SHARE HARVEST: UNFAIR

Influence peddling and lobbying is prevalent not only in democratic societies, but also in other forms of political regimes. Such phenomenon has come to stay as a behavioural norm in contemporary society. Do not politicians lobby and influence peddle in seeking party nominations for elections and do not elected members lobby and influence peddle in seeking ministerial portfolios? Similarly, are business entrepreneurs and corporate organisations devoid of influence peddling and lobbying to achieve their business goals, inasmuch as politicians invariably influence peddle and lobby to achieve personal goals, though, however, they had aspired to public office on the promise of serving the people?

Whilst such behavioural phenomenon may be the reality, in developing a free and open market economy, would it not be the onus and responsibility of good government to ensure equality of opportunity on a level playing field to all, devoid of any cronyism that the People's Alliance loudly decried, not only in coming to power, but also upon assuming office of government? Would it be fair and reasonable to castigate a wide spectrum of the private sector for influence peddling and lobbying, whereas it would be the onus and duty of a good and strong government to ensure that it does not succumb and fall prey to such influence peddling and lobbying?

Furthermore, not only should such influence peddling and lobbying not deny the equality of opportunity on a level playing field to all, but also should not cause any loss to the government, which is the public, whilst conferring benefit, favour or advantage on parties resorting to such practice of influence peddling and lobbying. The People's Alliance government immediately upon assuming office defined such undesirable conduct as "corruption", – an offence punishable under the law, for which purpose a Permanent Commission to Investigate Allegations of Bribery or Corruption was established as far back as October 1994.

The Sunday Leader last week posed the pertinent question, as to how many instances of prima-facie cases of "corruption", so defined, the People's Alliance government during its 4-year tenure in office had referred to the Permanent Commission for investigation, particularly more so since "corruption" was legally defined as an offence for the prospective period after October 1994? The Permanent Commission was an Agency specifically set up by the government for such very purpose of investigating prima-facie cases of "corruption".

ERRONEOUS PRESUMPTION?

On the other hand, *The Sunday Leader* brought into focus the recent policy guidelines that had been laid down by the government pertaining to the participation in the promotion of large scale public sector projects and tenders over Rs. 250 million by foreign companies. The government restricted the participation in such business by local agents, to listed public companies with a market capitalisation of Rs. 200 million and to local liaison offices directly owned by the foreign companies. Such policy guidelines by the government had apparently been on the premise, that the rest of the vast spectrum of the private sector unduly influenced public officials or resorted to corrupt practices in concluding deals which at times are unfavourable to the government.

The policy guidelines enunciated by the government therefore presumed, that listed public companies with a market capitalisation of Rs. 200 million and local liaison offices directly owned by foreign companies do not unduly influence public officials or resort to corrupt practices in concluding deals which at times are unfavourable to the government. *The Sunday Leader* questioned the correctness of such presumption and posed the question, as to whether not such presumption is a fallacy, given the several scandalous exposures published by *The Sunday Leader* on a number of questionable transactions carried out by the government.

In this context, *The Sunday Leader* last week referred to its previous extensive exposures on the privatisations of the plantation companies, particularly Agalawatte, Horana, Kegalle, Kotagala, Bogawantalawa and Kelani Valley, considered to have been the most profitable plantation companies. As exposed by *The Sunday Leader*, these profitable plantation companies had been gifted on a platter as it were, devoid of any free and open competition, to exclusively pre-selected parties, with majority shareholdings of these plantation companies sold to such exclusively pre-selected parties at the nominal value of Rs. 10/- per share only, on the basis of a ludicrously absurd pricing formula, causing substantial losses to the government and conferring benefit, favour or advantage on such exclusively pre-selected parties.

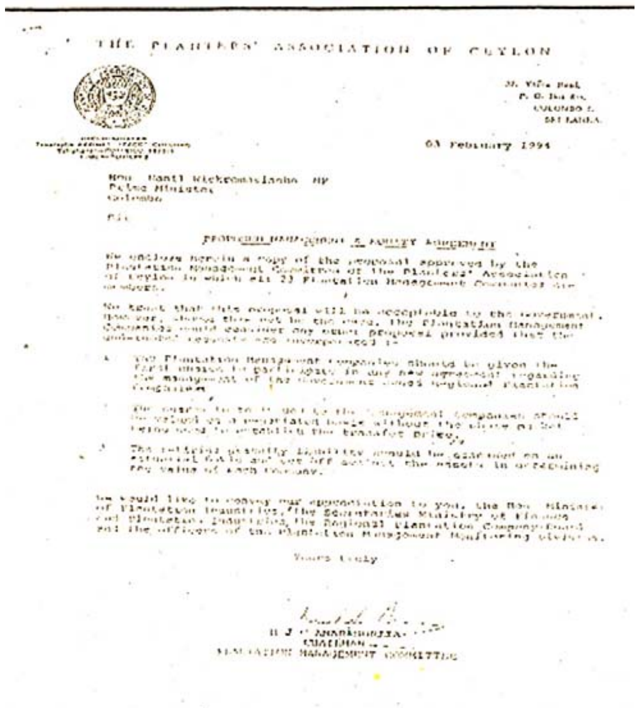
How such misadventure ever happened has been unknown to the public. The government, however, promptly stopped the sale of the majority shareholdings of the balance plantation companies on such ludicrously absurd basis, and subsequently realised much higher prices for even the then loss making plantation companies on the basis of a bidding process.

The Sunday Leader in the public interest has now further probed such privatisation of the profitable plantation companies, particularly in the context of the presumption by the government, that listed public companies with a market capitalisation of Rs. 200 million and local liaison offices directly owned by foreign companies do not unduly influence public officials or resort to corrupt practices in concluding deals which at times are unfavourable to the government, whereas, it is the onus of an honest and strong government to ensure that it does not succumb and fall prey to such machinations.

PLANTATIONS LOBBY

Deputy Chairman, Hayleys, Chairman, Planters' Association, M. J. C. Amarasuriya — did not want the share market used to establish the transfer price of the controlling shareholdings.

The Sunday Leader probe has revealed, that as far back as February 1994, The Planters' Association of Ceylon had made representations to the then United National Party government on the proposed privatisation, then referred to as "peoplisation", of the plantation companies. The then Chairman of The Planters' Association of Ceylon, M.J.C. Amarasuriya had forwarded a Letter dated February 3, 1994, to the then Prime Minister, Ranil Wickremasinghe urging that the plantation management companies should be given the first choice and that shares of the plantation companies should be issued on a negotiated basis, without the share market being used to establish the share transfer price. The Letter copied also to the then Minister and the Secretary of Plantation Industries and the Secretary Ministry of Finance had stated:



Proposed management & equity agreement, dated February 3, 1994

"Hon. Ranil Wickremasinghe MP
Prime Minister
Colombo.

Sir,

<u>PROPOSED MANAGEMENT & EQUITY AGREEMENT</u>

We enclose herein a copy of the proposal approved by the Plantation Management Committee of the Planters' Association of Ceylon in which all 23 Plantation Management Companies are members.

We trust that this proposal will be acceptable to the Government. However, should this not be the case, the Plantation Management Companies could consider any other proposal provided that the undernoted requests are incorporated :-

1. The Plantation Management Companies should be given the first choice to participate in any new agreement regarding the management of the Government owned Regional Plantation Companies.

2. The shares to be issued to the Management Companies should be valued on a negotiated basis without the share market being used to establish the transfer price.

3. The retiring gratuity liability should be assessed on an actuarial basis and set off against the assets in determining the value of each Company.

We would like to convey our appreciation to you, the Hon. Minister of Plantation Industries, the Secretaries Ministry of Finance and Plantation Industries, the Regional Plantation Company Board and the officers of the Plantation Management Monitoring Division.

Yours truly,
M.J.C. Amarasuriya
Chairman
Plantation Management Committee"

It is now a matter of history, that Ranil Wickremasinghe, then Prime Minister, present Leader of the Opposition, had not been swayed or influenced by, nor been naive to, such proposal for the privatisation of the plantation companies to be negotiated through private treaty with exclusively pre-selected parties, devoid of open competitive bidding on the trading floor of the Colombo Stock Exchange to determine the realisable market price of the plantation company shares.

The then Chairman of the Planters' Association of Ceylon, M.J.C. Amarasuriya, who had forwarded such representations to the then government, was also the Deputy Chairman of the Hayleys Group, a company of which group, DPL Plantations Ltd., subsequently acquired 71.2% of Kelani Valley Plantations Ltd., – one of the first six profitable plantation companies, where the majority shareholding were sold by the People's Alliance government for the nominal value of Rs. 10/- per share only.

Attached to the February 3, 1994 Letter forwarded by M.J.C. Amarasuriya had been a Memorandum also dated February 3, 1994 setting out the proposed Management Equity Agreement for the privatisation of the plantation companies that had been formulated by The Plantation Management Committee of The Planters' Association of Ceylon. M.J.C. Amarasuriya had signed such Memorandum as the Chairman of such Committee.

URGENT & CONFIDENTIAL (REVISED PROPOSAL)

TO	: Secretary General - Planters Association
FROM	: Chandra Jayaratne - CTC Eagle Insurance Co Ltd
DATE	: 25th January 1994
SUBJECT	: DIVESTITURE OF SHARES OF RPC'S VESTED WITH THE LEASE OF PLANTATION LAND AND IMMOVABLES AND OTHER ASSETS

Revised proposal; Subject — Divestiture of shares of RPCs vested with the lease of plantation land and immovables and other assets

PROPOSED MANAGEMENT AND EQUITY AGREEMENT

1 Divestiture of the shares of the RPCs to be made with the first option on the purchase being reserved for the existing PMC of the RPC via a negotiated sale basis at a fair agreed valuation.

2 .1 The value of business Assets of the RPCs to be agreed with the Authorities by each PMC. The computation will take account of the bare land value of each estate as at June 1992 as determined by Coopers & Lybrand valuation (on the basis of a 99 year unrestricted lease as previously executed between the RPCs and the owners and amortized for 1 1/2 years from June 1992) together with the net book value of assets as at 31 December 1993 as reflected in the balance sheets (ie buildings, machinery, land development costs etc).

.2 In computing the net book values, the liability to employees gratuity to be restated at an actuarially determined value to reflect the likely future gratuity commitment on past services of the employees to 31 December 1993 on account of future salary/wage increases.

.3 Cognizance will also be taken of the business value as computed by Coopers and Lybrand based on earnings potential and a Mid-Median (Net Asset and Business Value) established as the enterprise value.

3 Cash flow requirements to meet the following cash expenditure needs to be ascertained and agreed by the Authorities in respect of each RPC.

- Cash loss to 31 December 1993
- Cash required where necessary until break even
- Net working capital requirements, if any.

4 The authorities

- to permit the RPCs to retain the long term debentures presently granted
- to seek low cost development based on long term financing facilities from International Funding Agencies to fund capital expenditure during the period up to cash break even.

5 The most appropriate capital structure for each RPC to be determined in relation to the agreed enterprise value as per (2) above, taking due account of the desired level of gearing and the cashflow needs as ascertained in (3) above.

2

6 Once the capital structure has been agreed, 60% of the equity capital of the RPC to be taken up by the PMC for settlement in cash. The balance 40% of equity capital to be allotted to the Government in part consideration of the lease of the land and the transfer of the enterprise. A restructuring mechanism will assure infusion of cash required by the RPC as determined in (3) above.

7 Of the Government's 40% share holding, 10% of which will be voting shares and 30% non voting shares, the Government will allocate the 10% voting shares to the employees on lines similar to that adopted in previous peoplisations.

8 The plantation management companies will undertake in writing via a memorandum of agreement to obtain a quotation for the shares within a reasonable period for both voting and non voting shares and will offer for sale from its holding a minimum of 20 - 25% of the issued capital of the RPC via a primary share placement in the market, valued at an appropriate premium. The level of premium will vary and needs to be justified by the PMC on its management capability and prospects of the RPC in the medium to long term.

Proposed management & equity agreement; Divestiture of shares of RPCs with first option reserved for existing PMC of the RPC on negotiated sale basis

The Memorandum, inter-alia, had stipulated that 60% of the equity capital of the plantation companies should be made available to the respective plantation management companies. Of the 40% balance, 30% to be made non-voting shares to be held by the government and allotted to a plantation sector unit trust to be administered by professional Fund Managers and the 10% to be given to the employees as voting shares. Therefore, the plantation management companies were to acquire 60% of the 70% voting shares, i.e. 86% voting power. Ironically the Memorandum, as a justification, had, inter-alia, stated – "4. The peoplisation opportunity and creation of a wide spread share owning democracy possible via the plantation sector unit trust."

It had been further proposed, that 20 – 25% of such shares held by the plantation management companies would be offered for sale to the public on the basis of a share placement on the Colombo Stock Exchange, valued at an appropriate premium. Thereby, inherently it had been clearly conceded that the shares of the plantation companies indeed did have a premium value. Nevertheless, would not the terms of the proposed share acquisition and sale mechanism have ensured, that such share premiums would have accrued to the benefit of the respective plantation management companies and not to the government. Why? Even after the sale to the public of 20 – 25% of the shares held by the plantation management companies, the plantation management companies would have still continued to own a 50 – 57% of controlling interest of the respective plantation companies.

WAS PERC COMPROMISED?

A few days previously to the Memorandum of February 3, 1994, Chandra Jayaratne, Managing Director, CTC Eagle Insurance Co. Ltd., had forwarded a Memorandum dated January 25, 1994 to the then Secretary General of The Planters' Association of Ceylon, titled –"Divestiture of Shares of RPC's vested with the lease of plantation land and immovables and other assets". The Memorandum that had been forwarded to the then Prime Minister, Ranil Wickremasinghe by the then Chairman of The Planters' Association of Ceylon had been on the basis of such Memorandum, that had been formulated by Chandra Jayaratne and submitted to the Secretary General of The Planters' Association of Ceylon for the divesting of the shares of the plantation companies that had been owned by the government.

Upon the People's Alliance government assuming office and establishing the Public Enterprise Reform Commission [PERC] in February 1995, at that time under the incidental powers of President Kumaratunga, Chandra Jayaratne was selected as a member of PERC by R.N. Asirwatham, who was handpicked to be its Chairman by President Kumaratunga. The privatisation of the most profitable plantation companies Agalawatte, Horana, Kegalle, Kotagala, Bogawantalawa and Kelani Valley had been carried out between August and December 1995 by PERC during the tenure of office of both R.N. Asirwatham and Chandra Jayaratne.

The Sunday Leader in the preceding two weeks published extracts from a further Letter dated August 1, 1995 that had been addressed to PERC by the then Chairman Planters' Association of Ceylon, M.J.C. Amarasuriya, which Letter had, inter-alia, stated –"We are writing to appeal to you to re-consider the quantum of the non-refundable payment of Rs. 5 million, for the undernoted reasons ... insisting on this high guarantee might result in many MAs not taking up the offer and thereby, adversely affecting the privatisation of plantations. We are writing this letter on behalf of the plantation management companies to appeal to you to re-consider the Rs. 5 million guarantee and to reduce it to an acceptable level in order to ensure the success of the privatisation of plantations."

The Sunday Leader last week further disclosed that DPL Plantations Ltd., a company in the Hayleys group of companies of which M.J.C. Amarasuriya was Deputy Chairman had acquired 71.2% majority shareholdings of the plantation company, Kelani Valley Plantations Ltd., at the nominal value of Rs. 10/- per share only for the effective purchase consideration of Rs. 142.3 million, working in association with Agricultural Development Services (Singapore) Pte. Ltd., as had been reported in the Lehman Brothers Report dated November 2, 1995 titled – "India and Sri Lanka Focus – Opportunities Await"

- Published in The Sunday Leader on 4.10.1998 by Nihal Sri Ameresekere under the pseudonym 'Bismark'