

BY COURIER

24th November 2009

Mr. S. Swarnajothy, A.C.A., B.Sc (Mgt), F.S.C.M.A.,
Auditor General,
Auditor General's Department,
Independence Square,
Colombo 7.

Dear Mr. Swarnajothy,

SC (FR) No. 158/2007

We write as instructed on behalf of our Client, Mr. Vasudeva Nanayakkara, Attorney-at-Law, Advisor to H.E. the President, the Petitioner in the above numbered Application, further to our Letter dated 23.11.2009, and draw your kind attention, in addition, to the following matters:

1. Consultancy Fees, free of tax, of around Rs. 170 million had been paid to PricewaterhouseCoopers (PWC) on the SLIC privatisation, which was adjudged by the Supreme Court to be illegal, invalid, null and void. Funds had been provided, as per the Steering Committee Minutes, by the SLIC. This also includes a Success Fees of around Rs. 40 million. In the context of the said adjudication by the Supreme Court, ought not these Fees be recovered from PWC, and they be charged for gross professional negligence ?
2. Likewise, Ernst & Young, Auditors of SLIC had re-prepared the SLIC Accounts contrary to what had been required by the conditions in the Sale & Purchase Agreement, purporting to be according to International Accounting Standards (IAS). The Steering Committee Minutes reveal quotations from Ernst & Young for carrying out IAS audits. It was disclosed in the Supreme Court, that Ernst & Young had retrospectively materially changed the SLIC investment classification, without disclosing any explanation therefor, thereby paving the way for the purported buyers to claim a refund of over Rs. 2 billion from the State. In the context of the said adjudication by the Supreme Court, ought not these Fees be recovered from Ernst & Young, and they be charged for gross professional negligence ?

Yours faithfully,

Abdeen Associates
Attorneys-at-Law

cc: Hon. Attorney General
13th Respondent, Mr. Nihal Sri Ameresekere
Mr. Vasudeva Nanayakkara, Attorney-at-Law, Advisor to H.E. the President

Dr. Nalaka Godahewa, Managing Director, SLIC

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Auditor General,
Auditor General's Department,
Independence Square,
Colombo 7.

Dear Mr. Swarnajothy,

SC (FR) No. 158/2007

We write as instructed on behalf of our Client, Mr. Vasudeva Nanayakkara, Attorney-at-Law, Advisor to H.E. the President, the Petitioner in the above numbered Application.

We refer to the attached newspaper report in the '*Daily Mirror*' of 23.11.2009.

As you are aware, Judgment was delivered by the Supreme Court on 4.6.2009 in favour of our Client, with the privatisation transaction of Sri Lanka Insurance Corporation Ltd., (SLIC) being adjudged, as null and void, and illegal and invalid, *ab-initio*.

By the Judgment the Supreme Court also removed forthwith the Board of Directors and the Auditors of SLIC.

Subsequently, as per the Proceedings of 26.6.2009, the Secretary to the Treasury was to make arrangements for the Auditor General to compute the profits / losses of the SLIC from the date of privatisation 11.4.2003 upto 4.6.2009, the date SLIC reverted back to the State.

On the said date the Supreme Court ordered that the Secretary to the Treasury may seek further directions from Court, which may deem necessary from time to time, with regard to the administration of SLIC.

In the foregoing context of the Accounts of SLIC being audited by the Auditor General from 11.4.2003 upto 4.6.2009, to compute the profits / losses of SLIC, the following matters are brought to your kind attention:

1. In the context of the indicative valuation of SLIC done by PricewaterhouseCoopers (PWC), observing that the relevant provisions had not been properly confirmed, it is necessary that the relevant provisions for potential insurance liabilities be professionally confirmed by an actuarial expert.
2. The siphoning out of SLIC of any monies and/or profits to other Companies of the former owners, also needs to be taken into reckoning.

3. The Supreme Court had not accepted the valuation by PWC holding that it was erroneous and also since it was well below the real value of SLIC as at 11.4.2003. The 13th Respondent, a professional Accountant, pointed out that the valuation could be in the range of Rs. 20,000 Mn. to Rs. 30,000 Mn., in his Written Submissions tendered to Court. Hence, a correct valuation ought be carried out of SLIC as at 11.4.2003, the date of privatisation.
4. By the Judgment, the Supreme Court directed that the purchase consideration of Rs. 6050 Mn., be refunded by way of 5 Year redeemable Treasury Bonds, and had further directed that the net profits after tax of SLIC for the period 11.4.2003 to 4.6.2009 be computed as aforesaid, and be paid to the purported purchasers.
5. In view of the Supreme Court Judgment revealing that the SLIC had been undervalued, the entirety of the net profits of SLIC for the period 11.4.2003 to 4.6.2009 could not be attributable and paid in respect of a purported purchase consideration of only Rs. 6050 Mn., when the SLIC's value as at 11.4.2003 is reckoned to be over Rs. 20,000 Mn.. In this context only a *pro-rata* of the net profits after tax would be attributable to the Rs. 6050 Mn., in the context of the real value of SLIC having been very much more. This matter would need to be reviewed and rectified by the Supreme Court, for which an Application could be made by the Hon. Attorney General.
6. The Supreme Court Judgment also directed that persons, who had recognised academic / professional qualifications and more than 10 years experience in any one or more of the fields of business, management, accountancy, law, commerce, economics and insurance be appointed to the Board of Directors of SLIC, which requires verification.
7. It is also relevant to take note that the present Secretary to the Treasury had been a castigated party, who had carried out the privatisation of SLIC, and also a Consultant of the Treasury, who our Client understands is now dealing with this matter, was one of the Members of the Steering Committee, which carried out this privatisation, adjudged by the Supreme Court to be illegal, invalid, null and void.

Yours faithfully,



Attorneys-at-Law

cc: Hon. Attorney General
13th Respondent, Mr. Nihal Sri Amersekere
Mr. Vasudeva Nanayakkara, Attorney-at-Law, Advisor to H.E. the President

Mr. Nalaka Godahewa, Managing Director, SLIC

Govt. consults AG to

Pay back unclaimed dividends to Harry J.

By KELUM BANDARA

PROFITS

The government has consulted the Auditor General to ascertain the amount of unclaimed dividends by business tycoon Harry Jayewardane at Sri Lanka Insurance Corporation (SLIC)

which had been privatized to him since 2003, so that they could pay such profits back to him along with the purchase money of Rs. 6.2 billion.

In January this year, the Supreme Court ruled that the privatization of the SLIC was illegal and as a result ordered it to be returned to the government. The court ordered that the purchase price be refunded.

Accordingly, Deputy Finance Minister Ranjith Siyambalapatiya told Daily Mirror yesterday that the government was required to pay Rs. 6.2 billion to Mr. Jayewardane as the purchase price along with the unclaimed dividends during the privatized period.

The SLIC was privatized to Distilleries Group belonging to Mr. Jayewardane.

Mr. Siyambalapatiya said that the Auditor General had been consulted to ascertain the exact amount of unclaimed dividends.

Earlier, the government also

"We have to pay Rs. 6.2 billion in keeping with the Court Order. In addition, we are required to pay back the unclaimed dividends of the Company. The Auditor General is now working on it,"

brought an Amendment to the Appropriation Bill seeking permission to go for borrowings up to Rs. 1,050 billion instead of Rs. 840 billion approved in the 2009 budget.

During the debate on the Bill, Mr. Siyambalapatiya said that the government expenditure had increased unexpectedly this year "We have to pay Rs. 6.2 billion in keeping with the Court Order. In addition, we are required to pay back the unclaimed dividends of the Company. The Auditor General is now working on it," he said.

He scotched speculation that a Cabinet decision had been taken to pay all these monies immediately.



Ranjith Siyambalapatiya