

PA SELLOUT PLUNGED STOCK

The general policy that had been followed by the former United National Party government on the privatisation of profitable state owned enterprises was to dispose of 60% majority shareholdings of the state owned enterprises being privatised, on the basis of the transparent process of open competitive bidding amongst interested parties, on the trading floor of the Colombo Stock Exchange, thereby realising the highest price. Of the balance, 30% shareholdings of the state owned enterprise being privatised was sold to the public on a fragmented basis on the trading floor of the Colombo Stock Exchange, whilst the balance 10% of the shareholdings was gifted to the employees of the respective state owned enterprises. The process of sale on the trading floor of the Colombo Stock Exchange compelled the full public disclosure of all relevant data and informations pertaining to the respective state owned enterprises.

Such policy pursued in the privatisation of profitable state owned enterprises by the former United National Party government, no doubt, immensely contributed towards developing the nascent capital market and interest and activity in trading in the Colombo Stock Exchange, with the growth and development of the stock brokering business, promoting and generating much public interest and involvement in the capital market and the trading of shares in the Colombo Stock Exchange. Amongst the successful privatisations on the basis of such open competitive bidding on the Colombo Stock Exchange to sell the majority shareholdings of profitable state owned enterprises included, Asian Hotels Corporation Ltd. (Oberoi Hotel), Distilleries Co. of Sri Lanka Ltd., Lanka Canneries Ltd., Trans Asia Hotels Ltd. (Ramada Hotel), and Lanka Milk Foods Ltd.

STOCK EXCHANGE SHUNNED ?

Quite curiously and questionably, for some unknown reasons publicly neither disclosed, nor justified, the People's Alliance government that crusaded for and enunciated high profile policies on transparency, deviating from the policy that had been pursued by the former United National Party government of disposing, on an open competitive bidding basis on the trading floor of the Colombo Stock Exchange, the majority shareholdings of profitable state owned enterprises that were being privatised, on the contrary, the People's Alliance government pursued a policy of entertaining bids from parties on a closed tender basis and/or negotiated basis, such privatisation transactions being handled by the Public Enterprise Reform Commission [PERC]. Unlike the full public disclosure of data and informations published of the state owned enterprises being privatised on the basis of open competitive bidding on the trading floor of the Colombo Stock Exchange, PERC made available data and informations only to the respective bidders, that too with the conditionality committing such bidders to absolute secrecy and confidentiality, patently contrary to the policies of transparency enunciated by the People's Alliance government.

Amongst such privatisation transactions of profitable state owned enterprises carried out by PERC under the People's Alliance government, without open competitive bidding on the trading floor of the Colombo Stock Exchange have been the very profitable plantation companies, Agalawatte, Horana, Kegalle, Kotagala, Bogawantalawa and Kelani Valley, considered as the most profitable plantation companies by PERC. The majority shareholdings of these very profitable plantation companies were disposed of by PERC to the pre-selected management companies on the basis of a ludicrous and questionable pricing formula, resulting in such valuable majority shareholdings of these profitable plantation companies virtually being gifted to the pre-selected management companies at the nominal price of Rs. 10/- per share only. This was fully analytically exposed, also disclosing the colossal losses caused to the State and the public thereby. The People's Alliance government took no action thereon. Further shocking controversial revelations on the privatisation of these plantation companies are to be exposed.

Furthermore, the sale of shareholdings of the major profitable state owned enterprises, Colombo Gas Co. Ltd., Orient Lanka Ltd., Sri Lanka Telecom Ltd., and Air Lanka Ltd., had also not been carried out on an open competitive basis on the trading floor of the Colombo Stock Exchange, whilst three of these state owned enterprises enjoyed monopolistic status of which two were essential public utilities. Air Lanka

Ltd., is the national carrier. Contrary to the objects of PERC defined under Section 4 of the PERC Act No. 1 of 1996, that of developing and broad basing the capital market and mobilizing long term private savings and motivating the private sector, the People's Alliance government professing high profile policies on transparency, quite curiously and questionably shunned the established process of open competitive bidding on the trading floor of the Colombo Stock Exchange in carrying out the sale of the shareholdings of these profitable state owned enterprises. Why ?

CONTRADICTIONARY POSITIONS ?

The policy pursued by the People's Alliance government of questionably not putting up for open competitive bidding on a transparent basis the sale of majority shareholdings of these profitable state owned enterprises on the trading floor of the Colombo Stock Exchange, contributed in no small measure, to devalue the importance of and diminish the interest in the share trading activities of the Colombo Stock Exchange, causing detriment to its growth and development, particularly during this period of nascent growth and development of the capital market. What is the public justification for such a policy and practice pursued by the People's Alliance government, deviating from the previously established policy and practice that had been quite successfully pursued by the former United National Party government developing the Colombo Stock Exchange ?

Would not the above policy and practice pursued by the People's Alliance government have been a major contributory cause for the steady decline in the activity in the Colombo Stock Exchange, reflected by the all share price index of 1,378 in 1994 prior to the People's Alliance government assuming office now dropping below the 500 mark to the level of 464 with forecasts of further decline ? Had the sale of the major shareholdings of the profitable state owned enterprises that were privatised, been carried out on the trading floor of the Colombo Stock Exchange , would it not have generated greater interest in the activities of the Colombo Stock Exchange supporting its growth and development ? The Deputy Minister of Finance Prof. G.L. Peiris and the People's Alliance government's economists propounding, that the economic fundamentals that had been wrong during the United National Party government have been put right by the People's Alliance government, how is it that there has been such a deterioration in the activities and growth of the Colombo Stock Exchange ?

In the above scenario, it is quite incomprehensible to understand the recent policy enunciated in the Cabinet Memorandum of June 10, 1998 submitted by President Chandrika Bandaranaike Kumaratunga endorsing and supporting public companies listed in the Colombo Stock Exchange, the Cabinet Memorandum, inter-alia, having stated – "...it is important that the local agents of companies bidding for such projects do not unduly influence public officials or resort to corrupt practices in concluding deals which at times are unfavourable to the Government....The justification for public listed companies representing reputed international suppliers, contractors and investors is that they are compelled to operate more transparently than an unlisted private or public company and with a greater degree of accountability towards shareholders. Furthermore, public listed companies are required to comply with the continuing listing requirements of the Securities & Exchange Commission...".

ORIENT LANKA 97% TO PARTY NOT PRE-QUALIFIED

The Daily News of August 31, 1998 under the caption – "Alpha buys 37% stake of Orient Lanka for Rs. 740 M." reported that the U.K. based Alpha Airports Group PLC, which owns 60% of Orient Lanka Ltd., the duty free operator at the Bandaranaike International Airport, had last week bought a further 37% stake of Orient Lanka Ltd., for Rs. 740 million. The report further stated that 1996 privatisation agreement between Alpha and the Sri Lanka government included a "put option" under the Sale and Purchase Agreement, whereby the government could sell the balance shares and the investor could purchase them at an agreed price. The bottom line is that 97% shareholdings of Orient Lanka Ltd., has been disposed of to Alpha Airports Group PLC, a foreign company. This has sealed the fate of Orient Lanka Ltd., being a

listed public company in the Colombo Stock Exchange, thereby denying the ownership therein by the public of this country, in contravention of the given object of developing and broad basing the capital market, according to the objects defined under Section 4 of the PERC Act No. 1 of 1996.

The Daily News report however failed to disclose to the public Section 4.1.5 of the Sale and Purchase Agreement which had stated –"Alpha which has declared that it is purchasing the Shares as the trustee for and on behalf of its Affiliate, Alpha Airport Holdings BV, shall be entitled to have the shares transferred to the said Affiliate and the GOSL shall do everything necessary to facilitate such transfer including procuring the permission of the Exchange . Controller.... ".

This gross violation of a cardinal tender condition in that the Affiliate, Alpha Airport Holdings BV had been a recently incorporated company in the Netherlands, without any experience and expertise in the duty free trade and could not have got pre-qualified according to the criteria that had been laid down by PERC was exposed. Tender procedure clearly does not permit the substitution by another party and in this case by a party, who could not even have got pre-qualified.

LOSS TO THE COUNTRY ?

According to the very dictum of President Kumaratunga's Cabinet Memorandum of June 10, 1998 listed public companies in the Colombo Stock Exchange "are compelled to operate more transparently than an unlisted private or public company and with a greater degree of accountability towards shareholders. Furthermore, public listed companies are required to comply with the continuing listing requirements of the Securities & Exchange Commission...". Conversely, would it not stand to logical reason, on the basis of such dictum, that a company 97% owned, particularly by a foreign company, would operate less transparently and with a lesser degree of accountability ?

It is a known norm in the international duty free trade, that the gross profits, particularly on the lines of business of Orient Lanka Ltd., would be in the range of 50% to 55% . If Orient Lanka Ltd., was to operate as a listed public company, as President Kumaratunga's Cabinet Memorandum of June 10, 1998 correctly propounded, such profitability would have been disclosed more transparently with a greater degree of accountability. Such gross profit is the added value in foreign exchange terms in Sri Lanka and accordingly, such foreign exchange earnings would be to the benefit of this country.

It was exposed that PERC had quite curiously and questionably rejected a proposal made by one of the biggest duty free operators in the world, Weitnauer Group of Companies of Switzerland, that had offered to pay the Sri Lanka government, only for a 10-year franchise, a 20% to 25% of the sales turnover of Orient Lanka Ltd., after meeting all its costs of operation, – the net present value to the government of the Weitnauer proposal would have been over Rs. 3000 million –, whilst the government would have continued to own Orient Lanka Ltd., with the continuous right of the government to have rented the franchise, time and again in the future, earning valuable foreign exchange for this country, on the growing levels of duty free sales at the international Airport, in conformity with the established and known practice in the international duty free trade. PERC had failed to act on and/or respond to written representations made to PERC and all its members on March 25, 1996 by the Weitnauer Group, Switzerland, prior to the signing of the Sale and Purchase Agreement with Alpha two months thereafter on May 25, 1996.

PUBLIC ACCOUNTABILITY ?

The conditions and guidelines for bidding for Orient Lanka Ltd., published by PERC had very clearly stipulated the following conditions 7 and 8 – " 7. Shortlisted investors are invited to offer to purchase a strategic stake of sixty (60%) per cent of the capital of the Company, that is, one million eight hundred thousand (1,800,000) shares of Rs. 10/- each". – "8. The Government intends to make 10% of the remaining shares available to the Company staff, and to list the remaining 30% of the shares on the Colombo Stock Exchange in due course".

These were the cardinal conditions upon which PERC had solicited bids for the privatisation of Orient Lanka Ltd. Instead of selling 60% to a foreign company, the People's Alliance government has now sold 97% of Orient Lanka Ltd., thereby depriving the employees of Orient Lanka Ltd., as had been held out 7% of the shareholdings and depriving the public of this country as had been held out 30% of the shareholdings, which would have also ensured, a more transparent operation of Orient Lanka Ltd., with greater degree of accountability, in terms of the enunciations in President Kumaratunga's Cabinet Memorandum of June 10, 1998. How did all this happen and why ? Do not the public of this country have a legitimate right to know ?

Contrary to the above conditions stipulated at the time of soliciting bids, the Sale and Purchase Agreement at Section 8.2 had included the following condition –"The GOSL hereby grants to Alpha an option exercisable at any time during the option period to require the GOSL to sell to Alpha free from all liens, charges and encumbrances all the option shares (excluding however the employee shares) in the capital of the company for the option price". This is how Alpha acquired 97% of Orient Lanka Ltd. Do the Cabinet of Ministers of the People's Alliance government take the full responsibility therefore ? The Orient Lanka Ltd., privatization transaction had been handled by visiting consultant to PERC from London Rajan Brito, during PERC chairmanship of Rajan Asirwatham.



Were all these conditions transparently disclosed to the cabinet of ministers and were they conditions acceptable, particularly to Minister G.L. Peiris and Lakshman Kadirgamar, who got controversially entangled in the Hilton settlement agreements, with prompt pronouncements of "obligations of an unacceptable nature" and "unsatisfactory features", respectively, to questions raised in parliament significantly the very preceding day by the United National Party MP Mahinda Samarasinghe ? These contentions, however, have gone unsubstantiated, with the government giving effect to the settlement agreements, only excluding one condition that had personally affected Minister G.L. Peiris, as a former member of the Securities & Exchange Commission, for his neglect and failure to have acted to "combat

the pillage and plunder of national resources”, as so described by him in his own words decrying by innuendo the former United National Party government, under which ironically he had held several appointments himself.

Section 4.4 of the sale and purchase agreement with Alpha Airport Group PLC stipulates as follows: “the GOSL under takes that during the duration of this agreement it shall give and / or shall procure to be given to the company the first option to operate, all new duty free facilities selling goods in Sri Lanka at the airport and all other airports in Sri Lanka.....” The government has invited proposals from reputed duty free operators for the establishment of duty free shopping complexes in Colombo and adjacent to the Bandaranaike International Airport at Katunayake. Ought not the government categorically clarify, as to whether the option afforded to alpha under section 4.4 of the sale and purchase agreement would also cover the proposed duty free shopping complexes or not?

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