict and the expressed intentions of the Government to negotiate with the LTTE, he said he was thinking aloud about what the reaction of the Government would be if Japan was to offer itself as a venue for talks between the representatives of the Government and the LTTE. He thought that such a meeting away from the public glare, might provide a conducive atmosphere for such talks. I replied that he should make this proposal to AIR since these matters were being handled by the Presidential Secretariat.

ii. Mr Hashimoto also brought to my notice the concern of the Government of Japan and Japanese investors in regard to the Hilton Hotel dispute. He said that in view of the importance which Sri Lanka Foreign Policy attaches to attracting foreign investment, the Government should look at the overall impact which disputes like the Hilton Hotel dispute would have on Sri Lanka-Japan bilateral economic relations and, more particularly, the adverse impact it may have on Japanese investors who might feel that in situations of this nature, the government was not doing enough to help resolve such issues. Since the overall loser would be the country itself, he thought that in matters like this the Government should become more involved, without leaving it to private arbitration or even negotiations conducted by BOI etc. I said I would convey his concerns to the appropriate authorities.

SS/FA
24.3.94

copy to :DG/PA
DG/EA R

IRREFUTABLE EVIDENCE OF CRIMINALITY

Thereafter **irrefutable evidence of criminality** of the cannibalization of the Architectural Plans was proven before a Special Presidential Commission, whose Warrant was coincidentally not extended by President Chandrika Kumaratunga. Hilton International under a separate Technical Assistance Agreement corroborated with KKS to finalise the Architectural Plans and *would they have not known this criminality to defraud ?*

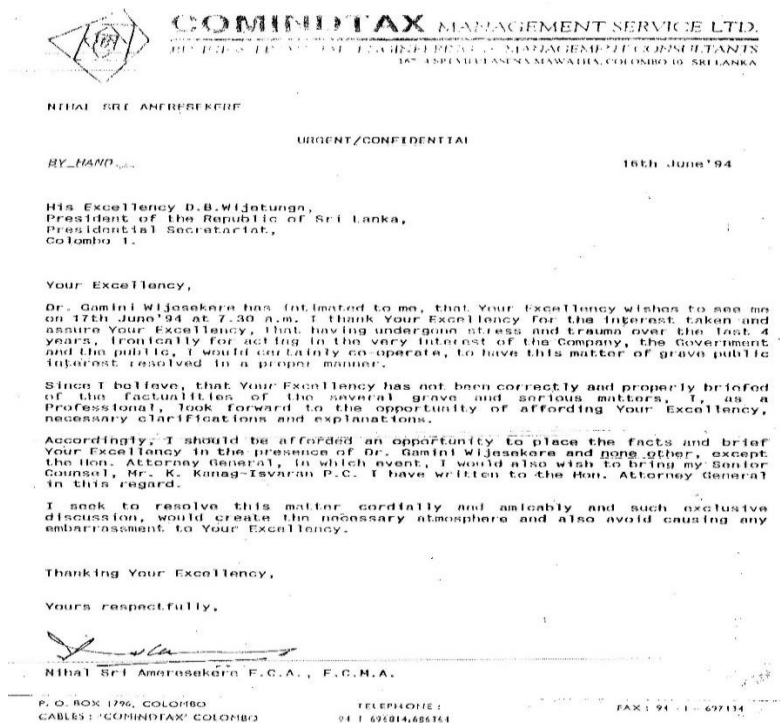
AGREEMENTS TO SETTLE AS PER THE PLEADINGS OF THE GOVERNMENT OF SRI LANKA, DUE TO THREATENING PRESSURES EXERTED BY THE JAPANESE GOVERNMENT

As a consequence, Agreements formulated by the Attorney General Tilak Marapana P.C., and Secretary, Ministry of Finance & Treasury, R. Paskaralingam, Deputy Secretary Treasury, K. Shanmugalingam, Addl. Solicitor General A.S.M. Perera P.C., and subsequently improved upon by Solicitor General Douglas Premaratne P.C. and A.S. Jayawardena, Secretary, Ministry of Finance & Treasury were entered into by the Government of Sri Lanka with Mitsui & Co. Ltd., Taisei Corporation, HDL and Nihal Sri Ameresekere, who established such fraud and exposed the above evidence of criminality before the Special Presidential Commission.

Prior to signing the Agreements Nihal Sri Ameresekere had given Quotations from Ernst & Young and Vanik Incorporation to Secretary, Ministry of Finance & Treasury, A.S. Jayawardena indicating rates of Compensation, whereby the Government of Sri Lanka stood bound thereby. **This was for a normal instance, whereas this is an instance with complex litigations overcoming obstacles.**

Thereafter due to further threatening pressures exerted by the Japanese Government to withhold Aid to Sri Lanka, **just before an Aid-Group Meeting**, an **Addendum** to the above Agreements was formulated by the Attorney General Sarath N. Silva P.C., and Secretary, Ministry of Finance & Treasury, B.C. Perera and Deputy Secretary Treasury P.B. Jayasundera, who had played a pivotal role, and signing as a Witness to the Addendum. They acted on the directions of President Chandrika Kumaratunga.

Previously President D.B. Wijetunga had endeavoured to conclude a Settlement also on pressures exerted by the Japanese Government. He had invited Nihal Sri Ameresekere for a discussion in this regard – viz:



Attorney General Tilak Marapana P.C., and Addl. Solicitor General A.S.M. Perera P.C., had been present, in addition Dr. Gamini Wijesekere.

President D.B. Wijetunga had agreed with Nihal Sri Ameresekere that payments cannot be made to Mitsui & Co. Ltd., and Taisei Corporation, as per the stance taken by Nihal Sri Ameresekere and demonstrated with Documents.

Furthermore, Mitsui & Co. Ltd., and Taisei Corporation had wanted **Promissory Notes** from the Government of Sri Lanka **in addition** to the State Guarantees, which Nihal Sri Ameresekere **had rejected**. Previously Mitsui & Co. Ltd., and Taisei Corporation had endeavoured surreptitiously to get a Mortgage on the Hilton Hotel which Nihal Sri Ameresekere had prevented.

At this stage, President D.B. Wijetunga had invited K.N. Choksy P.C., then Minister of Constitutional Affairs, who had been a wrong-doer Director of HDL, and charged by the Special Presidential Commission for fraud and causing losses to HDL and the Government of Sri Lanka. With Nihal Sri Ameresekere exposing such role of K.N. Choksy P.C., the Meeting **abruptly ended**. Due to threatening pressure exerted by the Japanese Government to withhold Aid, the *Addendum* converted at the behest of the Government of Sri Lanka, with the consent of Nihal Sri Ameresekere, 'Conditions Precedent' into 'Conditions Subsequent' mainly among other obligations and commitments to Nihal Sri Ameresekere to have been **pre-performed** by the Government of Sri Lanka and HDL under the Agreements. Significantly, the *Addendum, inter-alia*, stated thus **disclosing pressures exerted by the Japanese Government**.

"AND WHEREAS the Government wishes to continue to maintain without any impediment the cordial relationships with Japan and the Government has been concerned about the delay in the implementation of the aforesaid Agreements

AND WHEREAS in these premises the Government, with the consent and concurrence of Ameresekere, has now agreed to proceed with the implementation of the said Agreements No.1 and 2 without the fulfilment of the conditions stipulated in Agreements No. 3 and 4 except as herein specifically provided. It is understood by and between the parties that the Government will take administrative action, as permitted under applicable law, to give effect to the contents of Agreements No.3 and 4."

CONSENT MOTIONS AND CONSENT DECREES

Consequently, **Consent Motions** formulated by the Attorney General, which were part of the above Agreements were signed by the Attorney General and Other Instructing Attorneys and the **Commercial High Court Ordered and Entered the following Consent Decrees**.

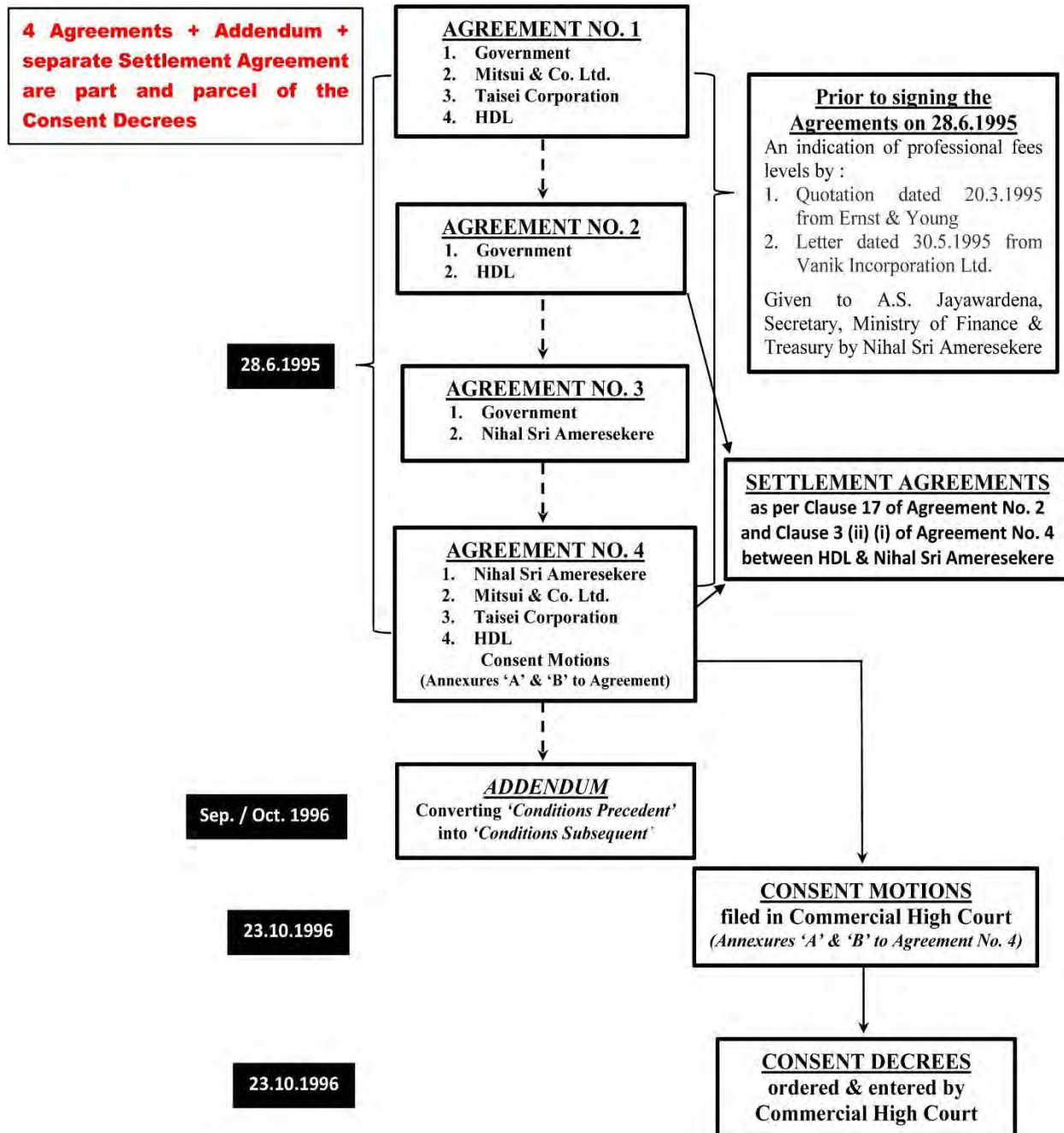
It would be noted that the Consent Decrees had specifically recorded thus - '...The Government of the Democratic Socialist Republic of Sri Lanka have entered into Agreements, settling the several issues.....'

With the ordering and entering of the Consent Decrees, as per the Agreements entered into on the intervention of the Government of Sri Lanka, as required therein

- i) US \$ 30 Mn., accumulated in HDL due to Interim Injunctions obtained by Nihal Sri Ameresekere was promptly paid to Mitsui & Co. Ltd., and Taisei Corporation before the Sri Lanka Aid-Group Meeting.
- ii) 15 dated Promissory Notes for the balance unwritten re-scheduled Debt were also issued to Mitsui & Co. Ltd., and Taisei Corporation by HDL, as per the Agreements.

DIAGRAMMATIC PRESENTATION

The following Diagram sets out the aforesaid Agreements and Addendum as **INTER-DEPENDENT AND INTER-CONNECTED ONE COMPOSITE AGREEMENT.**



CONSENT MOTIONS ARE ANNEXURES 'A' & 'B' TO AGREEMENT NO. 4, WHICH CONSENT MOTIONS WERE SIGNED AND TENDERED TO COMMERCIAL HIGH COURT AND SUPPORTED, AS PER 4 AGREEMENTS + ADDENDUM, BASED UPON WHICH COMMERCIAL HIGH COURT ORDERED AND ENTERED CONSENT DECREES. THUS, THE AGREEMENTS + ADDENDUM WERE PART AND PARCEL OF THE CONSENT DECREES. ALSO A SEPARATE SETTLEMENT AGREEMENT BETWEEN HDL & NIHAL SRI AMERESKERE WAS SIGNED CONCURRENTLY AS PER CLAUSES IN THE AGREEMENTS NO. 2 & 4 AND THEREFORE IS ALSO A PART AND PARCEL OF THE CONSENT DECREES

ACTIONS IN CONTEMPT OF THE CONSENT DECREES ORDERED AND ENTERED BY THE COMMERCIAL HIGH COURT

Appallingly, the Government of Sri Lanka, Attorney General, elected and selected Senior Public Officers, Judicial Officers and Legal Luminaries, either have been blissfully unaware or have deliberately evaded the gravity of non-fulfilment of the above **Consent Decrees** which had been Ordered and Entered by Commercial High Court on the intervention of the Government of Sri Lanka, itself at the behest of the Japanese Government, **whereby the parties stand injuncted to perform.**

After the above **Consent Decrees** had been ordered and entered into by the Commercial High Court, a party Charged by the Special Presidential Commission of Inquiry on grounds of fraud against HDL and the Government of Sri Lanka, filed / caused Cases to be filed to have the Agreements injuncted, whilst having completely ignored the above **Consent Decrees** Ordered and Entered by the Commercial High Court, ***in contempt thereof.***

Not only such party, but also would not the Counsel who settled the Plaints / Petitions have exposed themselves to the Offence of contemptuous Contempt of Court of **Consent Decrees, having knowingly ignored the same, and thereby misleading Court**, whilst the **Consent Decrees** had been part and parcel the documents submitted to Court in the said Cases ?

Certain District Courts entertained such Cases and issued Enjoining Orders and Interim Injunctions, without recognition of the **Consent Decrees** which had been Ordered and Entered by Commercial High Court **which were before the Court**, and therefore, had not the District Court Judges without jurisdiction entertained such Cases and issue Restraining Orders of the Agreements in Contempt of Court of the **Consent Decrees** ?

The Commercial High Court however had rightfully dismissed such a Case, but was revived by the erudite Justice Mark Fernando ! Did Justice Mark Fernando as a Supreme Court Judge and the Supreme Court have had jurisdiction to have entertained and deal with such a Case challenging Agreements based upon which **Consent Decrees** had been Ordered and Entered by the Commercial High Court ? Therefore would this not have been in Contempt of Court of the **Consent Decrees** ?

Court of Appeal Judge C.V. Wigneswaran, even questionably, acting in collusion with the Petitioner's Counsel, *permitted reduced payments to be made Mitsui & Co. Ltd., and Taisei Corporation, in terms of the Agreements*, which formed part and parcel of the **Consent Decrees**, whilst all other Conditions of the Agreements had been injuncted by him, causing immense loss, damage and jeopardy to the HDL and the Government of Sri Lanka. Did not Justice C.V. Wigneswaran commit a grave and serious Offence of Contempt of Court of **Consent Decrees** Ordered and Entered by Commercial High Court, ***without having any jurisdiction to have done so ?***

Thereafter Chief Justice Sarath N. Silva P.C., completely overlooking the fact that he, himself, as then Attorney General, together with Secretary, Ministry of Finance & Treasury B.C. Perera and Deputy Secretary Treasury P.B. Jayasundera had examined the Agreements and formulated the above *Addendum* and had caused the **Consent Decrees** to be entered into by Commercial High Court on the basis of Consent Motions, which had been formulated as a part of the Agreements. *Would this not tantamount to Contempt of Court of Consent Decrees which had been so obtained on behalf of the Government of Sri Lanka ?*

In such circumstances, could Chief Justice Saran N. Silva P.C. and the Supreme Court have had jurisdiction to have dealt with and interfered with the Agreements which formed a part and parcel of the above **Consent Decrees** Ordered and Entered by the Commercial High Court ? Would not such interference by the several relevant Supreme Court Judges have tantamount to Contempt of Court of the **Consent Decrees** Ordered and Entered by the Commercial High Court, noting also that the Supreme Court is the highest judiciary ?

Thereafter, Secretary Ministry of Finance & Treasury, P.B. Jayasundera had given an Undertaking to the Supreme Court, through the Attorney General, that the compensation to Nihal Sri Ameresekere would be independently determined and had subsequently appointed Merchant Bank of Sri Lanka Ltd., a Subsidiary of Bank of Ceylon to do so. P.B. Jayasundera had acted in Contempt of the Undertakings given to the Supreme Court.

CONTEMPTUOUS CONTEMPT OF COURT BY ELECTED AND SELECTED PUBLIC OFFICERS ?

When then Secretary Treasury P.B. Jayasundera had been called upon to fulfill the obligations and commitments to Nihal Sri Ameresekere under the Agreements, based upon which **Consent Decrees** had been ordered and entered into by the Commercial High Court, **P.B. Jayasundera repeatedly ignored such requirements.**

Later on the intervention of Lalith Weeratunga then Secretary to H.E. the President, P.B. Jayasundera **extorted** a Letter under duress to provide a Personal Overdraft to Nihal Sri Ameresekere as an interim measure, in complete contradiction of the stipulations in the Agreements **of an independent professional determination**, ironically he having previously got a reckless Report from Merchant Bank of Sri Lanka Ltd., a Subsidiary of Bank of Ceylon.

Nihal Sri Ameresekere accordingly had given a **further Letter** to Secretary Ministry of Finance & Treasury P.B. Jayasundera, Lalith Weeratunga then Secretary to H.E. the President and General Manager, Bank of Ceylon at the same time stating that the fulfillment of obligations and commitments to Nihal Sri Ameresekere should be as per the Agreements based upon which **Consent Decrees** had been Ordered and Entered by Commercial High Court.

This was in connection with an arrangement of a Personal Temporary Overdraft from the Bank of Ceylon, as an interim measure, for which Nihal Sri Ameresekere had paid interest, but due to the default of payment of Compensation rightfully and lawfully due to Nihal Sri Ameresekere, this Overdraft is in default and Nihal Sri Ameresekere, a Sovereign Creditor of the Government of Sri Lanka had been reported to CRIB, causing him irremediable mischief and irreparable damage. *In this regard, 'Flyer' on Books authored by Nihal Sri Ameresekere for the global market is annexed as Schedule V hereto.*

For such detriment and damage there is no remedy, ironically Nihal Sri Ameresekere having agreed to co-operate with Government of Sri Lanka in having his 2 Cases settled and withdrawn as had been required by the Government of Sri Lanka, due to threatening pressures exerted by the Japanese Government on the basis of Agreements entered into, upon which **Consent Decrees** had been Ordered and Entered by Commercial High Court.

P.B. Jayasundera had played a **pivotal role** in persuading Nihal Sri Ameresekere to enter into the *Addendum* with the solemn promise of fulfillment of obligations and commitments to Nihal Sri Ameresekere which had been 'Conditions Precedent' and then converted to 'Conditions Subsequent' due to lack of time before an imminent Sri Lanka Aid Group Meeting where Japanese Government had threatened to withhold Aid, which he had attended.

Thereafter in the infamous John Keells Colombo Port Oil Bunkering Case in the Supreme Court, Nihal Sri Ameresekere having played an exhaustive role in proving a series of fraudulent actions by P.B. Jayasundera, as directed by the Supreme Court, P.B. Jayasundera had to give-up all Public Office and gave an Affidavit to the Supreme Court in that behalf. *viz-* (IMF, World Bank & ADB Agenda on Privatisation – Vol. 3: Colombo Port Bunkering Privatisation – Annulled as Illegal & Fraudulent by Supreme Court)

Later, on an Application made by P.B Jayasundera the Supreme Court by a majority controversial decision of 6 to 1 permitted P.B. Jayasundera to assume the role as a Secretary, Ministry of Finance.

In such circumstances **P.B. Jayasundera had been a hostile party and thus disqualified** from having dealt with the obligations and commitments to Nihal Sri Ameresekere under the Agreements based upon which **Consent Decrees** had been Ordered and Entered by Commercial High Court. **Had not P.B. Jayasundera abused his State authority ?**

ROLE PLAYED BY ATTORNEY GENERAL, SECRETARY, MINISTRY OF FINANCE & TREASURY AND PUBLIC OFFICERS

The respective Attorney Generals Sunil de Silva P.C., T.J. Marapana P.C., Solicitor General, Douglas Premaratne P.C., on behalf of Shibly Aziz P.C., Sarath N. Silva P.C., and K.C. Kalamasabayson P.C. **had always acted by having regular discussions together with Nihal Sri Ameresekere and his Counsel**, with the participation of the respective Secretaries of the Ministry of Finance and Deputy Secretaries Treasury, namely, R. Paskaralingam, K. Shanmugalingam, A.S. Jayawardena and B.C. Perera and P.B. Jayasundera, acting for and on behalf of the Government of Sri Lanka. **This was to persuade Nihal Sri Ameresekere to enter into the Agreements and Addendum and to withdraw his 2 Cases on the threatening pressures exerted by the Japanese Government.**

Certain Senior Public Officers had required an Order of Court, without realizing that the **Consent Decrees** themselves bound them, particularly with the Government of Sri Lanka having **intervened** to arrange the same, and whereby **they stood injuncted** to fulfill the obligations and commitments in terms of the Agreements based upon which Consent Decrees had been Ordered and Entered by Commercial High Court ! **Not to have done so is Contempt of Court.**

CONSEQUENT EVASION BY ATTORNEY GENERAL, SECRETARY, MINISTRY OF FINANCE & TREASURY AND OTHERS

Having persuaded Nihal Sri Ameresekere to enter into Agreements and subsequently the **Addendum**, even converting 'Conditions Precedent' to 'Conditions Subsequent' of obligations and commitments to him by the Government of Sri Lanka and HDL, thereafter Attorney Generals and the Secretaries of Ministry of Finance and Treasury, **dubiously** have evaded and avoided meeting with Nihal Sri Ameresekere, **as had been so required by him** and fulfilling the obligations and commitments to him which had been 'Conditions Precedent' of a **Court Decreed Creditor under Consent Decrees defaulted by the Government of Sri Lanka !**

The respective Attorney Generals C. R. De Silva P.C., Mohan Peiris, Eva Wanasundera P.C., Palitha Fernando P.C., Yuwanjana Wijayatilake P.C., Jayatha Jayasuriya P.C., Dappula de Livera P.C., Sanjay Rajaratnam, together with respective Secretaries, Ministry of Finance & Treasury, Charitha Ratwatte, P.B. Jayasundera, Sumith Abeysinghe, R.H.S. Samaratunga and S.R. Attygalle have not had any meaningful discussions with Nihal Sri Ameresekere **to fulfill the obligations and commitments to him of the Government of Sri Lanka and HDL** under the **Consent Decrees** Ordered and Entered by Commercial High Court, notwithstanding Nihal Sri Ameresekere's written request for a Meeting before Attorney General for which an assurance had been given.

Did not such Public Officers stand in contemptuous Contempt of Court of **Consent Decrees** ? Where the State is in Contempt of Court, **the relevant Officials stand liable to be charged for the Offence of Contempt of Court, as per established authorities**. One does not enter into Agreements in utmost good faith with Sovereign Governments, **anticipating to be cheated by such sovereign Governments.**

H.E. THE PRESIDENT DIRECTED URGENT ACTION TO BE TAKEN

On representations made to H.E. the President Maithripala Sirisena, Directives had been issued by him through Austin Fernando, Secretary to H.E. the President to Finance Minister Mangala Samaraweera and Minister Public Enterprise Development Kabir Hashim, directing them to take action on this **commercial matter**. These Letters have been copied to Nihal Sri Ameresekere – viz:

INDIFFERENCE OF ELECTED AND SELECTED PUBLIC OFFICIALS

Disregarding such presidential Directions, Minister Kabir Hashim appointed a Committee of Officials **to examine** this matter on which Commercial High Court had Ordered and Entered **Consent Decrees** based on Agreements, as per his Ministry's Letter dated 22.2.2018.

The Committee comprised of Officials S.R. Attygalle, Deputy Secretary Treasury (Chairman) (*also Director, Bank of Ceylon*), V. Kanagasabapathi, former Deputy Secretary Treasury and Ravindra Hewavitharana, Secretary, Ministry of Public Enterprise Development and then Deputy Solicitor General Sumathi Dharmawardene.

This Committee **had not summoned** Nihal Sri Ameresekere to be heard and to ascertain the facts, thereby **denying him natural justice**, notwithstanding his requirement for a Meeting. Nor had the Committee all the Documents and facts before them as had been subsequently admitted by A.K.D.D.D. Arandara, Director Legal, Ministry of Finance !

Finance Minister Mangala Samaraweera got Chairman / CEO, National Agency for Public-Private Partnership Thilan Wijesinghe and A.K.D.D.D. Arandara, Director Legal, Ministry of Finance to meet Nihal Sri Ameresekere, together with his Lawyers, **just on one day** and they had promised to get back to Nihal Sri Ameresekere after all relevant facts having been clarified and List of Documents submitted to them, **however questionably they had not got back to him.**

Thereafter Finance Minister Mangala Samaraweera had requested Minister Malik Samarawickreme to meet Nihal Sri Ameresekere to have this matter concluded. Though Minister Malik Samarawickreme had intimated to Nihal Sri Ameresekere that he has made recommendations to Finance Ministry, it had apparently been rejected by Secretary, Ministry of Finance & Treasury R.H.S. Samaratunga, **who took the law into his own hands.**

Did not the foregoing persons act in sheer Contempt of Court of the **Consent Decrees** Ordered and Entered by Commercial High Court ?

QUESTIONABLE ROLE OF ATTORNEY GENERAL

At the same time, Austin Fernando, Secretary to H.E. the President wrote to Nihal Sri Ameresekere stating that R. Paskaralingam, Senior Advisor to Prime Minister Ranil Wickremesinghe would have the matter concluded, **as an urgent measure**, with copies of the Letter to **Attorney General** and **R. Paskaralingam.**

Thereafter R. Paskaralingam wrote a Letter to Nihal Sri Ameresekere informing him that he had taken up the matter at a discussion Prime Minister Ranil Wickremesinghe had with then Attorney General Jayantha Jayasuriya P.C., (*present Chief Justice*), and that he had intimated that Nihal Sri Ameresekere had to pursue this matter further with Secretary, Public Enterprise Development, Ravindra Hewavitharana, and that Attorney General's Officials were still dealing with this matter.

Is this not clear evidence of **stalling** by the highest Officials of the State of the fulfillment of the obligations and commitments to Nihal Sri Ameresekere under the **Consent Decrees** Ordered and Entered by the Commercial High Court at the behest of the Government of Sri Lanka represented by Attorney General and Secretary, Ministry of Finance & Treasury ?



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சனாதிபதி அலுவலகம்
PRESIDENTIAL SECRETARIAT

20 FEB 2018



14 MAY 2018

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Ministry of National Policies and Economic Affairs

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My No. Your No. Date

12th May 2018

My No. PS/SP/Sec/Misc (Vol.I)
February 16, 2018

Mr. Nihal Sri Ameresekere
Consultants 21 Limited
167/4, Vipulasena Mawatha
Colombo 10

Dear Mr. Ameresekere,

Fulfillment of Sovereign obligations and commitments of the Government of Sri Lanka, as per Agreements executed and decrees ordered and entered based thereon by Court

I refer to your letter dated February 12th, 2018 addressed to Mr. R. Paskaralingam, Senior Advisor to Hon. Prime Minister on the above subject.

I believe that Mr. Paskaralingam would attend to your request **as an urgent measure.**

Yours sincerely,


Austin Fernando
Secretary to the President

Copies : 1. **Hon. Attorney General**
2. Mr. R. Paskaralingam, Senior Advisor to Hon. Prime Minister

Mr Nihal Amarasekera
Consultants 21 Ltd.,
167/4, Vipulasena Mawatha
Colombom 10.

Dear Mr. Nihal,

This is regarding the communications you have been addressing me about the amounts due to you from the Government Last Thursday, 10th May 2018 there was a discussion between Hon. Prime Minister and the Attorney General on several pending projects seeking Attorney General's clearance. **I took this opportunity to bring up your matter and the Attorney General replied that this matter is under correspondence between his officials and the Secretary, Ministry of Public Enterprise Development.**

Therefore, I would like to advise you to pursue this matter with the Secretary, Ministry of Public Enterprise Development as I being an Advisor is finding it difficult to raise this matter at any official meetings.

Thanking you.
Yours sincerely


R. Paskaralingam
Advisor
Ministry of National Policies and Economic Affairs

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QUESTIONABLE CABINET SUB-COMMITTEE

Thereafter when the matter had come up before the Cabinet of Ministers, then Minister Sarath Amunugama had intervened to have the matter examined by a Cabinet Sub-Committee, who had never summoned Nihal Sri Ameresekere to ascertain the facts, though Nihal Sri Ameresekere had so required.

Letter dated 9.6.2017 from K.D.N. Ranjith Asoka, Director General, Department of Public Enterprises, Finance Ministry, **discloses the irresponsible sheer indifference in which the Cabinet Sub-Committee had acted ?**

No Meeting had been had and no Report had given to the Cabinet **within 3 weeks**, as had been **stipulated** by Cabinet. Does this not tantamount to a brazen act of Contempt of Court of **Consent Decrees** Ordered and Entered by Commercial High Court ?

What right has the Cabinet of Ministers to examine **Consent Decrees** Ordered and Entered by Commercial High Court, that too, on the intervention of the Government of Sri Lanka ?



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அரசு தொழில்முயற்சிகள் திணைக்களம்
Department of Public Enterprises

Web Site : www.treasury.gov.lk

මහා කාන්ට්‍රොලර්, ජිනරාල් අමාත්‍යාංශය, ශ්‍රී ලංකාව.
பொதுத் தளவுச்சீ. த்த. அமைச்சு, கொழும்பு, ශ්‍රී ලංකාව.
General Treasury Ministry of Finance, Colombo 01, Sri Lanka.

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எனது இல
My Number. }

PE/MD/CASE/Gen/2017

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Your Number }

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திகதி
Date } 09.06.2017

Private Secretaries to:

- The Hon (Dr.) Sarath Amunugama-Minister of Special Assignments
- The Hon Ravi Karunanayake-Minister of Foreign Affairs
- The Hon Patali Champika Ranawaka-Minister of Megapolis and Western Development
- The Hon (Dr.) Wijayadasa Rajapaksa-Minister of Justice and Buddhasana Religious Affairs
- The Hon Kabir Hashim-Minister of Public Enterprise Development

Dear Sir,

Cabinet Sub- Committee to Examine the "Claims Regarding Hotel Developers Lanka Ltd. (HDLL) – Mr. Nihal Sri Amarsekara"

The Cabinet has decided in its meeting held on 04th of April 2017 to set up a Sub Committee to discuss and report back to the Cabinet on the above matter within three weeks which has already been delayed. The relevant Cabinet Memorandum and the decision have already been circulated to the relevant Ministries.

As the Director General of Public Enterprises, I have been appointed as the Secretary and the Convener of the above sub Committee by the Secretary to the Treasury. Accordingly, I appreciate very much if you could inform us possible three days with available time for your Hon. Minister. Then, the meeting can be arranged at a convenient time for all members of the committee, the Ministers.

Please treat this as a very urgent matter as the given time has already been passed.

Thanking you


K.D.N. Ranjith Asoka
Director General

REPRESENTATIONS TO PRIME MINISTER & FINANCE MINISTER

In response to the representations made by Nihal Sri Ameresekere to the Prime Minister & Finance Minister Mahinda Rajapakse, following Letters were promptly sent by the Prime Minister's Office addressed to S.R. Attygalle, with copies to Nihal Sri Ameresekere.



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 பிரதம அமைச்சரின் அலுவலகம்
PRIME MINISTER'S OFFICE

28 NOV 2019
 58, ශ්‍රීමත් ඉරෙස්ට් උ විපුලසා මාවත, කොළඹ 07.
 58, சீர்திருவிநாயக்க உ சீர்திருவிநாயக்க, கொழும்பு 07.
 58, Sir Ernest de Silva Mawatha, Colombo 07.

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 பிரதம அமைச்சரின் அலுவலகம்
PRIME MINISTER'S OFFICE

58, ශ්‍රීමත් ඉරෙස්ට් උ විපුලසා මාවත, කොළඹ 07.
 58, சீர்திருவிநாயக்க உ சீர்திருவிநாயக்க, கொழும்பு 07.
 58, Sir Ernest de Silva Mawatha, Colombo 07.
 Web - www.pmooffice.gov.lk

PMO/01/SP-1/FIN
 27th July 2020

Mr. S R Atygalle
 Secretary
 Ministry of Finance, Economy & Policy Development
 The Secretariat
 Colombo 01

Obligations and Commitments of the Government under an in terms Writs of Execution Issued by the Commercial High Court on 3.1.2019 of the Consent Decrees Ordered and Entered by the Commercial High Court based on 4 Agreements and Addendum thereto Entered into on the Intervention of the Government of Sri Lanka, as stated therein

This refers to a letter of today, addressed to you with copy to us by Mr. Nihal Sri Ameresekere - Consultants 21 Limited of 167/4, Vipulasena Mawatha, Colombo -10, on the above subject.

The letter which is self-explanatory, is sent herewith for your kind information and necessary action, please.

Chandana Kumaratne AAL
 Additional Secretary
 for Secretary to the Prime Minister

✓ Copy to: Mr. Nihal Sri Ameresekere - For information, please.
 167/4, Vipulasena Mawatha
 Colombo -10

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 பிரதம அமைச்சரின் அலுவலகம்
PRIME MINISTER'S OFFICE

01 JAN 2021
 58, ශ්‍රීමත් ඉරෙස්ට් උ විපුලසා මාවත, කොළඹ 07.
 58, சீர்திருவிநாயக்க உ சீர்திருவிநாயக்க, கொழும்பு 07.
 58, Sir Ernest de Silva Mawatha, Colombo 07.
 Web - www.pmooffice.gov.lk

PMO/TT SP/1/7/FIN
 10th December 2020

Secretary
 Ministry of Finance
 The Secretariat
 Colombo -01

Conclusion of Government's Obligations and Commitments under Consent Decrees Ordered and Entered by the Commercial High Court, which you/the Government stood and Stand Injuncted to Fulfil.

This refers to our letter dated 27th July 2020 addressed to you, forwarding a request by Mr. Nihal Sri Ameresekere of 167/4, Vipulasena Mawatha, Colombo - 10, regarding the above matter.

I am forwarding herewith a further letter addressed to Hon. Mahinda Rajapaksa, Prime Minister by him on the same matter, for your kind attention and necessary action, please.

Priyanga Nanayakkara
 Senior Assistant Secretary
 for Secretary to the Prime Minister

Copy to: Mr. Nihal Sri Ameresekere - For information, please.
 167/4, Vipulasena Mawatha
 Colombo -10

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 பிரதம அமைச்சரின் அலுவலகம்
PRIME MINISTER'S OFFICE

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 58, சீர்திருவிநாயக்க உ சீர்திருவிநாயக்க, கொழும்பு 07.
 58, Sir Ernest de Silva Mawatha, Colombo 07.
 Web - www.pmooffice.gov.lk

PMO/TT SP/1/7/FIN
 7th June 2021

Secretary
 Ministry of Finance
 The Secretariat
 Colombo -01

Conclusion of Settlement of 1996 -Vide Notices of Writs of Execution on 3.1.2019

This has reference to a letter addressed to you with copies to the Secretary to the Prime Minister and the Additional Secretary by Mr. Nihal Sri Ameresekere of Consultants 21 Limited on the above subject.

The self-explanatory letter is forwarded herewith for your kind attention and necessary action, please.

Priyanga Nanayakkara
 Senior Assistant Secretary
 for Secretary to the Prime Minister

Copy to: Mr. Nihal Sri Ameresekere - For information, please.
 Consultants 21 Limited

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 විද්‍යුත් තැපෑල secretary@pmooffice.gov.lk

Secretary, Ministry of Finance & Treasury S.R. Attygalle had acted with **scant disregard** to the foregoing Letters of the Prime Minister of Sri Lanka. S.R. Attygalle was known to have worked / working very closely with P.B. Jayasundera, a party *hostile* to Nihal Sri Ameresekere for having exposed several of his fraudulent deals, **causing colossal losses to the State.**

INTRIGUING ACTION BY PRIME MINISTER RANIL WICKREMESINGHE ?

Prime Minister Ranil Wickremesinghe, through his admittedly illegal Anti-Corruption Office, had forwarded a Complaint to the now acknowledged unlawful FCID, **based on a stolen** Confidential Letter robbed / pilfered from the Bank of Ceylon, which a JVP Provincial Councilor, Asoka Ranawala had provided, with JVP Leader, Anura Kumara Dissanayake, also a Member of this infamous Anti-Corruption Committee.

The FCID Chief Police Investigator R.A.K. Premaratne having recorded a Statement of Facts with Documents from Nihal Sri Ameresekere, realized the gravity of the Agreements and **Consent Decrees** Ordered and Entered by the Commercial High Court, and the matter had been simply dropped. But the damage had been done, whilst there was no apology, whatsoever, to Nihal Sri Ameresekere. R.A.K. Premaratne had advised Nihal Sri Ameresekere that this investigation had been shockingly done under the supervision of the Attorney General (*present Chief Justice*).

As a part of the investigations, FCID **without a Court Order**, had obtained particulars of Nihal Sri Ameresekere's Personal Account at Bank of Ceylon, and the Bank Officials had disclosed information, **notwithstanding banking secrecy laws.** S.R. Attygalle, Deputy Secretary Treasury, also a Director of Bank of Ceylon, had also afforded information, which is unbecoming conduct of a Bank Director to have done so **without an Order of Court**.

Bank of Ceylon too had failed and neglected to investigate the Complaint of Nihal Sri Ameresekere of the **robbed / pilfered Letter**. Bank of Ceylon at the relevant time came under the supervision of Minister Kabir Hashim, who had acted in Contempt of the **Consent Decrees** and had perversely precipitated a public scandal damaging the name, standing and repute of Nihal Sri Ameresekere. Please see the 'Blog' for details by S.P. Sriskantha, Attorney-at-Law – <https://www.consultants21.com/nihal-sri-ameresekere-hilton-hotel-case-new/>

It is relevant to place on record that in the infamous John Keells Colombo Ports Oil Bunkering Case, Nihal Sri Ameresekere personally appearing had played an active role in proving the fraudulent deal before the Supreme Court. This included the disclosure with evidence of then Prime Minister Ranil Wickremesinghe, 3rd Respondent, of having **forced** then Chairman Sri Lanka Ports Authority to sign the Agreement, as had been recorded in the Board Minutes of the Colombo Ports Authority.

It has also been disclosed that then BOI Chairman Arjuna Mahendran had afforded a fraudulent BOI Approval for this dubious Project, which was annulled by the Supreme Court, recovering the past profits. Suppressing such facts Prime Minister Ranil Wickremesinghe in 2015 had endorsed the unquestionable integrity and credibility of Arjuna Mahendran to be appointed Governor, Central Bank of Sri Lanka, amidst serious opposition thereto. *viz - (IMF, World Bank & ADB Agenda on Privatisation – Vol. 3: Colombo Port Bunkering Privatisation – Annulled as Illegal & Fraudulent by Supreme Court)*

CRIMINAL INVESTIGATION SCUTTLED

Attorney General K.C. Kamalabayson P.C. had previously directed the Criminal Investigation Department to take criminal action on the fraud established before the Special Presidential Commission, which had been questionably stalled by the Attorney General's Department and then Director-CID A.R. Waidyalankara, **who had attempted a voluminous impossible task to obtain photocopies of the original Documents lodged with the National Archives Department by the Special Presidential Commission, with permission having been already granted by the Secretary to H.E. the President to remove the said original Documents from the Department of the National Archives as per the law.** Consequently it is the same A.R. Waidyalankara, who headed the infamous FCID and the above malicious investigation !

PROVEN ATTEMPT TO CHEAT NIHAL SRI AMERESKERE !

Subsequently, Secretary, Ministry of Finance & Treasury, S.R. Attygalle acting in concert and collusion with Addl. Solicitor General Sumathi Dharmawardene P.C., and Director Legal, Finance Ministry, A.K.D.D.D. Arandara, **behind the back of Nihal Sri Ameresekere** had **unilaterally** submitted a purported Draft Agreement titled "*Resolution of Claims by Nihal Sri Ameresekere against Hotel Developers Lanka PLC ...*", which had been **rejected** outright by Nihal Sri Ameresekere.

Nihal Sri Ameresekere had pointed out that the fulfillment of obligations and commitments to him **were by the Government of Sri Lanka and HDL** as per the Agreements based upon which **Consent Decrees** had been Ordered and Entered by the Commercial High Court.

The foregoing is ample proof of a deliberate **attempt to cheat** Nihal Sri Ameresekere, **in addition to acting in Contempt of Court of the Consent Decrees.**

The foregoing has been brazenly done, whilst Nihal Sri Ameresekere had required a Meeting before Attorney General Sanjay Rajaratnam P.C. to have a discussion, as had been had previously for the **Agreements** and the **Consent Decrees**, to fulfill the obligations and commitments to Nihal Sri Ameresekere under the said Agreements formulated by Attorney General, based upon which **Consent Decrees** had been Ordered and Entered by the Commercial High Court.

Then Attorney General Sarath N. Silva P.C., Secretary, Ministry of Finance & Treasury B.C. Perera and Deputy Secretary Treasury P.B. Jayasundera had **persuaded** Nihal Sri Ameresekere to withdraw his 2 Cases **before** the fulfilment of the 'Conditions Precedent'.

Having so acted, they stood even more obligated to have performed and fulfilled the obligations and commitments to Nihal Sri Ameresekere and **not to have done so is unexpected and unworthy conduct of the Attorney General and Senior Public Officials.**

CONDUCT AND ACTIONS IN BREACH OF CONDITIONS OF THE AGREEMENTS BASED UPON WHICH CONSENT DECREES HAD BEEN ORDERED AND ENTERED BY COMMERCIAL HIGH COURT

The foregoing conduct and actions **are in complete contradiction to and in violation of the Conditions of the Agreements** based upon which **Consent Decrees** had been Ordered and Entered by Commercial High Court **and a perverse attempt to cheat Nihal Sri Ameresekere, a Sovereign Creditor of the Government of Sri Lanka, by undue means.**

Even Nihal Sri Ameresekere's own monies paid as interest on his Personal Overdraft which were to be refunded by the Treasury, now amounting to over **Rs. 90 Mn., has been deliberately held back**, to financially frustrate the Sovereign Creditor Nihal Sri Ameresekere, and to evade and avoid the fulfillment of the obligations and commitments by the Government of Sri Lanka to Nihal Sri Ameresekere, as per the Agreements entered into by the Government of Sri Lanka, based upon which **Consent Decrees** had been Ordered and Entered by Commercial High Court.

The foregoing had also been in the circumstances of the Covid-19 pandemic lockdowns and the harassment of the Sovereign Creditor Nihal Sri Ameresekere by unwarranted litigations and voluminous correspondence, pushing him to a dire financial predicament and to **unjustly exploit** such situation by this long prolonged wrongful and unlawful delay in Contempt of Court of the **Consent Decrees with sheer disregard to Court.**

In comparison **previously** Nihal Sri Ameresekere had been persuaded by the Government of Sri Lanka, with the Government of Sri Lanka having entered into Agreements persuading Nihal Sri Ameresekere to withdraw his 2 Cases **even converting 'Conditions Precedent' into 'Conditions Subsequent'**, with immense **admitted** benefit to the Government of Sri Lanka and HDL, as given below, in the context of which **obligations and commitments of both the Government of Sri Lanka and HDL had been clearly stipulated in the Agreements:**

Write-off & Re-scheduling of Foreign Exchange Loans benefitting the Government of Sri Lanka and HDL

"Mitsui & Taisei wrote-off in June 1995 Jap. Yen. 17,586 Mn., then US \$ 207 Mn., or Sri Lankan Rs. 10,200 Mn., which **write-off** on foreign loans at value as at **30.6.2021** at Average Weighted Fixed Deposit Rate (AWFDR) amounting to **SL Rs. 140.9 Bn.**, and likewise, foreign loans balance at value as at **30.6.2021** amounting to **SL Rs. 81.3 Bn.**, had been **re-scheduled** over a further period of 16 years, at a reduced rate of interest of 5.25% p.a."

Had Nihal Sri Ameresekere not agreed with the urgings of the Government of Sri Lanka, **and had pursued his 2 Cases**, he would have then succeeded in obtaining Orders not to pay Mitsui & Co. Ltd., and Taisei Corporation, and would have accumulated over US \$ 150 Mn., in HDL, where US \$ 30 Mn., accumulated in HDL as per the Interim Injunctions obtained by Nihal Sri Ameresekere, had been released to Mitsui & Co. Ltd., and Taisei Corporation **on the signing of Addendum as had been required by the Government of Sri Lanka.**

If Nihal Sri Ameresekere had chosen to do so as aforesaid, today he, among Others, **would have been the main Stakeholders of HDL and not the Government of Sri Lanka.**

Not only the Government of Sri Lanka, but HDL also has acted in blatant violation of the Conditions stipulated in the Agreements upon which **Consent Decrees** had been Ordered and Entered by Commercial High Court.

HDL's obligations had been clearly stipulated in the Agreements. **HDL's Board of Directors had not been reconstituted in accordance therewith**, nor had HDL conducted its affairs as per the binding stipulations in the Agreements. **The respective HDL Chairmen, Competent Authorities and HDL Board of Directors, including HDL Company Secretaries stand accountable and responsible therefor, including Contempt of Court of Consent Decrees.**

SRI LANKA GOVERNMENT AND HDL'S OBLIGATIONS AND INDEMNITIES AFFORDED TO NIHAL SRI AMERESEKERE

Agreement No. 1 – between Government, Mitsui & Taisei and HDL

“18. Mr. Ameresekere has agreed to settle and withdraw D.C. Colombo Action No. 3155/Spl., upon the fulfilment of the conditions precedent set out in Clause 3 of the said Agreement No. 4, and

(a). the Government shall and will not commit any act or omission by inactivity or otherwise, which shall or may in any manner whatsoever or howsoever impede the prompt fulfilment of the said conditions precedent, and

(b). Mitsui and Taisei shall and will not commit any act or omission by abstention or otherwise, which shall or may in any manner whatsoever or howsoever impede the fulfilment of the said conditions precedent.”

Agreement No. 3 – between the Government and Nihal Sri Ameresekere

“6. The Government shall and will hold Mr. Ameresekere, his heirs, executors and administrators freed from and/or indemnified against and/or saved harmless from any claims, demands, actions or consequences of whatsoever kind or nature arising from or attributable to Mr. Ameresekere instituting and/or settling the said District Court Colombo Actions numbered 3155/Spl and 3231/Spl, and/or acting or purporting to act in furtherance thereof and/or reaching Agreement as referred to herein and further the Government shall and will support and/or assist Mr. Ameresekere in any matter whatsoever connected therewith.”

Agreement No. 2 – between the Government and HDL

“25. The parties hereto jointly and/or severally shall and will hold Mr. Ameresekere his heirs executors and administrators freed from and/or indemnified against and/or saved harmless from any claims, demands, actions or consequences of whatsoever kind or nature arising from, or attributable to, Mr. Ameresekere instituting and/or settling the said District Court Colombo Actions numbered 3155/Spl and 3231/Spl, and/or acting or purporting to act in furtherance thereof and/or reaching Agreement as referred to herein and further the said Parties shall and will support and/or assist Mr. Ameresekere in any matter whatsoever connected therewith.”

The foregoing conduct and actions had been blatantly perpetrated in reckless breach, *inter-alia*, of the foregoing conditions and **indemnities** in the Agreements which formed a part and parcel of the **Consent Decrees** Ordered and Entered by Commercial High Court. Do not the foregoing conduct and actions tantamount to grave and serious contemptuous Contempt of Court of **Consent Decrees** Ordered and Entered by Commercial High Court, and ought not all those concerned to be held accountable for such Offence of Contempt of Court **upholding the rule of law and the standing of Court, irrespective of the status personalities concerned.**

In addition would not the foregoing circumstances of harm caused to and harassment of Nihal Sri Ameresekere, a Sovereign Creditor of the Government of Sri Lanka, in blatant breach of the foregoing conditions and **indemnities** afforded by Government of Sri Lanka and HDL in terms of the **Consent Decrees give rise to further Damages payable by the Government of Sri Lanka and HDL to Nihal Sri Ameresekere ?**

Had not only elected and selected Senior Public Officers, but even the State itself, Judiciary, Senior Judges, Attorney Generals and knowledgeable Lawyers had shockingly failed to recognize and respect the foregoing **Consent Decrees** and had acted in Contempt of **Court after they having been put on Notice thereof ?**

DISCLOSURE OF CONSENT DECREES

It had been late S.P. Sriskantha, Attorney-at-Law, together with Ms. Bushra Hashim, Attorney-at-Law, who had in the first instance initiated an Application for Writs of Execution of the Decrees, without realizing that they were **Consent Decrees.**

Thereafter, Ms. Bushra Hashim, Attorney-at-Law, persuaded with the Commercial High Court Registry to retrieve the Original Files, which had been stored in Containers for years, due to the Commercial High Court Record Room Roof having collapsed. Thereupon the Court had permitted the Support of the above Application for Writs of Execution and issued Notices. Regular assurances had been given by Attorney General to Court that the matter would be resolved **for nearly 1 ½ years.**

When S.P. Sriskantha, Attorney-at-Law, suddenly passed away, Nihal Sri Ameresekere had personally appeared, and with foreign legal advice, had brought out the **Contempt of Court of Consent Decrees**, which binds parties who have consented to the Ordering and Entering of Consent Decrees, in this instance based on Agreements formulated by the Attorney General, on the intervention of the Government of Sri Lanka, as recorded in the **Consent Decrees and the parties stood injuncted to perform.**

Nihal Sri Ameresekere had been directed by Court to tender an Amended Petition, which had been tendered with an **Amended Caption** titled - **"In the matter of an Application under Chapter XXII of the Civil Procedure Code, read with Law applicable to Contempt of Court of Consent Decrees"**

Nihal Sri Ameresekere having researched with foreign legal lawyers, has cited at that time over 30 Legal Authorities to expose the law applicable to **Consent Decrees, where when one party performs the other parties stand injuncted to perform.** (A few of the Legal Authorities are given in Schedule I hereto)

LIABILITY OF JAPANESE GOVERNMENT ?

Would not the Japanese Government stand accountable and responsible under the Commercial Law of Sri Lanka for entering and interfering with a commercial transaction, and thereby standing liable for damages caused to Nihal Sri Ameresekere, as a consequence of the Japanese Government's undue intervention threatening with pressures.

The following citations from Judgements of Lord Denning MR would be pertinent in the context of diplomatic influences and nuances, *vis-à-vis*, this matter. (1977) 1 All ER @ 892

“If the dispute brings into question, for instance, the legislative or international transactions of a foreign government, or the policy of its executive, the court should grant immunity if asked to do so, because it does offend the dignity of a foreign sovereign to have the merits of such a dispute canvassed in the domestic courts of another country; but if the disputes concerns, for instance, the commercial transactions of a foreign government (whether carried on by its own departments or agencies or by setting up separate legal entities), and it arises properly within the territorial jurisdiction of our court, there is no ground for granting immunity” – *Rahimtoola v Nizam of Hyderabad*

“..... a foreign sovereign has no immunity when it enters into a commercial transaction with a trader here and a dispute arises which is properly within the territorial jurisdiction of our courts. If a foreign government incorporates a legal entity which buys commodities on the London market, or if it has a state department which charter ships on the Baltic Exchange it thereby enters into the market places of the world, and international comity requires that it should abide by the rules of the market” – *Thai–Europe Tapioca Service Ltd. v Government of Pakistan*

NIHAL SRI AMERESEKERE ENGAGES PRESIDENT'S COUNSEL NIEL UNAMBOOWE

Thereafter with a coincidence of destiny, Nihal Sri Ameresekere entrusted the matter to be dealt with by Niel Unamboowe P.C., former Addl. Solicitor General, who together with his Juniors Ms. Tersha Nanayakkara, and Lakdev Unamboowe, Attorneys-at-Law, have done extensive research and cited over 100 Legal Authorities to support the standing and status of **Consent Decrees**, and **breach thereof warranting imprisonment**. They are instructed by Ms. Bushra Hashim, Attorney-at-Law

CONCLUSION

Given the traumatic experience Nihal Sri Ameresekere had in mid-October 2021 and the miraculous escape from the Galle Face Sea at around 5.00 a.m. in the face of treacherous strong monsoon waves, having escaped from being drawn into the Sea, after a struggle for over ½ hour, having been bashed about on the rocks, and then held by 3 Muslim Boys sleeping overnight, and later lifted by Officers of the Navy and rushed to Hospital, where he had undergone immediate surgery and had been ordered bed rest from then.

Given his present age of 74 years, he decided to get his loyal Staff, who are familiar with the facts, to prepare this Statement of Facts for the benefit of his Family, Lawyers and Professional Friends, who have been advising and assisting him.

Also having stood in the public interest throughout his career, he also decided to document this, in the interest of Justice and the upholding of the Rule of Law, being enforced equally, irrespective of the status of the personalities concerned.



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ANNEXURES :

- SCHEDULE I – **A FEW LEGAL AUTHORITIES ON CONTEMPT OF COURT OF CONSENT DECREES**
- SCHEDULE II – **LOSSES CAUSED TO GOVERNMENT WHILST HAVING DEFAULTED THE OBLIGATIONS AND COMMITMENTS TO NIHAL SRI AMERESEKERE, A SOVEREIGN CREDITOR UNDER CONSENT DECREES**
- SCHEDULE III – **PRO-BONO WORK BY NIHAL SRI AMERESEKERE BENEFITTING THE GOVERNMENT AND THE COUNTRY**
- SCHEDULE IV – **TESTIMONIALS**
- SCHEDULE V – **FLYER ON BOOKS AUTHORED BY NIHAL SRI AMERESEKERE PUBLISHED IN US TO THE GLOBAL MARKET**

A FEW LEGAL AUTHORITIES ON CONTEMPT OF COURT OF CONSENT DECREES

- In *Rama Narang v Ramesh Narang*,³ the Supreme Court noticed, “A consent decree is composed of both a command and a contract”. In other words, a decree in terms of consent order is nevertheless a decree and must be obeyed as the course of action contained in the decree has received the approval of the Court which has also authorized the parties to follow the same. Violation, therefore, of the consent given before the Court would be a violation of an undertaking of the decree. The Supreme Court did not find justification in distinguishing between willful violation of the terms of a compromise decree and willful violation of a decree which is passed on adjudication. Court observed:

“No distinction is statutorily drawn between an order passed after adjudication and an order passed by consent”.

On an earlier occasion, in *Bank of Baroda v Sadruddin Hasan Daya*⁴ the Supreme Court had held:

“... The violation or breach of the undertaking which became part of the decree of the court certainly amounts to contempt of court, irrespective of the fact that it is open to the decree-holder to execute the decree”.

³ (2006)11 SCC 114; AIR 2006 SC 1883.

⁴ (2004)1 SCC 360; AIR 2004 SC 942.

- @ Pages 137-138 of *Contempt of Courts – Law & Practice by Ranadhir Kumar De*

- **The decree issued by consent cannot be modified, except by consent.**

- *McGraw v. Traders Nat. Bank* (1908) 64 W. Va. 509, 63 S. E. 398;

- *Thompson v. Maxwell, etc. Co.* (1897) 168 U. S. 451, 18 Sup. Ct. 121

- “An undertaking given to a Court of law binds the party who gives the undertaking. Deliberate violation of such undertaking is willful disobedience that comes within the definition of civil contempt and its deliberate violation would amount to contempt of court.”

- @ Pages 138-139 of *Contempt of Courts – Law & Practice by Ranadhir Kumar De*

- The Halsbury’s *Laws of England* stated:

“An undertaking given to the Court by a person or corporation in pending proceeding, in the faith of which the court sanctions a particular course of action or inaction, has the same force as an injunction made by the Court and a breach of the undertaking is misconduct amounting to contempt.”

- @ Page 146 of *Contempt of Courts – Law & Practice by Ranadhir Kumar De*

- In *S.R. Bhagwat v State of Mysore*⁴ the Supreme Court observed:
“It is now well settled by a catena of decisions of this Court that a binding judicial pronouncement between the parties cannot be made ineffective with the aid of any legislative power by enacting a provision which in substance overrules such judgment...”

- @ Page 122 of *Contempt of Courts – Law & Practice by Ranadhir Kumar De*

- : On the other hand, criminal disrespect challenges the Court’s authority. Willful defiance to Court by refusing to comply with the order or to ignore the undertaking given before the Court, in fact, is affront to the majesty of the Court. A deliberate defiance cannot be left with impunity. Contemnor must be punishment in vindication of court’s dignity.

- @ Page 102 of *Contempt of Courts – Law & Practice by Ranadhir Kumar De*

- : **In arriving at this view, the Supreme Court relied on its earlier decision in *Bank of Baroda v Sadruddin Hasan Daya*⁹ which stated the law:**

“The violation or breach of the undertaking which became part of the decree of the court certainly amounts to contempt of court, irrespective of the fact that it is open to the decree-holder to execute the decree”.

- @ Page 94 of *Contempt of Courts – Law & Practice by Ranadhir Kumar De*

- On another occasion,¹⁰ while punishing a Minister with simple imprisonment for one month, the Supreme Court explained why such penalties become necessary to be imposed on functionaries of the State. The Court said:

“Disobedience of this Court’s order strikes at the very root of rule of law on which the judicial system rests. ...If the judiciary is to perform its duties and function effectively and remain true to the spirit with which they are sacredly entrusted to it, the dignity and authority of the courts have to be respected and protected at all costs. Otherwise, the very cornerstone of our Constitutional scheme will give way and with it disappear the rule of law and the civilized life in the society. This is why it is imperative and invariable that Court’s orders are to be followed and complied with.”

10 *T.N. Godavarman Thirumulpad (102) through Amicus Curiae v Ashok Khot* (2006)5 SCC 1; AIR 2006 SC 2007; 2006 Cr LJ 2773.

- @ Page 7 of *Contempt of Courts – Law & Practice by Ranadhir Kumar De*

➤ **1.3 No legal bar to hold State in contempt**

Proceedings for contempt are essentially personal and punitive. This does not mean that it is not open to the Court, as a matter of law, to make a finding of contempt against any official of the Government say, Home Secretary or a Minister.

- @ Page 5 of Contempt of Courts – Law & Practice by Ranadhir Kumar De

➤ **3.12 Why contempt powers is necessary**

The Supreme Court in *Bhatnagars & Co. Ltd. v Union of India*¹⁵ said that where “majesty of law and dignity of Courts” are involved, the Courts have to punish anybody who dares “obstruct the course of justice or brings into disrepute the institution of justice.”

The Supreme Court further said:

“Contempt proceeding...serves a dual purpose. (1) Vindication of public interest by punishing the contemptuous conduct and (2) coercion to compel the contemnor to do what the law requires of him. The sentence imposed should effectuate both these purposes. It must also be clearly understood in this connection that to employ a subterfuge to avoid compliance of Court’s order about which there could be no reasonable doubt may in certain circumstances aggravate the contempt”.

15 1957 SCR 701; AIR 1957 SC 478.

- @ Page 27 of Contempt of Courts – Law & Practice by Ranadhir Kumar De

➤ In *Kapildeo Prosad Sah v State of Bihar*,¹³ the Court observed that it might be necessary to punish the contemnor for non-compliance of order of the court. In that case, the Supreme Court said:

“In his famous passage, Lord Diplock in *Attorney General v Times Newspapers Ltd.*¹⁴ said there is also ‘an element of public policy in punishing civil contempt, since administration of justice would be undermined if the order of any Court of law could be disregarded with impunity’. Jurisdiction to punish for contempt exists to provide ultimate sanction against the person who refuses to comply with the order of the Court or disregards the order continuously. Initiation to contempt proceeding is not a substitute for execution proceedings though at times that purpose may also be achieved”.

- @ Page 108 of Contempt of Courts – Law & Practice by Ranadhir Kumar De

➤ 5.12 *Contumacious use of official position*

Commission of deliberate criminal contempt of court could not be treated with impunity. Where the Minister and the Principal Secretary to the Government commit contempt of court in their official capacity there is need for exemplary punishment. Only custodial sentence of punishment would vindicate the Rule of Law. The punishment will also satisfy the purpose of punishment. This will set an example for those who have a propensity for disregarding court's orders because of their money power, social status or posts held.⁷

7 *T.N. Godavarman Thirumulpad (102) through Amicus Curiae v Ashok Khot* (2006)5 SCC 1; AIR 2006 SC 2007.

- @ Pages 130-131 of *Contempt of Courts – Law & Practice* by Ranadhir Kumar De

➤ A criminal case of contempt of court was initiated by the Supreme Court.¹¹ Initially, the contemnor tried to explain, but finally withdrawing his earlier affidavit admitted his guilt and tendered unconditional apology. The Court noted that the contemnor was a mine owner and had vested interest where propensities of the conduct of the contemnor reflected an increasing trend which ought to be viewed seriously. The Court viewed the attack as an aggravated form of criminal contempt. The Court held:

“We should make this case one which will unmistakably tell those like minded with the contemnor that this kind of crime against the course of justice and process of law does not pay and interference with the justice is playing with fire and that those who play with fire cannot complain of burnt fingers.”

- @ Page 132 of *Contempt of Courts – Law & Practice* by Ranadhir Kumar De

➤ Deliberate contempt being misconduct remains punishable. In *Noorali Babul Thanewala v K.M.M. Shethy*⁹ the Supreme Court noticed that despite undertaking given before the Supreme Court the undertaking was not honoured. The Supreme Court observed:

“When a court accepts an undertaking given by one of the parties and passes orders based on such undertaking, the order amounts in substance to an injunction restraining that party from acting in breach thereof. The breach of an undertaking given to the court by or on behalf of a party to a civil proceeding is, therefore, regarded as tantamount to a breach of injunction although the remedies were not identical. For the purpose of enforcing an undertaking, that undertaking is treated as an order, so that an undertaking, if broken, would involve the same consequences on the persons breaking that undertaking as would their disobedience to an order for an injunction. It is settled law that breach of an injunction or breach of an undertaking given to a court by a person in civil proceeding on the faith of which the court sanctions a particular course of action is misconduct amounting to contempt. The remedy in such circumstances may be in the form of a direction to the contemnor to purge the contempt or a sentence of imprisonment or fine or all of them.”

9 AIR 1990 SC 464; (1990)1 SCC 259; JT 1989(4) SC 573.

- @ Pages 146-147 of *Contempt of Courts – Law & Practice* by Ranadhir Kumar De



Civil contempt of court exists, therefore, to provide the ultimate sanction against a person who refuses to comply with the order of a properly constituted court: typically, the sanction is to commit the contemnor to prison.⁶⁰ Usually, this kind of coercion is intended to assist an individual to enforce a remedy, but, as Lord Diplock has recognized, there is also 'an element of public policy in punishing civil contempt, since the administration of justice would be undermined if the order of any court of law could be disregarded with impunity'.⁶¹

⁶⁰ There is now an online archive of committals to prison for civil contempt: see <https://www.judiciary.gov.uk/subject/contempt-of-court/>.

⁶¹ *Attorney General v Times Newspapers Ltd.* [1974] AC 273, 308.

- @ Page 9 of *Miller on Contempt of Court – Fourth Edition* by C.J Miller & David Perry, QC



Lord Denning MR expressed the distinction with particular clarity in *Danchevsky v Danchevsky*,⁵⁶ a case in which a husband had refused to comply with an order for the sale of the matrimonial home.⁵⁷

It seems to me that when the object of the committal is punishment for a *past* offence, then, if he is to be imprisoned at all, the appropriate order is a fixed term. When it is a matter of getting a person to do something in the future—and there is a reasonable prospect of him doing it—then it may be quite appropriate to have an indefinite order against him and to commit him until he does do it.⁵⁸

- @ Page 40 of *Miller on Contempt of Court – Fourth Edition* by C.J Miller & David Perry, QC



Influenced by such considerations the Phillimore Committee recommended:⁹⁴

that the court should have power of its own motion to act against a person who disobeys its order whenever it thinks fit to do so, and for this purpose it should be empowered to require any breach of its order to be reported to it by the party in whose favour the order was made⁹⁵ or, in appropriate cases, by a court official.⁹⁶

⁹⁴ See Phillimore Committee report, para. 171.

⁹⁵ For the current position in this respect, see below, para. 12.148.

⁹⁶ For the contrary conclusions of the Australian Law Reform Commission, see ALRC, *Contempt*, para. 534.

- @ Page 44 of *Miller on Contempt of Court – Fourth Edition* by C.J Miller & David Perry, QC

LOSSES CAUSED TO GOVERNMENT WHILST HAVING DEFAULTED THE OBLIGATIONS AND COMMITMENTS TO NIHAL SRI AMERESKERE, A SOVEREIGN CREDITOR UNDER CONSENT DECREES ORDERED AND ENTERED BY COMMERCIAL HIGH COURT

Sugar Deal – Revenue loss of Rs. 15.9 Billion as reported to Committee on Public Accounts (COPA)

In comparison to the foregoing defaulted sovereign obligations and commitments to Nihal Sri Ameresekere, it was indeed **appalling** to see the disclosure in the electronic and print media of a **colossal Loss of Rs. 15.9 Bn.**, dubiously caused to the Government, as had been reported by the Finance Ministry, as a result of *ad hoc* reduction of Import Duty on Sugar from Rs. 50 per Kg to only cents 25, which drastic sudden drop, apparently had been without reference to Stocks of Sugar in the market, Stocks in the Warehouses and Stocks on Water; and without reference to the international trend of Sugar prices. This had immensely benefitted a **very few selected Sugar Importers**, and had been **suddenly effected by S.R. Attygalle, Secretary Ministry of Finance and Treasury and P.B. Jayasundera, Secretary to the President, acting in concert.**

Over Payment to Mitsui & Co. Ltd., and Taisei Corporation

Cited below is the Supreme Court Minute of 15.5.2006:

Pursuant to the proceedings recorded on 24.4.2006 Mr. H. Soza for the Mitsui and Company Ltd., and Taisei Corporation submits that he has received firm instructions from Mitsui and Company Ltd.,- that they are agreeable to

(1) Waive of one instalment of the 5 instalments of the loan now due.

Notwithstanding the foregoing **Undertaking** given to the Supreme Court, **Mitsui & Co. Ltd., and Taisei Corporation (who defrauded the Government) had been paid such last installment also, (value today Rs. 1,815 Bn.,) together with interest for delay, in complete contrast to the manner in which hitherto the obligations and commitments to Nihal Sri Ameresekere had been dragged on by relevant Public Officers in Contempt of Consent Decrees Ordered and Entered by Commercial High Court, whereas Nihal Sri Ameresekere had acted to bring immense benefit to the Government !**

Oil Hedging Deals

- i. Standard Chartered Bank Claim US \$ 161,733,500/- + interest - Today's Value around **Rs. 32,600 Mn.**

Standard Chartered Bank was Awarded their Claim by the High Court of Justice United Kingdom, which disclosed that Ceylon Petroleum Corporation had been continuously advised by a private law firm, Nithya Partners, Attorney-at-Law, **and significantly not by the Hon. Attorney General.**

On Nihal Sri Amersekere's suggestion made to Exchange Control Department, Controller of Exchange imposed a fine of US \$ 245 Mn., on Standard Chartered Bank for the transfer of monies by US \$ 107.8 Mn., on the Capital Account in violation of the Exchange Control Act. After Notice by Letter dated **13.5.2009**, against which Standard Chartered Bank had filed a Writ Application in the Court of Appeal. In such context, it is led to be believed that Standard Chartered Bank Claim had been settled at **US \$ 60 Mn., i.e. a saving of over US \$ 100 Mn. (Today Rs. 20,200 Mn.)** (Exchange Controller had given similar Notice to Commercial Bank also)

Question arises, as to how Standard Chartered Bank's UK High Court Order had been accepted by Ceylon Petroleum Corporation, the UK High Court Order having been required to be Registered as a Order and Decree to be enforced in Sri Lanka in terms of the Reciprocal Enforcement of Judgments Ordinance No. 41 of 1921 ? Why was not this enforced ?

ii. **Citibank Claim of US \$ 195,458,093/- + interest - Today's Value around Rs. 40,000 Mn.**

Citibank's Claim referred to Arbitration before the London Court of International Arbitration was heard by a 3 Member Arbitral Tribunal and rejected, *as totally flawed* transactions, even in the face of the above Judgment of the High Court of Justice United Kingdom having been tendered before them !

Nihal Sri Amersekere had published in US, the first Volume of his Book on these illegal '**Derivative / Hedging Deals**' and globally distributed. It is verily believed that the Arbitral Tribunal sitting in Singapore had been apprised of the Book, demonstrating the illegality of these betting / speculative transactions, **thus a saving of more than US \$ 195 Mn. (Today Rs. 40,000 Mn.)**

iii. **Deutsche Bank Claim of US \$ 60,368,993/- + interest - Today's Value around Rs. 12,200 Mn.**

Deutsche Bank Claim considered by a 3 Member Arbitral Tribunal of the International Centre for Settlement of Investment Disputes was lost by the Government of Sri Lanka, **with 2 Members holding in favour of Deutsche Bank and one Member strongly dissenting.**

It is a travesty of international norm, that a betting or speculative Claim of **US \$ 60 Mn.**, had been interpreted as 'an investment' in terms of the Sri Lanka German Promotion and Reciprocal Protection of Investment Treaty, whereas 'an investment' ought to have been for economic value. In fact the dissenting Award stated Deutsche Bank's investment, if at all, could only have been **US \$ 2.5 Mn.**, which was their maximum exposure under the particular speculative contract.

Hereto question arises, as to why such Award was not enforced according to Sri Lankan Law as provided for in Article 11 (3) of the said Treaty ? There have been cases where the Commercial High Court had upheld the minority / dissenting award and not enforced the majority award.

iv. **Total Professional Compensation and costs incurred, as per COPE Report of August 2016 has been Rs. 1,232.2 Mn. At today's value would exceed Rs. 2,100 Mn.**

- v. Nihal Sri Ameresekere had filed 2 Cases in May – SC (FR) Application No. 404/2009 and June 2009 – SC (FR) Application No. 481/2009, respectively, against the transfer of monies on the Capital Account in violation of the Exchange Control Act in May 2009, and to prevent foreign litigations against the Government and Ceylon Petroleum Corporation in June 2009, which had been **strenuously opposed** by the Attorney General, on basis of **time-bar**, as Nihal Sri Ameresekere had been aware of the previous litigations in January 2009, in which Leave had been granted, but proceedings terminated after a dispute with Government over Petroleum Prices. **Nihal Sri Ameresekere not been a party to such Cases.**

Attorney General had **assured** the Supreme Court of successfully defending the foreign litigations and recovering costs, whereas Nihal Sri Ameresekere was seeking to prosecute against the miscreant Banks in Sri Lanka seeking **Anti-Suit Injunctions** against foreign litigations, stating that Sri Lanka was the most appropriate forum for litigation – citing - *SNI Aérospatiale v Lee Kui Jack & Another* (1987) 3 All ER @ 510 and *Spiliada Maritime Corp v Cansulex Ltd.*, - (1986) 3 All ER @ 843.

- vi. The Banks were liable to be sued for Contempt of Court for **misleadingly concocting** gambling deals. Supreme Court was misled to uphold such **time-bar** Objections, and in its brief Judgment held that Nihal Sri Ameresekere should have filed his Applications **before end February 2009, which was an impossibility**, as the **above actions took place only in May and June 2009**, thereby causing colossal loss and damage to the Government and the country !
- vii. Secretary Treasury P.B. Jayasundera, together with V. Kanagasabapathy, Director Genral, Public Enterprises, Finance Ministry, had handled these transaction.

COMPARISON WITH THE CONSENT DECREES PERTAINING TO NIHAL SRI AMERESEKERE

The comparison with the manner, as to how Nihal Sri Ameresekere's obligations and commitments under the Consent Decrees Ordered and Entered by Commercial High Court had been acted upon in sheer Contempt of Court, and he having been **harassed** is indeed appallingly intriguing issue, warranting investigation.

PRO-BONO WORK BY NIHAL SRI AMERESKERE BENEFITTING THE GOVERNMENT AND THE COUNTRY

NO CRIMINAL ACTION TAKEN AGAINST THOSE WHO CAUSED COLOSSAL LOSSES TO THE STATE IN UNEQUAL ENFORCEMENT OF THE RULE OF LAW !

1. Savings to Government in **1979 / 1982** by managing finances of Sri Lanka Transport Boards by not drawing Subsidies from Treasury at 2 years of Rs. 300 Mn., each then = Rs. 600 Mn. at today's value, Rs. 55 Bn.
2. Savings to Government in preventing revenue write-off in perverse Amnesty named Tax Amnesty in **2003** of Rs. 200 Bn., at today's value Rs. 1,320 Bn.
3. Annulling privatization of Sri Lanka Insurance Corporation Ltd., including Lanka Hospitals in **2009** at today's value Rs. 165 Bn.
4. Annulling monopolistic privatization of Lanka Marine Services Ltd., in **2008** and recovering past Taxes exempted at today's value Rs. 28 Bn.
5. Preventing fraudulent Subsidy by Indian Oil Company on privatization of Petroleum Retail Network value in **2004** of Rs. 5,000 Mn., at today's value Rs. 31 Bn.
6. Savings in Foreign Exchange intervening in fraudulent purported Oil Hedging Deals with Standard Chartered Bank, Deutsche Bank, Citibank Value as at **2009** US \$ 300 Mn., with Interest at today's value Rs. 66 Bn.
7. Exposing colossal losses incurred by State by dubious privatisations Rs. ??
Rs. 1,665 Bn.

8. With a Voluntary Survey carried out by the Exchange Controller under requirement of Nihal Sri Ameresekere **exposed Export Proceeds Leakage as per admissions by Exporters** from 1994 to 2015 was reckoned to be around at **today's value of** US \$ 40,000 Mn.

This was first exposed in 2004 before the then Hon. Prime Minister Mahinda Rajapaksa, and the Leaders of the People's Alliance, in the presence of Lalith Weeratunga, Hon. Prime Minister's Secretary, when the Governor, Central Bank of Sri Lanka **falsely denied** the assessment done on a Voluntary Survey, where it was **admitted 10% non-repatriation of export proceeds**, and stating that **there were no such exports proceeds repatriation leakage**. P.B. Jayasundera, Secretary, Ministry of Finance & Treasury, also a Member of the Monetary Board, **who was present failed to take any action thereon**. COPE Report 2005 and Auditor General confirmed non-repatriation of export proceeds, requiring action to be taken – **A Report had been submitted**.

Today Governor, Central Bank of Sri Lanka is endeavouring to enforce repatriation of export proceeds, and also the Surrender of export proceeds. If 50% of the above leakage had been curtailed, then it would have been US \$ 20,000 Mn., with no foreign exchange shortage today !

TESTIMONIALS

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දිනය / திகதி / Date }

To whom it may concern

Mr. Nihal Sri Ameresekere has been known to me for many years, but more particularly after he chose to challenge the Government of Prime Minister Ranil Wickramasinghe, present Leader of the Opposition and Vice Chairman, International Democrat Union, on an Amnesty Law (in the guise of an Income Tax Amnesty), where Parliament over which the Executive President had no control, legislated to provide a blanket Amnesty to all those who had violated the law and defrauded public revenue, not merely Income Tax, but also Customs violations and duties, Excise violation and duties, Foreign Exchange violations and fines, etc. I was asked by Mr. Ameresekere to assist in some aspects of the challenge in which he was successful in having the law declared null and void, being ultra vires the constitution of Sri Lanka, and also pronounced as violative of the Universal Declaration of Human Rights and International Covenant on Civil and Political Rights.

Thereafter Mr. Ameresekere and I maintained a close professional relationship during the whole period during which he served as the Chair of the Public Enterprises Reform Commission of Sri Lanka, and I as then Director – Legal (Chief Legal Officer) of the Sri Lanka Peace Secretariat, (then headed by Mr. Jayantha Dhanapala, who had retired from the United Nations) the principal organ that was mandated to deal with the ethnic conflict with the Tamil Tiger movement. That period spanned over two years. Mr. Ameresekere mooted and co-ordinated with the Peace Secretariat to promote the establishment of MIGA (World Bank Associate) Guarantees to promote investments into the Eastern and Northern conflict areas of Sri Lanka.

During that period Mr. Ameresekere detected an irregular activity of a Singaporean Company that had been engaged by contract, to provide bunkering facilities to ships calling at the Port of Colombo. He engaged the company in Arbitration in which I was one of the Arbitrators. The Arbitration revealed a number of suspicions Mr. Ameresekere had, which included a forgery of a signature of a senior officer of the Ceylon Petroleum Corporation. We awarded costs against the Singaporean Company. We have subsequently found that the company had disappeared and cannot be found to serve the Arbitrators’ Order for costs.

Sri Lanka Courts unlike the Indian Courts did not recognize what is referred to as Public Interest Litigation (P.I.L.). In the latest engagement in which Mr. Ameresekere is involved, he commenced action against the Attorney-General of Sri Lanka challenging that certain aspects of the Appropriation Bill were ultra vires the Constitution. Accordingly, he argued before the Supreme Court that, certain aspects of the Appropriation Bill were inconsistent with the Constitution. After he had commenced that action eight separate parties associated with him, in support of his Petition. Mr. Ameresekere’s own *locus standi in judicium*, was based upon Article 28 of the Constitution (an Article that had never before been applied in a Court in Sri Lanka) which he argued gave him the right to represent the public.

This was a plea in favour of recognizing Public Interest Litigation, as a part of the Jurisprudence of Sri Lanka. The Chief Justice entertained Mr. Ameresekere inviting him to argue from the Bar Table. This indicates either that Mr. Ameresekere has succeeded in persuading the Supreme Court to accept P.I.L. as worthy of being introduced into the jurisprudence of Sri Lanka or that the Supreme Court has recognized Mr. Ameresekere as a Custodian of Public Order and his contribution to the Sri Lankan Society, as a watchdog of the nation is appreciated by the Court. Either interpretation must be taken as a factor for which Mr. Ameresekere should be proud of. I had a part to play in scrutinizing the Petition before it was filed in the Supreme Court on the 11th of October 2007. The Determination of the Supreme Court to the Hon. Speaker of Parliament is awaited.

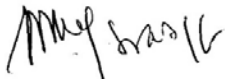
Previously Mr. Ameresekere appearing in person had also argued before a full bench of Supreme Court, against laws introduced in relation to *parate* execution of property, and debt recovery. Mr. Ameresekere was successful in both matters, where the Supreme Court citing a celebrated Indian Judgment, pronounced that harsh, oppressive and unconscionable laws ought be struck down and that the law cannot strengthen the strong, and weaken the weak.

I am also aware that Mr. Ameresekere is at present closely involved in two public interest actions instituted to annul to major privatizations in the insurance sector and the bunkering sector, which the Parliamentary Committee on Public Enterprises had deemed to be fraudulent.

As Chairman of the Sri Lanka Law Commission, I have always consulted Mr. Ameresekere when the Commission is faced with legislations of a fiscal and revenue nature. Mr. Ameresekere was also an active member of the Company Law Advisory Commission, which brought into operation a new Companies Act in May 2007 keeping abreast of the prevalent international practices in corporate law.

I did not intend to make this letter this lengthy. I have limited this to instances in which I and Mr. Ameresekere had been personally involved to foster the well being of the Nation. Mr. Ameresekere has a profound knowledge of how things are done by States and Multinationals so as to avoid being detected of their misdeeds. His sense in these matters is as much as consulting a clairvoyant. This I witnessed in the aforementioned Arbitration involving the Singaporean Company. His professional background as Accountant and forensic abilities and knowledge of the law makes him an unique person.

Mr. Ameresekere's integrity is beyond reproach. His character as a person of high morals and as a keeper of high principles is beyond question. It is these qualities that have earned him the respect from such quarters as the country's highest Court – the Supreme Court. It is these qualities that has earned him the recognition as a sentinel against corruption mixed with frauds in this land.



Dr. Lakshman Marasinghe
Emeritus Professor of Law,
University of Windsor,
Windsor, Canada.

Of the Inner Temple,
Barrister-at-Law (England)
And Attorney-at-Law (Sri Lanka),

Chairman, Sri Lanka Law Commission



November 2nd 2007

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Amarananda Somasiri Jayawardena
Lalitha Jayawardena

TO WHOM IT MAY CONCERN

NIHAL SRI AMERESEKERE

It is a pleasure to write about Nihal Sri Ameresekere, the fearless and peerless fighter for the public interest, the rule of law and human rights in Sri Lanka's big government and bloated bureaucracy. There is so much he has done, almost single-handedly, that it is impossible to condense them into a short note. In fact, I have repeatedly advised him to write a book about his crusade. He says he is working on it, but it does not seem to get done, because he is so immersed in his causes.

Nihal came to my attention, *circa* late 1980s or early 1990, as a young Management Accountant, when he shot to fame with public exposure of corrupt activities of government. Notable was the award of the Hilton Hotel contract with disadvantageous terms to the government. He instituted Sri Lanka's first derivative action in law in 1990 and got the judiciary to suspend payments to the Japanese contractor. He also spotlighted the liberal import duty waivers granted by the government to favoured clients for flimsy reasons, involving an enormous loss of government revenue. He further exposed serious irregularities in privatization of state assets and enterprises, and came to be lionized by the media. Nihal's exposes became major issues at the 1994 Election, which led to the defeat of the government and the coming of Ms. Chandrika Bandaranaike Kumaratunge as the President on a platform that included a war on corruption.

The new President who was also the Minister of Finance & Planning invited me to be the Secretary of the Ministry and the Treasury. Naturally, we invited Nihal to join the Ministry as a special high level Adviser to investigate alleged corrupt activities of the previous regime, especially because the officials tended to be rather defensive of irregularities. He waded through tons of files, like a fish taking to water, uncovered several actions that smacked of corruption and remedial action was initiated.

The Hilton contract was the major issue, where the major owner, the government, was exposed to massive losses. Nihal gathered sufficient evidence to enable us to renegotiate the contract. He assisted me in the negotiations with great skill, in changing several negative clauses and to reclaim the government's rights as major shareholder. He also assisted me in re-negotiation of an adverse contract in setting up a large Flour Mill by a Singapore Company.

He also worked with me in preparing the groundwork for a powerful "Public Enterprise Reform Commission" (PERC), which was to advise the government in all privatizations in a transparent manner. It was a fitting tribute to his skills and integrity that he was made the Chairman of the PERC later.

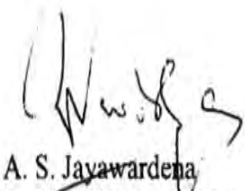
He continued his work with the Ministry after I left in late 1995 to become the Governor of the Central Bank of Sri Lanka. Yet, I kept in close touch with him, and even assisted him in investigating exchange control malpractices.

Nihal continued with public interest activity after he left the Ministry in 1995 – the most notable being his challenge in the Courts of a Tax Amnesty extended to a variety of miscreants who had defrauded not only taxes, but government fines and levies etc. The Courts ruled the amnesty as against the laws of the land and even international practice. The measure had to be withdrawn.

More recently, in 2007, he has challenged the validity of the Appropriation Bill (The Budget Law) for violating fiscal responsibilities as laid down in law, and violating the Constitution by not providing sufficient information to the public and by permitting officials to transfer funds voted for specific activities to other activities.

Nihal's public interest actions challenging fraud and corruption in government are so numerous that I am amazed at how he finds the time and energy to do it, while continuing his lucrative practice as a leading Professional Accountant and Management Consultant. He has extraordinary forensic and investigative skills to sift mountains of paper and an uncanny knowledge of the laws and regulations of the land. Leading Lawyers have expressed great admiration for his legal skills, although he has had no formal learning of the law.

Nihal has often come into conflict with the powerful on account of his investigations; so much so, that I have advised him to ensure his personal protection from enemies. I am sure that there are many corrupt persons who would like to see Nihal out of the way. He smiles knowingly and goes on regardless. Guiding him is an almost fanatical belief that public service is a trust, always accountable to the people. To him, integrity is the cornerstone of public service. These beliefs appear to keep him going and release extraordinary energy for his tasks. I suspect that he feels that some divine or *karmic* force is driving and protecting him.




A. S. Jayawardena
Retired Governor of the Central Bank of Sri Lanka
Former Secretary, Ministry of Finance
Former Secretary to the Treasury
Former Secretary, Ministry of Industries Science & Technology
Former Alternate Executive Director of the International
Monetary Fund
Former Chairman and General Manager, Bank of Ceylon
Central Banker since 1958.

31 October, 2007
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* The preachings of Lord Gauthama Buddha

about 2550 years ago

Well done is that action of doing which one repents not later, and the fruit of which one, reaps with delight and happiness.

Should a person do good, let him do it again and again. Let him find pleasure therein, for blissful is the accumulation of good.

An evil deed is better left undone, for such a deed torments one afterwards. But a good deed is better done, doing which one repents not later.

Those who know the essential to be essential and the unessential to be unessential, dwelling in right thoughts, do arrive at the essential.

Those who discern the wrong as wrong and the right as right — upholding right views, they go to realms of bliss.

Those who are ashamed of what they should not be ashamed of, and are not ashamed of what they should be ashamed of — upholding false views, they go to states of woe.

Those who imagine evil where there is none, and do not see evil where it is — upholding false views, they go to states of woe.

Easy is life for the shameless one who is impudent as a crow, is backbiting and forward, arrogant and corrupt.

One who, while himself seeking happiness, oppresses with violence other beings who also desire happiness, will not attain happiness hereafter.

All tremble at violence; all fear death. Putting oneself in the place of another, one should not kill nor cause another to kill.

Neither in the sky nor in mid-ocean, nor by entering into mountain clefts, nowhere in the world is there a place where one may escape from the results of evil deeds.

There never was, there never will be, nor is there now, a person who is wholly blamed or wholly praised.

CONTEMPORARY REALITIES

ROOT CAUSE OF POVERTY

Nihal Sri Ameresekere

Is not the root cause of abject poverty, the fraudulent pillage and plunder by corrupt means of public resources, both by the public and private sectors, out of sheer insatiable greed by a few, which thereby deny the dire basic needs of the many of their very right to livelihood? Hence, ought not this root cause be courageously addressed and severely dealt with, to prevent the fraudulent pillage and plunder by corrupt means of the resources of the people, by enforcing the rule of law most stringently against such socio-politically powerful and affluent miscreants, than against the hapless poor?

Is this not of far greater importance, than pontified poverty elevations programs, which really in fact replaces such unjust pillaged and plundered resources of the people, with such ill-gotten wealth even gaining recognition in society, including being 'whitewashed' in public by religious leaders, on mere donations made therefrom? Does this not finally lead to social injustice, with human rights violations, and finally to social uprisings, with riots giving birth to terrorism, to combat which the very resources of the people are again deployed?

"..... The ruler's trusteeship of the resources of the State which belong to the people is a part of the legal heritage of Sri Lanka dating back at least to the third century BC as pointed out by Justice Weeramanry in his separate opinion in the International Court of Justice in the Danube Case, by quoting the sermon of Arahath Mahinda to King Devanampiya Tissa as recorded in the Great Chronicle - *Mahawamsa*" - June, 2009, Supreme Court of Sri Lanka

* *The Mahawamsa* "The Great Chronicle" is the single most important work of Sri Lankan origin, written in Pali language translated to Sinhala and English, recording the history and heritage from 543 BC

With the cancerous menace of rampant fraud and corruption, does not the unbridled pillage and plunder of the resources of the already impoverished vast majority of poor people, by few persons socio-politically powerful, influential and affluent, further impoverish them?

Is it not a curious paradox, that schemes and designs to replace, such pillaged and plundered property of the poor people, through 'poverty alleviation programs', ironically are financed from the very funds of the poor people or by debts to be re-paid by them or their future generations?

Despite the adoption in December 2005 of the United Nations Convention Against Corruption, specifically identifying as culprits, 'politically exposed persons', do not such persons unabashedly continue to peddle fraud and corruption, and are shielded through socio-political influences, and publicly sanctified by religious leaders seeking the 'lime-light'?

Should not the pillage and plunder of the property of the poor people, referred to as 'economic terrorism', perpetrated by 'economic terrorists', condemned internationally in contemporary times, be first dealt with, as the root cause for the germination of terrorism?

Denying the impoverished helpless vast majority of poor people equitable social justice, does it not ultimately lead to disillusionment, alienation, frustration, social unrest, insurrection and justifiable rebellion?

Does not therefore, the pillage and plunder of the resources of the poor people, consequently result in armed struggles and armed terrorism, with brutal counter offensives by the international community, to destroy such terrorism?

Ironically, do not such brutal counter-offensives, with the utilization of further resources of the poor people, which consequently give rise to despicable violations of human-rights, with concerns of humanity righteously transcending parochial interests of nationality, justifiably raise international concerns, however, at a very belated stage?



Size - 8.25" x 11" - 280 Pages



Size - 8.25" x 11" - 410 Pages



Size - 8.25" x 11" - 300 Pages

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