

## **PACIFIC SHORE VS NYLON-6**

*The Sunday Leader* last week focused upon the alienation of valuable public real estate properties in the city of Colombo, to a project company to be set up in Sri Lanka, with BOI approval, by Pacific Shore Properties Ltd., said to be of Hong Kong, as per the Cabinet Memorandum submitted by the Ministry of Finance & Planning on 22<sup>nd</sup> July 1997, on a proposal, presumably a preliminary proposal, made to the BOI on 21<sup>st</sup> May 1997, i.e. just two months previously.

One of such properties is the unique and very valuable 1.75 acre rectangular block of land at Kollupitiya, bordering the sea and the Galle Road, at very close proximity to the 5-star Lanka Oberoi Hotel. As per the Cabinet Memorandum this valuable property is said to be valued by the Chief Government Valuer at Rs. 1.0 million per perch, making a total of Rs. 280 million. Presumably this appears to be the capitalised value of a 99-year lease for this land; however the Cabinet Memorandum speaks of the "alienation" of such land to such project company.

Since this is a valuation made by the Chief Government Valuer, one would ordinarily and normally expect, that the Marine Drive reservation, existing for over several decades, would have been taken cognisance of and such reservation area of land valued at around 15%-25% of the normal value, in conformity with principles of professional land valuations and if so, if such land reservation is now to be cancelled as proposed, then would not such valuation require upward revision? Real estate circles speculate that freehold value of land in such area to be in the region of Rs. 1.5 million to Rs. 2.0 million per perch.

The real open market price for this unique valuable block of land could only have been ascertained by calling for open competitive bids with adequate publicity, as the UDA normally and ordinarily does in the case of other sites, which have been so advertised — eg: former Wellawatte Spinning & Weaving Mills property at Kirulapone. Why was this not openly advertised and development offers called for? Why such negotiations on the basis of an unsolicited proposal?

### **IS IT CORRUPTION ?**

This land that had been valued at Rs. 280 million, presumably on the basis of a 99-year lease, has been proposed to be given at around Rs. 52 million to Rs. 77 million on the basis of a 99-year lease; however it is specifically stated that the land is to be "alienated" i.e. ownership or title to be transferred, as per the dictionary definition of the meaning of the word "alienate". Accordingly, as opposed to a 99-year lease value of Rs. 1 million per perch, this land is proposed to be given at a value around Rs. 185,000/- to Rs. 275,000/- per perch grossly below the valuation given by the Chief Government Valuer i.e. at around 18.5% to 27.5% of such valuation given by the Chief Government Valuer, which would give rise to a loss of around Rs. 203 million to Rs. 228 million on a land that is valued at Rs. 280 million!

It is simply incomprehensible and incredible, as to how the concessionary lease rental of 2%-4% of the market value of land, which also should be based on the freehold value and not the leasehold value, came to be surreptitiously interpreted as the re-payment of the capital sum valued ! Who was responsible for making such questionable determination, causing loss to the state and conferring a benefit and advantage to another person, a punishable offence defined as "corruption" as per Section 70 of the Bribery Act enacted into the law in October 1994 by this very government.

The valuation of Rs. 280 million would be a lump-sum payment if at all, for a 99-year lease of this land. If instalment payment terms are to be afforded to the developer, then a reasonable rate of interest, concessionary or otherwise, would be chargeable on the reducing unpaid balance capital sum, until it is fully paid. How is it that such very elementary basis of such very simple transaction was fouled up and proposal made to give such land at around 18.5% to 27.5% of the Chief Government Valuer's valuation, devoid of any interest, whatsoever, on such deferred payment terms?

Similarly, 3 acres of valuable land at Lake Drive, a fast developing city area in the vicinity of the luxury multi-storeyed Royal Park apartment complex that was recently opened, has also been proposed to be given to the same project company to be set up in Sri Lanka by Pacific Shore Properties Ltd., said to be of Hong Kong.

The Chief Government Valuer is said to have valued this property at Rs. 250 million i.e. Rs. 484,500 per perch. This property is specifically proposed to be transferred freehold to the project company on the down payment of 10% and 2%-4% annually thereafter without any interest, whatsoever, on the deferred capital payment. Accordingly, this property valued at Rs. 250 million by the Chief Government Valuer is proposed to given at around Rs. 64 million to Rs. 85 million i.e. at Rs. 124,000/- to Rs. 165,000/- per perch, which similarly would give rise to a loss of around Rs. 165 million to Rs. 186 million.

The total loss on these two proposed land transactions, in comparison with the valuations placed by the Chief Government Valuer, could be reckoned to be around Rs. 368 million to Rs. 414 million in comparison with the total land valuation of Rs. 530 million for these two properties. The loss compared with the realisable market values on an open competitive bid basis could even perhaps be very much more. These proposed transactions in simple terms, tantamount to the alienation of state and public property below the valuations placed by the Chief Government Valuer, without even transparently calling for open competitive bids. How and why ? Would this not be causing loss to the state and conferring a benefit and advantage to another person, tantamounting to corruption as defined in the Bribery Act?

### **IS IT NORMAL PRACTICE?**

Encouraging foreign investments no doubt is a laudable concept. However to such foreign investment projects, local land must necessarily be made available at market values, since the economic viability of such commercial real estate projects, could very well easily pay for such land, unlike in instances of socio-economic projects, such as public utilities, hospitals, libraries, schools etc. Would not the project company market the developed real estate comprising of such very land at market values? Therefore why should the government give land to such project company at such give away prices for such commercially viable projects to sell subsequently at market prices? Should not the feasibility and cash flow of these projects have been examined in the first instance, prior to deciding on making such ludicrously absurd concessions? Had this been done? If not, why?

The normal commercial practice, if at all, would be to take up some share capital in the project company for a part of the land value, so that the initial cash-flow of the project company could be assisted and thereby, the state also participating in and benefitting from such real estate development project; and which shareholdings being available to be subsequently marketed to the public once the project is developed, thereby making the public of this country also participants and co-owners of such development projects.

The processes of approval for these multi-faceted complex real estate projects, one even said to be 42 storeys high, appear to have taken an amazingly fast track, when compared with the time normally and ordinarily taken for the conceptualisation, project formulation, appraisal and approval of such complex real estate projects. From the stage of preliminary proposal on 21st May 1997, it has reached the stage of Cabinet Memorandum in just 2 months on 22nd July 1997.



**BOI Chairman/DG and PERC member Thilan Wijesinghe  
— was he responsible for the cabinet memorandum?**

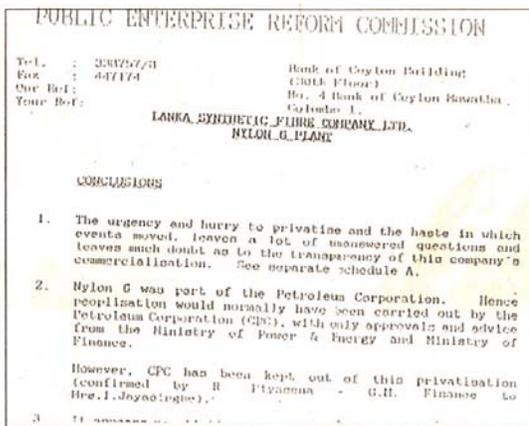
In fact the Cabinet Memorandum further states, that in order to expedite the implementation of the project, both these properties at Kollupitiya and Lake Drive be vested with the BOI immediately by the UDA and SLLR & DC respectively, enabling the BOI to transfer same to the developer. As to how and why the BOI should get involved in such real estate development projects, when the well equipped specialised agency, UDA normally and ordinarily handles such real estate projects is no doubt a very pertinent and sensible question?

### IS IT DOUBLE STANDARDS?

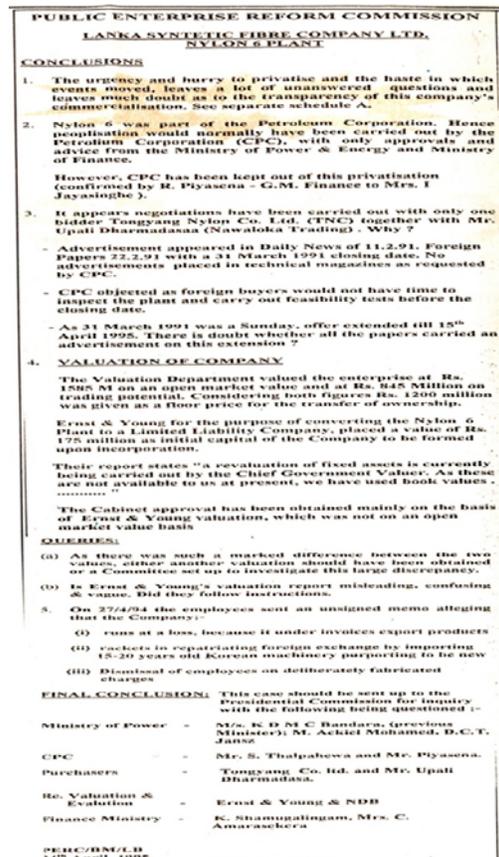
In contrast and in comparison with these two real estate projects, *The Sunday Leader* pointedly brings into focus the criticism that had been made by the Public Enterprise Reform Commission [PERC] on the privatisation of the Lanka Synthetic Fibre Co. Ltd. i.e. the Nylon-6 Plant of the Ceylon Petroleum Corporation, that was carried out during the previous regime. Such criticism, with the recommendation that such privatisation transaction should be referred to the Special Presidential Commission of Inquiry, had been made by PERC in April 1995, under the then Chairman, Rajan Asirwatham. PERC at that time had been functioning under and in terms of a warrant issued by Her Excellency the President.

As a consequence thereof, there was an inquiry by the Special Presidential Commission into the privatisation of the Nylon-6 Plant, with the Commission making its findings and recommending the deprivation of the civic rights of the then Secretary, Ministry of Power & Energy, Ackiel Mohamed.

In the public interest, PERC's criticism and recommendations as per its Memorandum dated 24th April 1995, bearing reference PERC/BM/LB is given in full for one benefit of the reading public. *The Sunday Leader* leaves it to the intelligence of the reading public to compare, what PERC has stated on the privatisation of the Nylon-6 Plant and the above two proposed land transactions — the primary issue in both these cases is the question of disposal of valuable state property below the valuation given by the Chief Government Valuer; and in the instance of these two real estate properties, no open competitive bids have even been called for!



PERC conclusions regarding Nylon - 6 Plant



Having made such criticism and having taken such high ground, it would also be very interesting and pertinent to compare and consider, how PERC has carried out its own privatisation programme, as has been so far analytically exposed by *The Sunday Leader* in the public interest; and on which exposures PERC has even been unable to respond to, notwithstanding that PERC would be accountable to the public in dealing with public property. In comparison majority shareholdings of 51% controlling interests in Plantation Companies have been disposed of by private treaty, without professional valuations and without open competitive bidding!

In addition to the primary question of sale below the valuation by the Chief Government Valuer, another issue of complaint had been the alleged short period given for the offers from 11th February 1991 in the local papers and February 22, 1991 in the foreign papers, with March 31, 1991 as the closing date i.e. 7 weeks and 5 weeks. How does this compare with PERC's own shot-gun time period of 4 days, i.e. November 11, 1995 to November 15, 1995 for fresh offers called for in the case of Orient Lanka Ltd. i.e. a period of 4 days, that too with a weekend in the middle, and the transaction hastily concluded by one party, on behalf of another party, who could possibly not have got pre-qualified, discarding a much more lucrative and conventional offer, thereby causing continuous colossal losses to the state?

Furthermore, though the Weitnauer Group, Switzerland had been invited by PERC to have discussions with a government appointed Evaluation Committee, such discussions had essentially been only had by the Finance Ministry Consultant from London, Brito Mutunayagam, who has been functioning at PERC. How does this compare with the criticism on the Nylon-6 privatisation?

Very significantly, the very opening paragraph in PERC's Memorandum bearing reference PERC/BM/LB dated April 24, 1995 containing criticism on the Nylon-6 privatisation had stated — "The urgency and hurry to privatise and the haste in which events moved, leaves a lot of unanswered questions and leaves much doubt as to the transparency of this company's commercialisation." How do the actual actions, deeds and conduct of PERC compare with such noble words? Who is "BM", who had prepared such PERC Memorandum on the Nylon-6 privatisation? Should we not have similar criticisms prepared on the privatisations carried out by PERC? Would not social justice and fairplay demand same?

- *Published in The Sunday Leader on 12.10.1997 by Nihal Sri Ameresekere under the pseudonym 'Bismark'*