19.06.2017

PRIVATE NOTICE QUESTION

*To ask the Attorney General–*

**Whether, in regard to the recent arbitral award in favour of Betamax Ltd, he will state -**

1. **the terms of the award, indicating if a claim of some Rs 4.5 billion has been received from Betamax Ltd;**
2. **whether the Solicitor General had approved the procedure adopted for the termination of the contract with Betamax Ltd in 2015;**
3. **full details of any alleged cost saving made since the termination with Betamax Ltd; and**
4. **if an appeal will now be lodged against the award?**

**REPLY**

Madam Speaker,

The issue of the Contract of Affreightment (COA) regarding the transportation of petroleum products for Mauritius signed between the State Trading Corporation (STC) and Betamax Ltd has been raised and addressed in this House on many occasions. The information I would be providing in this PNQ has been obtained from the Honourable Minister of Industry, Commerce and Consumer Protection under whose portfolio the STC falls.

Let me remind the House of some facts about this contract and the way in which it was allocated in 2009 when the Honourable Leader of the Opposition was a senior member of the then Government.

Madam Speaker,

The Betamax Contract was awarded by the then Minister of Public Infrastructure, Mr Bachoo, when the Labour-PMSD alliance was in the Government. It should be pointed out that the Attorney General’s Office, which was consulted, did not give its clearance to the contract proposed by Mr Bhunjun. One of the grounds was that the Public Procurement Act had not been followed. Despite that, the issue was pursued by the then Government disregarding the legal advice and it is not a mere coincidence that it was on the very day on which the STC Board was considering the COA, that Betamax Ltd. was incorporated.

Madam Speaker,

The experts consulted by the STC are unanimous in saying that they have never seen such a COA, the terms of which are not to the benefit of the STC. For instance, the COA is drafted very much in favour of Betamax Ltd and the terms provide for STC to pay far above the market rate for the services provided and for items which we would not expect STC to pay (according to usual market practice).

Madam Speaker,

The central element is that the price structure was changed by Betamax Ltd and approved by the then Government whereby, instead of applying market rates for the freight, for transport, a fixed rate, much higher than the prevailing ones was retained. The COA also included an escalation clause with an increase every five years.

The House is aware that as soon as this Government came to power in December 2014, an Inter-Ministerial Committee was set up by Cabinet to re-negotiate the COA with Betamax Ltd., namely on the following:

* **Demurrage charges** (unusual in the context of a single vessel full time charter);
* **Freight charges** (exorbitant and well above market rates);
* **Escalation rates for freight and demurrage** (unheard of in freight market);
* **Port dues and bunker consumption on STC’s account** (payable over and above freight rates contrary to market practice); and
* **Additional cargo** (Betamax Ltd had exclusive rights to provide for freight services, beyond the capacity of 64,000 MT of Red Eagle, therefore, the cost of any additional cargo on another vessel would still be paid to Betamax Ltd based on the existing contract rates).

Unfortunately, even though three meetings were held with Betamax Ltd to review the COA, Betamax Ltd did not demonstrate any genuine willingness to renegotiate the COA and did not substantiate any of their averments with documentary evidence. Thus, on 30 January 2015, as a responsible Government, we took a decision in the public interest for the STC to terminate forthwith the COA with Betamax Ltd in the light of, *inter-alia*, the unlawful procedure and processes regarding the allocation of the contract.

Madam Speaker,

In regard to part (a) of the Question, the terms of the award cannot be disclosed as per rule 35 of the 2013 Rules of the Singapore International Arbitration Centre which provides that,

I quote

“*The parties and the Tribunal shall at all times treat all matters relating to the proceedings and the award as confidential”*

Unquote

However, to enlighten the House and from information already available in the public domain, I can confirm that the Arbitrator has awarded that STC should pay between Rs 4.3 Billion and Rs 4.5 Billion (depending on rate of exchange).

On 12 June 2017, Betamax Ltd submitted a claim to the STC to that effect. STC has already replied on   
13 June 2017, indicating that the STC will apply to the Supreme Court to set aside the Award.

Madam Speaker,

With regard to part (b) of the Question, the Honourable Leader of the Opposition (who has been in Cabinet for so many years), should know that advice tendered by law officers is privileged and are covered by the Official Secrets Act. Given the privileged nature of legal advice and the provisions of the Official Secrets Act, I do not propose to provide any details as to the legal advice tendered by any law officer of the Attorney-General’s Office.

Madam Speaker,

It is important to note that the Attorney-General’s Office has not been the legal adviser of the STC on this whole arbitration issue. The STC has received independent legal advice both locally and internationally.

The STC has received legal advice to the effect that the Betamax Ltd contract was against the “public interest”. Advice was tendered along those lines by local Senior Counsel and Senior Attorney. Advice was also given by Stephenson Harwood, a reputable international firm.

Madam Speaker,

With regard to part (c) of the Question, I would like to stress on the fact that the decision to terminate the contract between Betamax Ltd and STC was taken after an independent study was carried out by Stephenson Harwood, a firm specialised on the matter.

According to the Stephenson Harwood Report, had STC gone on the open market for the transportation of petroleum products, the costs would have been for time charter USD 55, 765, 247 and for a normal COA USD 64, 462, 321 respectively. This analysis showed that STC had overpaid an amount in the range of **USD 45 M to USD 53** **M**, that is between **Rs 1.6 Billion and Rs 1.9 Billion,** since May 2011.

The total amount paid to Betamax Ltd for the period May 2011 to January 2015 was USD 125, 244, 128 for the importation of 4,046,703 metric tons of petroleum products, that is, an average freight rate of USD 30.79 per metric ton.

After the termination of the contract with Betamax, the average freight rate paid by STC for the period February 2015 to May 2017 is USD 24.25 per metric ton, i.e a savings of USD 6.54 per metric ton.

Madam Speaker,

From February 2015 as at May 2017, the total savings amounted to USD 16,328,099, i.e **Rs 580 M**. It is estimated to be USD 17,581,599 i.e **Rs 622 M** by the end of July 2017.

Madam Speaker,

With regard to part (d) of the Question, I am informed by the Honorable Minister of Industry, Commerce and Consumer Protection that the STC has informed him that the STC intends to apply to the Supreme Court under the International Arbitration Act to set aside the said arbitral award. The STC issued a communiqué to that effect on 7 June 2017. I am tabling a copy of the communiqué. The Honourable Leader of the Opposition should understand that I cannot give any more details on that forthcoming application to the Supreme Court as same would prejudice the case of the STC.