

Kotagala transaction structured by Merchant Bank,

BLESSED BY BOI

THE investigative exposures on the controversial privatization of Kotagla Plantations Ltd, (KPL) published by *The Sunday Leader* revealed last week, that Secretaries & Registrars Ltd, chairman of which was also the then Chairman, Public Enterprise Reform Commission (PERC), Rajan Asirwatham, had by its letter dated November 3, 1995, applied to the Board of Investment of Sri Lanka (BOI) for the approval of a foreign investment amounting to the sum of US \$ 6 million (SL Rs. 312.4 million) into George Steuart Management Service (Pvt) Ltd, (GSMSPL), the total share capital of which company at that time, comparatively had been only Rs. 50,060.

BOI AWARE OF INVESTMENT

Pointedly, the said letter of application by Secretaries & Registrars Ltd, written on behalf of GSMSPL to BOI had clearly stated that out of the total foreign investment of US \$ 6 million (SL Rs. 312.4 million), only Rs. 33,400 (US \$ 641) would constitute share capital comprising 3340 new shares of Rs. 10 each, affording the foreign investor an equity shareholding of 40% of GSMSPL, the balance 60% had been the total shareholding of GSMSPL of Rs. 50,060, that had existed at that time prior to such foreign investment.

The balance of the foreign investment of US \$ 6 million (SL Rs. 312.4 million) was to have been accounted as share premium of Rs. 7.776 million (US \$ 149,366) and the remaining US \$ 5,850,000 (SL Rs. 304.5 million) was to have been accounted as loan stock, as disclosed in the applications to BOI. Within a period of just one week, BOI by its letter dated November 10, 1995 had quite speedily given approval for the foreign investment into GSMSPL. Chairman / Director General, BOI, Thilan Wijesinghe was also a then influential member of PERC promoting foreign investments.

SALE OF KOTAGALA BY PERC

At that very same time in November 1995, PERC had been in the process of selling 51% controlling interest of KPL, to GSMSPL for Rs. 102 million. GSMSPL was also in addition required to loan to KPL, a further sum of Rs. 120 million, as mandatori convertible debentures; thereby the total cash disbursement required by GSMSPL to acquire the 51% controlling interest of KPL had only been Rs. 222 million.

The debenture loan of Rs. 120 million had not been purchase consideration paid to the seller, the treasury secretary, put had been a loan given by GSMSPL to KPL, to be converted as share capital of KPL, after a period of two years. By the conversion of such debenture loan into additional shares of KPL, GSMSPL in effect acquired, not a mere 51% controlling interest of KPL, but a 69.4% shareholding thereof, for which the effective total purchase consideration had only been Rs. 138.7 million. This was because 69.4% of the Rs. 120 million loaned as debentures, when converted into shareholdings of KPL, would have continued to belong to GSMSPL and only the balance 30.6% thereof i.e. Rs. 36.72 million would have passed on to the ownership of the treasury secretary thereby making the total effective purchase consideration for a 69.4% shareholding of KPL, so acquired by GSMSPL, only Rs. 138.7 million.

FOREIGN INVESTMENT MORE THAN TOTAL COST FOR KOTAGALA

It is quite clear that the total cash outlay that had been required by GSMSPL for the acquisition of 51% controlling interest of KPL had only been Rs. 220 million – i.e. the consideration of Rs. 102 million for the 51% shareholding plus the convertible debenture loan of Rs. 120 million. Of this total cash outlay of Rs. 220 million, the effective purchase consideration for the acquisition of a 69.4% shareholding of KPL was only Rs. 138.7 million. Nevertheless, Secretaries & Registrars Ltd, at that very same time in November 1995, acting on behalf of GSMSPL, had applied to BOI for the approval of foreign investment amounting to US \$ 6 million (SL Rs. 312.4 million) into GSMSPL.

PERC DEEMED TO HAVE KNOWN?

In the context of the foregoing, would not the then Chairman, PERC, Rajan Asirwatham and member PERC, Thilan Wijesinghe have been fully aware of such BOI application and prompt BOI approval in November 1995 for such foreign investment of US \$ 6 million (SL Rs. 312.4 million) into GSMSPL, at the very same time, that GSMSPL was in the process of acquiring in November 1995, the 51% controlling interest of KPL from PERC? Ought not Rajan Asirwatham and Thilan Wijesinghe, being members of PERC, have disclosed their such interests and such information to PERC, who was then in the very process of selling the 51% controlling interest of KPL to GSMSPL? In any case, in such circumstances, would not such information have been deemed to have been known to PERC and PERC accountable and responsible therefore?

Ought it not have been patently clear as daylight, that when a consortium of foreign investors bring in US \$ 6 million (SL Rs. 312.4 million) into GSMSPL, a company, whose total share capital then had comparatively been only Rs. 50,060, that such consortium of foreign investors would be calling the shots, as it were, and furthermore, that such funds were being brought into GSMSPL, to finance the acquisition of 51% controlling interest of KPL by GSMSPL? If not, why? Is not the BOI expected and required to examine the purpose and justification for foreign investments? Accordingly, has not the BOI approved such transaction?

AGREEMENT MAKES FULL DISCLOSURE

In fact, in no uncertain terms, the agreement entered into on December 4, 1995, in pursuance of a memorandum of understanding dated August 3, 1995, by and between the consortium of foreign investors, namely Naganathan Ayadurai of Thailand, Mary Ong of Malaysia and Rovenco Co. Ltd, of Thailand, and GSMSPL and George Steuart & co, Ltd, which had stipulated that all notices in the case of the said foreign investors and GSMSPL should be addressed to KPMG Ford, Rhodes, Thornton & Co. of which then Chairman, PERC Rajan Asirwatham was also a senior partner – had clearly stipulated at clause 20 thereof, that the following payments had been made by the said foreign investors, on behalf of GSMSPL, amounting to a total of Rs. 223.02 million.

(1) On August 4, 1995, paid to the treasury secretary as bid bond of Rs. 5,000,000 – (2) On November 2, 1995, paid to the Secretary to the Treasury as 10% down-payment of Rs. 17,200,000-(3) On November 24, 1995, paid to the treasury secretary as 90% balance payment of Rs. 79,800,000-(4) November 24, 1995, paid to Kotagala Plantations Ltd, as Debenture Loan of Rs. 118,800,00-(5) On November 24, 1995, paid to the commissioner general of inland

revenue as stamp duty Rs. 1,200,000 – (6) On November 24, 1995, paid to the commissioner general of Inland Revenue as stamp duty Rs. 1,020,000 – a total payment of Rs. 223,020,000.

The same said agreement of December 4, 1995 vide clauses 3 and 4 therein had clearly stipulated, that for a total consideration of Rs. 86 million, the then 60% local shareholdings of GSMSPL amounting to Rs. 50,050 would be transferred to the foreign investors and/or their nominees – this was the entirety of the then 60% local shareholdings of Rs. 50,060 of GSMSPL, save and except one Rs. 10 share that had been held by former Director of George Stuart & Co. Ltd, David Jansze.

PERC ACCOUNTABLE & RESPONSIBLE?

The aforesaid payments made by the said foreign investors on behalf of GSMSPL amounting to Rs. 223.02 million for the acquisition of 51% controlling interest of KPL by GSMSPL and the Rs. 86 million paid as consideration for the 60% local shareholding of GSMSPL (save and except one share), had amounted to a total payment of Rs. 309 million, in addition to the payment of Rs. 33,400 for the 40% shareholding of GSMSPL, that had been directly acquired, as foreign shareholding, by the foreign investors.

In the foregoing circumstances, *The Sunday Leader* leaves it to the intelligence of the reading public to judge, as to whether or not, PERC had in fact sold the 51% controlling interest of KPL, Knowing fully well that such 51% controlling interest of KPL, in actual fact commanded a much higher market price and that it in fact did command such higher market price, as had been amply evidenced by the facts disclosed in the said agreement of December 4, 1995, between the said foreign investor, GSMSPL and George Stuart & Co. Ltd?

Would not the then members of PERC have been jointly and severally accountable and responsible for the conduct and actions of any of the members of PERC, in the execution of the transactions of PERC? Having not taken any action thereon or distancing themselves therefrom, even subsequently, have not the then members of PERC acquiesced there with? Would it not have warranted the prompt and immediate resignation of all the then members of PERC? After all is it not public property that has been so dealt with?

MERCHANT BANK BUYS 37.4% OF GEORGE STUARTS

David Janze, former Director of George Stuart & Co. Ltd, in his memorandum to the parliamentary consultative committee in August 1996, published in *The Sunday Island* of February 15, 1997, had disclosed, that George Stuart & Co. Ltd, had been undergoing financial difficulties and that in such circumstances, in October 1994, the Merchant Bank of Sri Lanka Ltd (MBSL) had entered into a memorandum of understanding with George Stuart & Co. Ltd, *inter alia*, to financially restructure George Stuart & Co. Ltd, and for MBSL to invest Rs. 50 million as equity capital of George Stuart & Co. Ltd, subject to the amendment of the articles of association of George Stuart & Co. Ltd, for such purpose.

MBSL in its annual report & accounts of December 1994 at page 54 therein, under the disclosure of non-quoted investments had disclosed an investment of 229,500 ordinary shares of Rs. 10 each in George Stuart & Co. Ltd, at a cost of Rs. 18.36 million.

Subsequently, MBSL in its annual report & accounts of December 1995 at page 44 therein, under the disclosure of investments in associate companies had disclosed an investment of 625,000 ordinary shares in George Steuart & Co. Ltd, at a cost of Rs. 50 million. Consequent to the amendment of its articles of association, Gorge Steuart & Co. Ltd, in conformity with such agreement had allotted such 625,000 ordinary shares in the name of MBSL in December 1997.

Prior to this additional allotment to MBSL of 625,000 new of ordinary shares of Rs. 10 each of George Steuart & Co. Ltd, the share capital of George Steuart & Co. Ltd, had been 1,045,000 ordinary shares of Rs. 10 each. Therefore, such MBSL investment in 625,000 ordinary shares of George Steuart & Co. Ltd, had amounted to at 37.4% shareholding of George Steuart & Co. Ltd, had amounted to a 37.4% shareholding of George Steuart & Co. Ltd. In a accordance there with, MBSL in its annual report & accounts of December 1995 had disclosed such investment in George Steuart & Co. Ltd, as an investment in an associate company of MBSL.

“ STRUCTURED THE DEAL”?

In the foregoing circumstances, had not MBSL been quite privy to and fully aware of and very much involved in the affairs of George Steuart & Co. Ltd, and its then subsidiary GSMSPL, which company at that time, since 1992, had been managing KPL? In August 1995, that is after MBSL had got involved in October 1994 with George Steuart & Co. Ltd, GSMSPL had been afforded the exclusive option by PERC of acquiring the 51% controlling interest of KPL, and such 51% controlling interest of KPL had been acquired by GSMSPL from PERC in November 1995, financed in the manner, as set out above. The then Chairman MBSL coincidentally had also been the then Chairman, PERC, Rajan Asirwatham.

The Sunday Leader reliably understands that the memorandum of understanding dated August 3, 1995 entered into between the said consortium of foreign investors and GSMSPL and George Steuart & Co. Ltd, had been drawn up by MBSL and that MBSL had assisted in the drafting of the consequent agreement, that had been entered into on December 4, 1995 by an between the same parties as referred to above.

The Sunday Leader investigations have revealed, that for services rendered by MBSL to George Steuart & Co. Ltd, and GSMSPL, immediately after the conclusion of the acquisition of 51% controlling interest of KPL by GSMSPL, MBSL in December 1995, had charged fees from George Steuart & Co. Ltd, giving two receipts dated December 14, 1995, - receipt no. 76076 for Rs. 1,705,575.44 as “corporate finance and legal fees”, and receipt no. 76087 for Rs. 2,600,000 as ‘fees for structuring the deal’ of GSMSPL. Copy of MBSL’s letter dated December 20, 1995 to George Steurat & Co. Ltd, forwarding the two receipts dated December 14, 1995 is given (see Letter).

Significantly, immediately upon the conclusion of the deal by GSMSPL of acquiring 51% controlling interest of KPL, MBSL in December 1995 had charged and received fees as “fees for structuring the deal” of GSMSPL and fees as “corporate finance and legal fees” from George Steuart & Co. Ltd, amounting to a total of Rs. 4,305,575.44.

RESPONSIBILITY OF GOVERNMENT?

Furthermore, MBSL had made a substantial investment of Rs. 50 million, acquiring 37.4% shareholding of George Steuart & Co. Ltd, the then holding company of GSMSP, Accordingly, did not MBSL have a direct interest and stand to cognisably benefit and profit from this transaction of GSMSP on the acquisition of 51% controlling interest of KPL?

As professional merchant bankers having made such substantial investment in George Steuart & Co. Ltd and for having “structured the deal”, of GSMSP, would not MBSL have been responsible and accountable therefore and not GSMSP or George Steuart & Co. Ltd? After all, was not the then chairman of PERC?

How could the government have found fault with George Steuart & Co. Ltd and/or its directors and/or the foreign investment consortium? On the contrary, had not BOI, PERC and MBSL being directly/indirectly state institutions, knowingly structured and approved such transaction and had not private professional institutions of the chairman, PERC handled such transaction? Has not the government failed to have dealt with the said institutions? Knowing the facts now, what actions would the government take? If not, why?

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| | | Sri Lanka Limited | |
| | | P.O. BOX 1987 | |
| <i>Private and Confidential</i> | | | |
| 2001, December, 1995 | | Ref. No. MBSL/CF/95/567 | |
| Mr. Keerthi De Silva Director – finance George Steuart & co. Ltd., 45, Janadhipathi Mawatha Colombo - 1 | | | |
| Dear Sir, | | | |
| ACKNOWLEDGEMENT OF FEES | | | |
| Please find enclosed the official receipt, details of which are given below:- | | | |
| George Steuart & co. Ltd, Corporate Finance & Legal Fees | | Rs. | 1,705,575.44 |
| George Steuart Management Service (pvt) Ltd., Fees for structuring the deal | | Rs. | 2,600,000.00 |
| Total | | Rs. | 4,305,575.44 |
| <hr/> | | | |
| Thanking You, | | | |
| Yours Faithfully | | | |
| Manager – Corporate Finance | | <u>A.M.A.Cader</u> | |

- Published in The Sunday Leader on 8.3.1998 by Nihal Sri Ameresekere under the pseudonym 'Bismark'