

WAS PERC PARTY TO THE DEAL ?

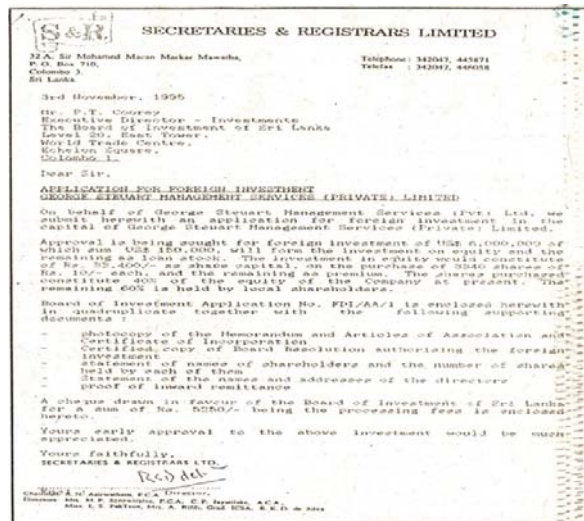
The *Sunday Leader* last week in its analytical exposure, dealing with the controversial privatisation transaction pertaining to Kotagala Plantations Ltd., carried out during August/November 1995 by the Public Enterprise Reform Commission [PERC], disclosed, that on 4th December 1995, an Agreement had been entered into, by a consortium of foreign investors, namely Naganathan Ayadurai of Thailand, Mary Ong of Malaysia and Rovenco Co. Ltd. of Thailand, with George Steuart & Co. Ltd., and George Steuart Management Services (Pvt) Ltd. for the sale of the shares of George Steuart Management Services (Pvt) Ltd. Such Agreement entered into on December 4, 1995 had been in pursuance of a Memorandum of understanding entered into on August 3, 1995 and had stipulated that all notices under the Agreement, in the case of the consortium of foreign investors and George Steuart Management Services (Pvt) Ltd., should be addressed in writing to KPMG Ford, Rhodes, Thornton & Co., 32A, Sir Macan Marker Mawatha, Colombo 3 for the attention of M.R. Mihular, one of its partners, whilst the then Chairman PERC, Rajan Asirwatham was also a senior partner thereof.

BOI APPROVAL

Prior to such Agreement, the Board of Investment of Sri Lanka [BOI], by its letter dated November 10, 1995 had approved the issue of 40% of shares of George Steuart Management Services (Pvt) Ltd., to Rovenco Co. Ltd., of Thailand, one of the parties to the said Agreement. Such BOI letter of approval, signed by M.P.T. Cooray, Executive Director (Investment) had also been copied to the Controller of Exchanger/Central Bank, Chief Accountant/Central Bank and the Registrar of Companies. The approval given by BOI, as per such letter dated November 10, 1995 had noted that the nominal value of the 40% shareholding of the foreign investment in George Steuart Management Services (Pvt) Ltd., would be Rs. 33,400/- and that a sum of Rs.7.776 million would be invested by the foreign collaborator as a premium for such shares.

BOI APPLICATION

Previously, by letter dated November 3, 1995 Secretaries & Registrars Ltd., of the same said address as KPMG Ford, Rhodes, Thornton & Co., at 32A, Sir Macan Marker Mawatha, Colombo 3, Chairman of which, has also been the Chairman, PERC Rajan Asirwatham, had forwarded an application on behalf of George Steuart Management Services (Pvt) Ltd., to M.P.T. Cooray, Executive Director [Investment] of BOI, for approval of such foreign investment into George Steuart Management Services (Pvt) Ltd., forwarding a cheque for 5,250/- as processing fees. By such letter dated November 3, 1995, Secretaries & Registrars Ltd., had sought the approval for a foreign investment to the tune of US \$ 6 million (i.e. SL Rs. 312.4 million), of which US \$ 150,000 (SL Rs. 7.8 million) was to be investment in equity i.e. ordinary shares, and the balance of US \$ 5,850,000 (SL Rs. 304.5 million) was to be given by the foreign collaborators to George Steuart Management Services (Pvt) Ltd., as loan stock.



Secretaries & Registrars Ltd., by their said letter dated November 3, 1995 had intimated, that the investment of Rs. 7.7 million in 40% of the equity of George Steuart Management Services (Pvt) Ltd., was to comprise of 3340 shares of Rs. 10/- each, amounting to Rs. 33,400/- and the remaining was to be accounted as premium for such 40% shareholding, thereby the price for a Rs. 10/- share of George Steuart Management Services (Pvt) Ltd., amounting to Rs.2338/-. The terms and conditions applicable to the proposed loan stock of US \$ 5.85 million (SL Rs. 304.5 million), however, had not been disclosed in Secretaries & Registrars Ltd.'s letter of November 3, 1995 to BOI. On November 7, 1995, Secretaries & Registrars Ltd., had further forwarded an amended application to BOI, appropriately amending Clause 4 of the BOI application, clarifying the distinction between investment in the nominal share capital and the share premium account, requiring George Steuart Management Services (Pvt) Ltd., to sign 4 copies of the application, so duly amended.

THE "FAIT ACCOMPLI" !!

Previously, on October 4, 1995, former Director of George Steuart & Co. Ltd., David Jansze had made representations to the members of PERC at a meeting of PERC concerning such foreign investment in George Steuart Management Services (Pvt) Ltd. Presumably, minutes had been kept of David Jansze's representations. Shortly thereafter, on October 13, 1995 Secretaries & Registrars Ltd., had written to George Steuart Management Services (Pvt) Ltd., inter-alia, stating, "With reference to the application to be made to the Board of Investment of Sri Lanka, please forward us the following information/documents at your earliest ... 3. Address of Ms. Mary Ong ...". In his Memorandum in August 1996, to the Parliamentary Consultative Committee, David Jansze had, inter-alia, stated - "I was assured by the Chairman of PERC, in the presence of its other members, that he would be alert to this, but could take no action until it actually materialized. However, after it became public that such a transaction had taken place, the Chairman of PERC declared in the press that now that it was a 'fait accompli', there was nothing he could do about it."

US \$ 6 MILLION INVESTMENT ?

In the approval letter dated November 10, 1995, BOI had specifically noted, that after the issue of the new shares in George Steuart Management Services (Pvt) Ltd., to the foreign investor, Rovenco Co. Ltd. of Thailand, that the foreign share capital of George Steuart Management Services (Pvt) Ltd., was to be Rs. 33,400/- (40%) and the local share capital was to be Rs. 50,060/- (60%), making a total share capital of Rs. 83,460/- (100%). Into a company, whose share capital prior to such foreign investment, was only a mere Rs. 50,060/-, BOI could not deny, that they were fully well aware, that the total foreign investment was in fact a comparatively staggering sum of US \$ 6.0 million (SL Rs. 312.4 million), which was to be accounted as, share capital, share premium and as loan stock, as had been clearly disclosed to the BOI by Secretaries & Registrars Ltd., as per their letter dated November 3, 1997, which, inter-alia, had stated - "Approval is being sought for foreign investment of US \$ 6,000,000 of which sum US \$ 150,000 will form the investment on equity and the remaining as loan stock"

In such circumstances, both BOI, of which the Chairman/Director General was Thilan Wijesinghe and Secretaries & Registrars Ltd., of which the Chairman was Rajan Asirwatham, ought to have known/would have known in October/November 1995, as to why and for what purposes, such a huge investment of US \$ 6.0 million (SL Rs. 312.4 million) was being sought to be brought into George Steuart Management Services (Pvt) Ltd., whose total share capital then was only Rs. 50,060/-.

WAS IT NOT CONSCIOUSLY KNOWN ?

Rajan Asirwatham, as then Chairman of PERC and Thilan Wijesinghe as a member of PERC ought to have/would have been fully aware, that at that very same time in October/November 1995, PERC was in the process of selling the 51% controlling interest of Kotagala Plantations Ltd., to George Steuart Management Services (Pvt) Ltd., for a consideration of Rs. 102 million for the 51% controlling interest,

with a further Rs. 120 million to be given by George Steuart Management Services (Pvt) Ltd., by way of a loan to Kotagala Plantations Ltd., in the form of mandatorily convertible debentures, thereby affording George Steuart Management Services (Pvt) Ltd., a 69.4% majority shareholding of Kotagala Plantations Ltd.

PERC had concluded the sale of Kotagala Plantations Ltd.'s shareholdings in November 1995, handing over the share certificate to Ms. Mary Ong, foreign collaborator of George Steuart Management Services (Pvt) Ltd.

However, in *The Sunday Leader* of January 7, 1996, BOI Chairman, Thilan Wijesinghe was reported to have stated - "The BOI has given approval only for the sale 40% of the shares" i.e. of George Steuart Management Services (Pvt) Ltd. *The Sunday Leader* leaves it to the intelligent public to consider, as to whether Thilan Wijesinghe, Chairman/Director General, BOI and member of PERC had made a full and frank disclosure then, as he ought to have, or whether he had avoided the above facts and issues, and if so, why ? In an interview given to *The Sunday Island* of June 9, 1996, when questioned about the photograph showing the handing over of the Kotagala Plantations Ltd. shareholding to Ms. Mary Ong of Malaysia, this is what then Chairman PERC, Rajan Asirwatham is reported to have stated - "Q: Dr. Romesh Bandaranaike himself has done it ? A: Yes, ... This share certificate should have gone to George Steuart Plantation Management Ltd. It should be some one from that company. At least inquiries should have been made as to what this lady is doing on behalf of George Steuarts. That is correct."

STARTLING DISCOVERY

The most startling discovery by *The Sunday Leader* is that, the Agreement dated December 4, 1995, that had been entered into for the sale of the shares of George Steuart Management Services (Pvt) Ltd., to the consortium of foreign investors, under which Agreement, notices to the foreign investors and George Steuart Management Services (Pvt) Ltd., had to be addressed to KPMG Ford, Rhodes, Thornton & Co., of which then Chairman PERC, Rajan Asirwatham was a senior partner, is that, under Clauses 3 and 4 of the said agreement, for a consideration of Rs. 86.0 million, agreement had been reached to execute shares transfer forms to transfer 5005 shares of Rs. 10/- each of George Steuart Management Services (Pvt) Ltd., to the foreign investors and/or their nominees. This was the entire local shareholding (except one solitary share held by David Jansze) of George Steuart Management Services (Pvt) Ltd. The share transfer forms, however, had not been executed in the name of the foreign investors, but had been in blank, to be executed in the name of their prospective new local collaborators.

SALE OF KOTAGALA PLANTATIONS

George Steuart Management Services (Pvt) Ltd., had been managing Kotagala Plantations Ltd., since 1992 and PERC, in carrying out the privatisation of Kotagala Plantations Ltd., had afforded George Steuart Management Services (Pvt) Ltd., an exclusive option, without any open competitive bidding, whatsoever, on the trading floor of the Colombo Stock Exchange, the right to purchase 51% controlling interest of Kotagala Plantations Ltd., at the lowest price, that was to be received for the fragmented sale of 20% of the shareholdings of Kotagala Plantations Ltd., which was offered to the public in the Colombo Stock Exchange. This no doubt, was a questionably ludicrous formula, which in quite plain and simple terms, patently and clearly enabled George Steuart Management Services (Pvt) Ltd., to have the exclusive right, to purchase 51% controlling interest of Kotagala Plantations Ltd., at the nominal value of only Rs. 10/- per share.

Members of PERC, who at that time had been functioning under a fiat given by President Chandrika Bandaranaike Kumaratunga had been, Chairman, Rajan Asirwatham, A.S. Jayawardena, Secretary, Ministry of Finance & Planning, Thilan Wijesinghe, Chairman/Director General, BOI, Ariththa Wikramanayake, Director General, Securities & Exchange Commission, Dr. Saman Kalegama, Director, Institute of Policy Studies, Chandra Jayaratne, Managing Director, C.T.C. Eagle Insurance Co. Ltd. and Nimal Malalasekera. Dr. P.B. Jayasundera had been participating at PERC meetings

representating Secretary, Ministry of Finance & Planning, A.S. Jayawardena and J.M.S. Brito, visiting consultant from London to the Ministry of Finance & Planning, had also been attending PERC meetings, if and when, he had been in Sri Lanka, and Indrajit Coomaraswamy from London, had been functioning as Director General, PERC, for sometime.

LEGAL ADVISORS FIGHT SHY ?

The *Ravaya* of July 27, 1997 carried a front page headline story, under the caption "540 million fine for the Kotagala Plantations fraud". The report, inter-alia, stated that, whilst questions repeatedly surfaced pertaining to this improper transaction, that PERC Chairman, Rajan Asirwatham had engaged the services of the law firm, Julius & Creasy to examine the matter and advise, and that accordingly, legal advisors to PERC on this matter was Julius & Creasy. The *Ravaya* of the next week i.e. August 3, 1997 reported on its front page, under the caption - "Julius & Creasy clarify facts" that Julius & Creasy had stated that -"The firm Julius & Creasy had not acted on behalf of PERC in the matter of the Kotagala transaction."

The Sunday Leader, however, is in possession of letter dated January 2, 1996 written to George Steuart Management Services (Pvt) Ltd., by Julius & Creasy stamped '*extremely urgent*', stating - "We act for the Public Enterprise Reform Commission and are writing to you under instructions from them. Our client's attention has been drawn to several recent press reports to the effect that some part of the shareholding of George Steuart Management Services (Pvt) Ltd., has been sold to a foreign company". Subsequently, Julius & Creasy had written further letters dated January 25, 1996 and February 15, 1996 to F.J. & G. De Saram, lawyers for George Steuart Management Services (Pvt) Ltd., seeking clarifications on the sale of George Steuart Management Services (Pvt) Ltd.'s shares to foreign investors, whilst copying the said letters to R.N. Asirwatham, Chairman, PERC, given the above scenario, ought he not have known the clarifications so sought?

IS GEORGE STEUARTS TO BE BLAMED?



President Kumaratunga — "No room will be left for this kind of dishonest and fraudulent action"

The Sunday Leader of December 24, 1995 had reported thus - "Public Enterprise Reforms Commission [PERC] chief and Bank of Ceylon [BoC] Chairman Rajan Asirwathan, calling it "immoral", said that the Government could do nothing about it, as this was due to privatisation. Asked whether the state cannot take action against the company concerned, he replied that if action was to be taken, it would reflect very badly on our democracy". *The Sunday Leader* of December 31, 1995 under the caption "Chandrika tells PERC to file action against George Steuart's" quoted the then Chairman PERC, Rajan Asirwatham to have stated- "I am frankly dismayed at what this company has done. They have let down the entire private sector by their actions". *The Island* of June 6, 1996, inter-alia, reported thus - "President Chandrika Bandaranaike Kumaratunga at a special press conference last Friday said that no shares of Kotagala Plantations would be transferred and that legal action was being taken. 'No room will be left for this kind of dishonest and fraudulent actions' she said".

In the above scenario, how could one have ever faulted George Steuart & Co. Ltd. and its Directors for the above transaction, inasmuch as, was it they who had "*structured such deal*"? Has not PERC, an arm of the government functioning under the Ministry of Finance, directly and/or indirectly, tacitly or otherwise, knowingly been a party to such transaction? Having deemed it dishonest and fraudulent on prima-facie impressions, what actions would President Kumaratunga take now, given the correct facts disclosed so far upto now, in the circumstances that then members of PERC having been jointly and severally responsible for the conduct and actions of its members?

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