

## PACIFIC 'SHOW' AND COSY DEAL

Over the recent several weeks, *The Sunday Leader* analytically exposed how the Public Enterprise Reform Commission [PERC] had privatised Orient Lanka Ltd. PERC for some unknown reasons, discarding established international practice of franchise operation, and disregarding a very much more lucrative franchise proposal that had been made by an internationally well reputed duty free operator, questionably sold outright to a foreign buyer, the majority ownership of 60% shareholdings of Orient Lanka Ltd., with a further option to such foreign buyer to purchase another 37% shareholdings therein, making a total of 97% shareholdings of Orient Lanka Ltd. PERC also even gave a further preference to such foreign buyer to re-purchase the balance 3% shareholdings from the employees - why not the Employees Trust Fund Board ?

Is it that the foreign buyer is interested to acquire a 100% shareholding of Orient Lanka Ltd.? The government policy held out, however, was that privatisations of state owned enterprises would be on the basis of broadbasing share ownership as listed public companies, to ensure transparency and public accountability in such state owned enterprises that are being privatised. According to what is said to be the norm in the Duty Free trade, Orient Lanka Ltd., ought to register a gross profit of around 50% on sales turnover, which alone would ensure a successful public issue of the government's balance 37% shareholdings. Under the given circumstances it would be the duty and responsibility of PERC to ensure such achievement.

### SHOULD NOT THE GOVERNMENT PROBE & ACT ?



BOI Chairman and DG Thilan Wijesinghe  
— How could such complex projects be  
studied and examined at such amazing speed ?

President Chandrika Kumaratunga  
— What did the cabinet memorandum  
really mean ?

Though PERC had restricted pre-qualification to internationally established and experienced duty free operators only, PERC has however, subsequently, sold in 1996 such majority shareholdings of Orient Lanka Ltd., to a newly formed company registered in 1994, Alpha Airports Holdings B.V. of Netherlands, described as an affiliate of such an international duty free operator, Alpha Airports Group PLC of U.K. Such newly formed Netherlands company could not and would not have been pre-qualified in the first instance; whereas the international duty free operator from U.K., with whom PERC had negotiated and transacted had finally contracted to buy the majority shareholdings of Orient Lanka Ltd., in trust for and on behalf of such newly formed company in the Netherlands, with a share capital less than Rs. 6 million and that too, apparently not an internationally established duty free operator!

The newly formed company in Netherlands, Alpha Airports Holdings B.V., though at present is reported to be a 100% subsidiary company of the international duty free operator Alpha Airports Group PLC, the newly formed Netherlands company has been described as an affiliate of the international duty free operator of U.K. Why? Would it not imply, that the Netherlands company would in the future be owned in the majority by some other party, other than the international duty free operator in U.K., i.e. Alpha Airports Group PLC, thereby becoming an affiliate of such international duty free operator - the Netherlands company being defined as an affiliate in the Sale and Purchase Agreement with the government.

If and when this takes place, then this would tantamount to a re-sale of the majority shareholdings of Orient Lanka Ltd., which under the given circumstances as analysed by *The Sunday Leader* could very well be at a substantial profit. Such very same strategy enabling the re-sale of the majority shareholdings of a privatised state owned enterprise, adopted in the case of Kotagala Plantations Ltd., led to a public hue and cry and upon which, the government came down very hard as a consequence thereof, with a shake-up at PERC!

The all important question is, why did PERC and those who were associated with this privatisation transaction, knowingly execute a Sale and Purchase Agreement, wherein it had been patently stated, that the majority shareholdings of Orient Lanka Ltd., is being purchased by Alpha Airports Group PLC, U.K. in trust for someone else, i.e. Alpha Airports Holdings B.V. of Netherlands? The Sale and Purchase Agreement had specifically contemplated and provided for the same — how had PERC colluded?

Should not a responsible government, particularly one that has taken very high moral ground on policies of transparency and public accountability, precipitate a full probe into the scandalous manner in which Orient Lanka Ltd., has been privatised and cancel and nullify such transaction, in the circumstances of having been sold to a party, who was not qualified to have purchased the same in the first instance?

In the least, ought not the government take immediate steps to ensure that there is no such re-sale of the majority shareholdings of Orient Lanka Ltd., through such clever mechanism and strategy as had happened in the case Kotagala Plantations Ltd., resulting in unconscionable profits in the hands of those transacting, which profits rightfully and legitimately belonged to the government and the people. Should not the government lock the stable door, before the horse bolts? If not, why?

## **PRIVATISATION & FOREIGN INVESTMENTS**

In a similar analogy, *The Sunday Leader* today analytically focuses on another transaction, that was exclusively carried as an *Expose'* in *The Sunday Leader* in relation to the "alienation" of two valuable properties in this country to a company by the name of Pacific Shore Properties Ltd., stated to be of Hong Kong in President Chandrika Bandaranaike Kumaratunge's Cabinet Memorandum of 22nd July 1997, submitted as Minister of Finance & Planning.

*The Sunday Leader* does not decry the policy of privatisation of state owned enterprises, nor does it decry the policy of foreign investment promotion for the development of the national economy. However, the analytical exposures in *The Sunday Leader* is in the context of the policies of transparency, public accountability and corruption, that have been pronounced and upheld by this very government, itself. Such analytical exposures only disclose breaches of and non-adherence to such policies. The very leadership to such policies have been given by President Kumaratunge, herself.

Privatisation ought to be carried out protecting socio-economic interests and the national interests, whilst ensuring the realisation of real market values on state properties sold transparently on a level playing field. After all, it is this very government that decried aloud the selling of family silver and deals with socio-political cronies! What have you now?

Foreign investments no doubt ought to be mobilised for economic development of the country. Nevertheless, such foreign investment deals and transactions must not only be equitable with fair gain for the country, but also should be solicited transparently on a level playing field. No doubt, this also is in conformity with several policy pronouncements of this government. Those who advise, execute transactions and lobby to push transactions, ought to do so in conformity with such policies, not only enunciated, but also arduously held out to the public. Would not the public expect them to do so?

### **DEAL WITH PACIFIC SHORE PROPERTIES LTD.**

In such very public interest and in the interest of the government and more particularly the country, *The Sunday Leader* will endeavour to understand and analyse the proposed land transactions with Pacific Shore Properties Ltd., said to be of Hong Kong, on the very basis of informations contained in the Cabinet Memorandum of the Ministry of Finance & Planning dated 22nd July 1997, since the very Cabinet of this country would make important decisions, essentially on the basis of the informations contained in such Cabinet Memorandum.

The land at Steuart Place, Kollupitiya, where originally the well known Steuart's Garage stood was acquired by the Urban Development Authority [UDA] for urban development and Steuart's Garage was asked to go away. The Finance & Planning Ministry's Cabinet Memorandum states, that this land has been valued by the Chief Government Valuer at Rs. 280 million at Rs. 1 million a perch, which gives a land extent of 280 perches i.e. 1.75 acres. The question as to whether such valuation has been placed after having taken into account the Marine Drive reservation is, however, not disclosed - nor is it disclosed whether this is a freehold or a capitalised leasehold valuation by the Chief Government Valuer ?

The Chief Government Valuer ordinarily ought to have and would have taken such Marine Drive reservation into account in giving a professional valuation for such land, valuing such Marine Drive reservation at a very much lower value i.e. at around 15% - 25%. This no doubt is a material and relevant clarification, particularly moreso since the Marine Drive reservation is stated to be a major issue. The Cabinet Memorandum states that the Marine Drive reservation would take up approximately half of the site. Is this really the correct and verified position ? If so, would it then mean that out of the 280 perches, as much as 140 perches would go for the Marine Drive i.e. leaving only a balance 140 perches as buildable land?

The Cabinet Memorandum specifically seeks to alienate this land said to be valued at Rs. 280 million by the Chief Government Valuer, to a project company to be set up in Sri Lanka by Pacific Shore Properties Ltd. said to be of Hong Kong.

### **WHAT DOES THE CABINET MEMORANDUM REALLY MEAN ?**

The Cabinet Memorandum specifically sought to alienate the land to such project company at 2% of the value of the Chief Valuer's valuation annually for 5-years and 4% thereafter as has been stated therein. The Cabinet Memorandum further states that a nominal ground rent will be charged after the capital sum is recovered - i.e. presumably by implication such capital sum could only mean the Chief Valuer's valuation of Rs. 280 million. The leasehold period proposed has been 99-years. What does the dicta of this Cabinet Memorandum really mean? This is very important. Does it mean that the Chief Valuer's valuation for the land of Rs. 280 million is to be paid at 2% p.a. for the first 5-years and 4% p.a. thereafter, until the capital sum of Rs. 280 million is recovered? What otherwise does the dicta of the Cabinet Memorandum really mean?

The significant ambiguity of this is clearly borne out by the very guidelines that had been issued by President Kumaratunge with the objective of encouraging large construction projects, which very guidelines have been quoted in the very Cabinet Memorandum, itself, thus - "I have issued guidelines for the determination of annual lease rentals for state lands where the lease rent be calculated at no less than 2% of market value and no more than 4% of market value as determined by Chief Valuer in the first 5-years and thereafter, on the basis of 4% of the market value".

It is quite clear and well understood in the real estate sector, that such 2% p.a. and 4% p.a. related to the market value of land, is a determination of a mere annual rental value for such land, for the use of such land by a developer on the basis of a rental leasehold. Such rental is paid for the occupation and usage of the land and is by no means a payment programme for the capital value of the land as valued by the Chief Valuer. Such annual rental would have to be paid continuously during the full term of such lease and in this instant case for the full 99-year period and would be adjusted for upward revision of the annual lease rental in keeping with inflation.

In such circumstances, as to how the Cabinet Memorandum stipulates, to alienate the land to the project company at 2% p.a. for 5-years and thereafter at 4% p.a. of the Chief Valuer's valuation until the capital sum is recovered is incomprehensible? On the contrary, the ownership of the land would continue to belong to the state, and if the project company was to procure the land at any point of time in the future, then in addition to having paid such annual lease rentals for occupation and usage of the land upto that point of time, the project company would no doubt have to pay the full market value of the land at that point of time to the state -there is no question, whatsoever, of the recovery of the capital sum by the annual lease rentals paid for the occupation and usage of such land. Even if a capitalised lease valuation of Rs 280 million is to be recovered, then it ought to be recovered, if in instalments, upon applying current market rates of interest on such reducing capital that is being recovered in instalments.

### LAND TO BE ALIENATED ? WHAT IS THE REAL PAYMENT ?

On the mere interpretation of what is possibly understood by the Cabinet Memorandum, that the capital sum of Rs. 280 million is to be paid at 2% p.a. for 5 years and 4% p.a. thereafter until the capital sum is recovered, then the net present value today of such re-payments as per the given Chart, at 12% p.a. interest would amount to only Rs. 77.3 million and at 18% p.a. interest would amount to only Rs. 51.9 million. Is it the government's intention to give this very valuable land at Steuart Place, Kollupitiya at a value of around Rs. 51.9 to Rs. 77.3 million on the basis of a 99-year lease i.e. at Rs. 185,000 per perch to Rs. 275,000 per perch only? How could this be acceptable and that too without any transparent open competitive bidding on a level playing field for such unique and very valuable piece of land at very close proximity to 5-star hotels and the prestigious US and British Embassies, not forgetting Temple Trees of course! Is not such payment, if on such basis, ridiculous? Should not a competitive offer have been floated to get the best deal?

PAYMENTS ON LAKE DRIVE LAND					PAYMENTS ON STEUART PLACE LAND					
Year	Instalment	Discounted at		NPV	Year	Instalment	Discounted at		NPV	
		12% p.a.	18% p.a.				12% p.a.	18% p.a.		
	Rs.Mn.	Rs.Mn.	Rs.Mn.	Rs.Mn.		Rs.Mn.	Rs.Mn.	Rs.Mn.	Rs.Mn.	
1	25.0	1.000	1.000	25.00	1	5.6	1.000	5.60	1.000	5.60
2	5.0	0.893	0.847	4.24	2	5.6	0.893	5.00	0.847	4.74
3	5.0	0.797	0.718	3.59	3	5.6	0.797	4.46	0.718	4.02
4	5.0	0.712	0.609	3.05	4	5.6	0.712	3.99	0.609	3.41
5	5.0	0.636	0.516	2.58	5	5.6	0.636	3.56	0.516	2.89
6	5.0	0.567	0.437	2.19	6	11.2	0.567	0.35	0.437	4.89
7	10.0	0.507	0.370	3.70	7	11.2	0.507	0.58	0.370	4.14
8	10.0	0.452	0.314	3.14	8	11.2	0.452	0.50	0.314	3.52
9	10.0	0.404	0.266	2.66	9	11.2	0.404	0.42	0.266	2.95
10	10.0	0.361	0.225	2.25	10	11.2	0.361	0.40	0.225	2.52
11	10.0	0.322	0.191	1.91	11	11.2	0.322	0.36	0.191	2.14
12	10.0	0.287	0.162	1.62	12	11.2	0.287	0.32	0.162	1.81
13	10.0	0.257	0.137	1.37	13	11.2	0.257	0.28	0.137	1.53
14	10.0	0.229	0.116	1.16	14	11.2	0.229	0.25	0.116	1.30
15	10.0	0.205	0.099	0.99	15	11.2	0.205	0.23	0.099	1.11
16	10.0	0.183	0.084	0.84	16	11.2	0.183	0.20	0.084	0.94
17	10.0	0.163	0.071	0.71	17	11.2	0.163	0.18	0.071	0.80
18	10.0	0.146	0.060	0.60	18	11.2	0.146	0.16	0.060	0.67
19	10.0	0.130	0.051	0.51	19	11.2	0.130	0.14	0.051	0.57
20	10.0	0.116	0.043	0.43	20	11.2	0.116	0.13	0.043	0.48
21	10.0	0.104	0.037	0.37	21	11.2	0.104	0.11	0.037	0.41
22	10.0	0.093	0.031	0.31	22	11.2	0.093	0.10	0.031	0.35
23	10.0	0.083	0.026	0.26	23	11.2	0.083	0.09	0.026	0.29
24	10.0	0.074	0.022	0.22	24	11.2	0.074	0.08	0.022	0.25
25	10.0	0.066	0.019	0.19	25	11.2	0.066	0.07	0.019	0.21
26	10.0	0.059	0.016	0.16	26	11.2	0.059	0.06	0.016	0.18
Total	250.0	85.44	64.04		Total	280.0	77.32	51.98		
Per Perch	0.484	0.165	0.124		Per Perch	1.0	0.275	0.185		

Furthermore and more importantly, the clarity of such proposed transaction, surely ought not to be clouded in such ambiguity, but be clearly borne out by the usage of proper terminology, i.e. lease rental on the basis of an annual rental leasehold, as opposed to a capitalised leasehold; whereas the usage of the word "alienate" would only mean - the "transfer ownership of property to another person" as per the *Oxford Dictionary* and - the "transfer of property title from one person to another" as per *Webster's Dictionary*. Was this the real design and intention of those, who have been responsible for this transaction? - If so held out in such manner, as so stipulated in the Cabinet Memorandum, would not there be a legal commitment, with the project company insisting on such transfer of such land after the capital sum is purportedly paid. If not what would "alienate" mean, particularly in the context of the stated recovery of the capital sum? The catastrophic and amateurish bungling of the Specialist Centre transaction with the Nawaloka Group by the UDA would only give rife to such concerns and apprehensions!

Similarly, the Cabinet Memorandum proposes to alienate 3 acres of land at Lake Drive to the same developer on a 30-year lease and transfer freehold upon the payment of the full capital sum on the basis of 10% of the Chief Valuer's value for the first year and 2% p.a. for the next 5-years and at 4% p.a. thereafter. The given Chart would show that on the basis of such payment, the Chief Valuer's value today of Rs. 250 million said to be at Rs. 484,500 per perch, would in actual effect only amount to a net present value for such land today of Rs. 85.4 million at 12% p.a. interest and Rs. 64.0 million at 18% p.a. interest i.e. Rs. 165,500 per perch to Rs. 124,000 per perch only. Would the citizens of this country be given such land at such prices?

In addition, the terms of a 99-year lease ought to ordinarily stipulate the ownership of the property developed i.e. the buildings - as to whether such buildings developed would be the property of the lessee or the lessor at the end of such lease period in the context of the quantum of the lease rental payments. If in such context, the ownership of the developed buildings is to be that of the lessee, then the terms of such lease ought to stipulate the terms of procurement of such buildings by the lessor and the price for the same. Nothing of this is stipulated, but the recovery of the capital sum is however referred to and the land to be alienated!

### **PROJECTS PROCESSED AT AMAZING SPEED**

As evidenced by the Cabinet Memorandum, these projects most certainly appear to have been processed on an amazingly fast track! It is only on 21st May 1997 that the Managing Director and CEO of the Pacific Shore Properties Ltd., said to be of Hong Kong, Mr. Liakat Dhanji had submitted a proposal to the BOI to undertake such complex projects. Just 9 days thereafter, i.e. on 30 May 1997, the BOI had issued a letter of principle approval. How the BOI examined and approved such projects even in principle, verifying the credentials of the developer, including receiving Bank references as ordinarily ought to have been done, in such a short space of a few days, is no doubt amazing!

Ofcourse, the BOI, nor the UDA had thought it fit and proper to have transparently called for competitive offers and proposals for the development of this unique and valuable property, particularly at Steuart Place, Kollupitiya, even moreso during the tenure of a government that has held in very high profile, policies on transparency and public accountability. 24 days after the issuance of such letter of principle approval by the BOI i.e. on June 24, 1997, Mr. Liakat Dhanji along with his Architect had made a presentation on the design concept of the developments. International class real estate projects are generally not known to be conceptualised in such hasty speed. But then, no doubt, there could always be such unique exception!!

Very shortly thereafter on July 22, 1997, a Cabinet Memorandum has been submitted presumably on the premise that the BOI had examined and verified the detail concepts of these complex projects and the credentials of the developer, Pacific Shore Properties Ltd. and the financing of these projects - at amazing speed no doubt. The amazing speed at which these projects were processed even sought to bulldoze the long-time conceptualised Marine Drive for the city of Colombo. How the Ministry of

Finance & Planning was competent and equipped to study, evaluate and recommend that such Marine Drive was not warranted goes beyond comprehension, whereas a master plan for the development of the city of Colombo presumably had been drawn up by the UDA, with professional expertise and competence on town planning based on the requisite rationale on town planning. Is it now a case of adhoc project driven town planning?

### **MERE WORDS BUT NO ACTION**

It is also the international practice of sound business, that commitment of such valuable land is given only upon the verification of the commitment by disclosed sponsors and their equity and loan financial packages committed for such development. This is done so that such valuable land is not exclusively alienated on such concessionary terms to an entrepreneur, who in turn would exploit such exclusive alienation commitment for gain and profit, which rightfully and legitimately ought to belong to the state. *The Sunday Leader* very reliably understands that a financing facility was only being attempted to be put together for these projects by Mr. Liakat Dhanji of Pacific Shore Properties Ltd. even as late as September 1997!

As a responsible member of the Cabinet, would the Justice & Constitutional Affairs Minister & the Deputy Minister Finance, Prof. G.L. Peiris, under the purview of whose Finance & Planning Ministry, the above transactions have been perpetrated, now intervene to suspend and cancel both these transactions - i.e. the privatisation of Orient Lanka Ltd., and the alienation of valuable state property in such ambiguous manner on the basis of such conditions pertaining thereto? If not, otherwise, it would only mean that all such conditions are acceptable to the government including Minister Peiris, for whatever, reasons!

*The Sunday Leader* cannot but help repeat the written word of the Foreign Minister, Lakshman Kadirgamar, when he dealt with the Thawakkal scandal - "I would strongly press on my colleagues, with respect, the fundamental desirability of making clear to the private sector, both local and foreign, that this government means what it says - that it will not tolerate malpractice in the market and that it will not condone and perpetuate (or to use a colloquial expression 'whitewash') malpractice where it has occurred. What has occurred in the Puttalam Cement affair is a gross and calculated fraud on the government and people of this country. This cabinet must not condone it in the name of trying to placate the stock market. In the long run stock exchange and a private sector stimulated by dubious means will again fall into disrepute, to the detriment of the national interest, as it did under the previous regime."

Words, words, words -but no real genuine action. Why ?

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