

THE MESS OVER MATTEGAMA SALE

The Sunday Leader over the last two weeks focussed on the subject of corruption in general, its global pervasiveness, the socio-political realities relating thereto and the commitments and abilities of governments to really and effectively deal with such social menace, particularly, when governments have been elected into office, with election campaigns funded by, those who peddle corruption and by those, to whom corruption is justifiable means of achieving business goals and objectives of amassing wealth, through unfair practice and non-competition, an anathema to a free and open economy.

The Sunday Leader also touched upon the issue of fraud, embezzlement and white collar crime, which is a distinctly different issue altogether, eventhough in certain instances fraud, embezzlement and white-collar crime would be inter-woven with the peddling of influence and corruption. Proper safeguards for the development of a healthy and sustainable free and open economy demands, that systems, statutes and law enforcement authorities be put in place, to ensure, that fraud, embezzlement and white-collar crime could be effectively dealt with, to protect and safeguard public investments. In the public interest *The Sunday Leader* would deal with this subject of fraud, embezzlement and white-collar crime in the future.

To those of our readers, who were closely following *The Sunday Leader's* analytical exposures on the scandalous fiasco of the plantation privatisations — *The Sunday Leader* wishes to inform, that there are more exposures to follow very shortly in the public interest, on insights into some of the plantation privatisation transactions. "Public scrutiny of what people do is probably the most powerful pressure towards probity of conduct" — *Audit Commission U.K.* "Rules alone do not prevent malpractice, public scrutiny does " — *Keith Henshall Institute of Public Relations*

The Sunday Leader today focuses on the sale of the government's 100% shareholdings in Mattegama Textile Mills Ltd.— a re-privatisation exercise undertaken with much criticism, of some of the past privatisations by the previous government, ironically including the previous privatisation of Mattegama Textile Mills Ltd., itself, by the then Government in October 1993.

RE-VESTED TO GET ON TO RIGHT TRACK

A special law was enacted, introduced in Parliament by Minister G.L. Peiris, the Deputy Minister of Finance, under whose purview the Public Enterprises Reform Commission [PERC] functions, since it is a subject under the purview of the Minister of Finance, Her Excellency the President, — accordingly, Minister G.L. Peiris, himself, being responsible and accountable to Parliament, on the subject of privatisation by the government. In addition as the Minister of Justice, the formulation of laws and statutes would come under Minister Peiris' purview. Thus, the special law — Rehabilitation of Public Enterprises Act No: 29 of 1996 was given birth to and enacted by Parliament in November 1996.

Speaking in Parliament on 23rd April 1997 in moving, amongst others, the vesting order on Mattegama Textile Mills Ltd., Minister G.L. Peiris, iter-alia, stated — "We are on the right track. The Hon. Ronnie de Mel's complaint is that we are not doing enough. But we will invoke both the criminal and the civil laws of the country to pursue these people and to make them pay, what is due not only to the State, but also to their own employees."

Mattegama Textile Mills Ltd., the latest Textile Mill to have been set up by the state, to particularly manufacture yarn of coarse counts, used for manufacture of towelling etc., was privatised by the previous government in October 1993. 90% of the government's shareholdings was sold for Rs.60.75 million, and in addition, the buyer was to pay the government Rs. 51.139 million in respect of the stocks and debtors taken over as at that date, making a total purchase consideration of Rs.111.889 million. At 21% p.a. interest, such purchase consideration would amount to a value of Rs.229.4 million today.

The buyer was a mainland Chinese enterprise, purported to have represented the Government of the People's Republic of China. The buyer however was permitted to pay the purchase consideration in instalments. The then government in turn undertook to take over all liabilities of Mattegama Textiles Mills Ltd., at that time, which had amounted to a value of Rs. 60.955 million.

The buyer defaulted on the instalment payments, having paid only Rs. 9.17 million and the Chinese government informed the Sri Lanka government, that there had been no authorisation of the Chinese government for this transaction, and that accordingly, the Chinese government was not bound by the terms and conditions of the share sale and purchase agreement entered into by the Chinese enterprise. However, the Chinese government had proposed that all dues be set-off against the balance on the 25 million Yuan Loan.

The Chinese enterprise, the buyer, having got into financial difficulties agreed to re-transfer the 90% shareholdings back to the Sri Lanka government, without any payment consideration for such transfer. In the background of these circumstances, the Mattegama Textile Mills Ltd. was vested in the government on February 11, 1997 and such vesting order was approved by Parliament on 23rd April 1997 under the provisions of the new law — Rehabilitation of Public Enterprises Act No. 29 of 1996. Such vesting in the government, included not only such 90% shareholding, but also the 10% shareholding, that had been distributed to the employees.

NOT ADVERTISED IN THE FOREIGN MEDIA - WHY ?

Consequently, PERC advertised the sale of the shareholding of Mattegama Textile Mills Ltd. in the local press and apparently not in the foreign press, according to what the Cabinet had been informed. Why was such advertisement placed only in the local press, whereas in other instances, when PERC had also advertised to the international business community, through the foreign media, as well? This ought to have been moreso in this instance, since technical know-how and expertise in the textile industry, is known to be available overseas, whilst also, other state textile mills had in fact been bought into by foreign companies experienced and expertised in the textile industry, under the privatisation programme of the government.

Ironically, one of the conditions that is reported to have been stipulated by PERC in offering the Mattegama Textile Mills Ltd. shares for sale, is that the prospective buyer should undertake an immediate investment of US \$ 10 million in plant and machinery. This alone is quite plain and simple to anyone to have realised, that a foreign investor, with experience and expertise was the requisite target — and hence, advertisements should have been placed, as normally and ordinarily had been done in other instances, in the international media with adequate notice. Therefore the question arises, why such practice was questionably abandoned significantly in this instance? Could the Chairman PERC, Dr. P.B. Jayasundera, explain?

As expectable, under such circumstances, only one offer was received, from Kabool Lanka (Pvt) Ltd. Kabool, a Korean company, with expertise and experience in the textile industry, had under the previous government, taken over Thulhiriya Textile complex, as one of the very first privatisations of the state sector textiles mills. This transaction was vociferously shrouded with controversy, by the very persons — who are now in government — when they were then in the opposition; they are dumbfully silent now, why?

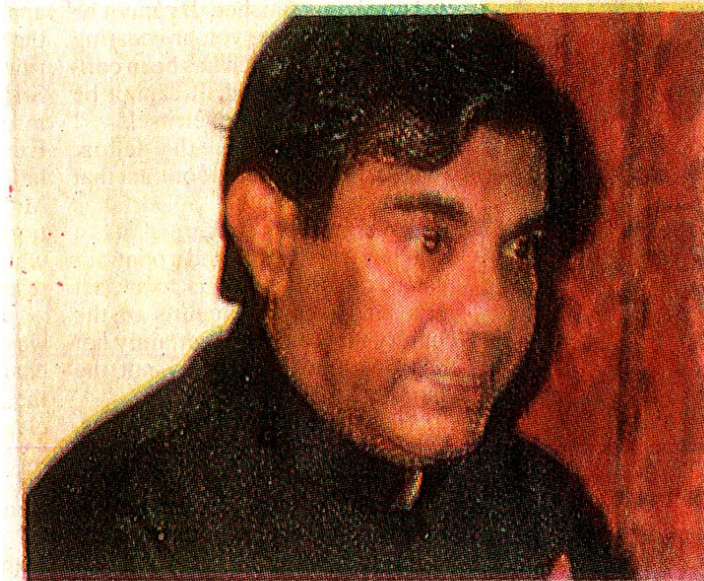
ONLY ONE OFFER PROCESSED - WHY ?

Kabool Lanka (Pvt) Ltd. offered US \$ 500,000, that is SL Rs. 29 million only, for the purchase of the 100% shareholding in Mattegama Textile Mills Ltd., but on the basis of not taking over any of the liabilities in Mattegama Textile Mills Ltd. On the condition stipulated to undertake an immediate investment programme of US \$ 10 million, Kabool Lanka (Pvt) Ltd. had envisaged an investment of US \$ 12 million over a period of four years — US \$ 8 million of which is said to be for capital goods.

A Technical Evaluation Committee appointed by the Secretary to the Treasury had evaluated this only offer and had willingly recommended the same to the Cabinet for approval. Why was consideration not given to re-advertise in the international media, giving adequate notice, particularly moreso, since only one offer had been received?

Was it not a Cabinet Appointed Committee, that ought to have considered such offer, since it was a transaction over Rs. 5.0 million or is it that the relevant rules and norms that had been laid down by then government have now been changed? Previously, even such Cabinet Appointed Divestiture Committee was chaired by the Secretary of the relevant line Ministry, under which such specific corporation functioned, in this instance, the Ministry of Industrial Development.

Accordingly, the Cabinet of Ministers were invited by the Ministry of Finance, to approve the sale of 100% shareholding in Mattegama Textile Mills Ltd. to Kabool Lanka (Pvt) Ltd. — for US \$ 500,000, with BOI granting concessions on plant and machinery on a minimum investment on plant and machinery of Rs. 500 million and the government taking over and settling all the liabilities of Mattegama Textile Mills Ltd. including compensation payable to the employees, for the 10% shares vested in the government, as per Section 5 of the Rehabilitation of Public Enterprises Act No. 29 of 1996.



Industrial Minister Gooneratne — Vociferous then. Now?

According to the Ministry of Industrial Development, as per observations dated May 15, 1997 made by Minister C.V. Gooneratne, the liabilities of Mattegama Textiles Mills Ltd. taken over by the government on the date of vesting February 10, 1997 had amounted to Rs.345,905,666.54.


Ironically, the recommendation to accept Kabool Lanka's offer has been justified — couched in the words — "to develop an internationally competitive linkage industry, which would support export drive". If that were really so, ought not in the first instance, the advertisement to dispose of the shareholdings in Mattegama Textile Mills Ltd. have been published in the international media to develop such very international competition? Otherwise, is this not all mere 'tongue in the cheek' statements made to cover-up, what really has been done?

If the government is serious in developing the textile industry, as a linkage industry to support the export garment industry, there ought to be a proper and overall studied strategy on the entire industry, towards achieving such objective. Otherwise such statement is not only meaningless, but is reflective of bankruptcy, in economic and pragmatic strategy in such regard.

QUESTIONABLE MATERIAL CHANGE TO CONDITIONS

The material condition that the government would agree to take over and settle all the liabilities of Mattegama Textile Mills Ltd., amounting to as much as Rs. 345.9 million was not known at the time the shares of Mattegama Textile Mills Ltd. was advertised for sale. If this is so, then the subsequent private treaty and arrangement with the only offerer, Kabool Lanka (Pvt) Ltd. for the government to take over such material and considerable liabilities, would not have been fair by those others, who would have offered very much more than the mere US \$ 500,000 only offered by Kabool Lanka (Pvt) Ltd., had such material fact been known to such parties previously.

Would the Attorney General, who ought to have been consulted in making such material change to the condition of offer have agreed to such change? Or is it, that the Attorney General was by passed and such material condition altered without proper legal sanction, contravening practice and procedure in the public sector? If so, who takes responsibility for such contravention?



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Cabinet Memorandum

**The Divestiture of Failed Privatised Public Enterprises
Mattegama Textile Mills Limited**

1. The Mattegama Textile Mills Limited was privatised on October 18, 1993 by selling 90 per cent of the Company to the Government of the People's Republic of China for Rs.60.75 million. The payment schedule for the purchase consideration had been as follows:

| | | (Rs.Mn.) |
|----------------|------------|---------------|
| Down Payment | | 2.025 |
| 1st instalment | 18.10.1994 | 18.225 |
| 2nd instalment | 18.10.1995 | 20.250 |
| 3rd instalment | 18.10.1996 | 20.250 |
| Total | | 60.750 |

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(c) The Government to use sales proceed to compensate workers' 10 per cent shares as determined by the Compensation Tribunal in terms of Section 5 of the Rehabilitation of Public Enterprise Act No.29 of 1996.

(d) The Government to settle all the existing liabilities of the Mattegama Textile Mills Limited.

Chandrika Bandaranaike Kumaratunga
Chandrika Bandaranaike Kumaratunga
Minister of Finance and Planning

Public sector practice and procedure demands proper valuation to be carried out prior to such sale by the Chief Government Valuer. Was this done? If not, why? If it was done, what was such valuation? The Cabinet, however, has only been informed that the net worth of Mattegama Textile Mills Ltd. was a negative value of Rs. 175 million. Accordingly, when the liabilities of Rs. 345.9 million is removed, then the net worth of the company would be a positive value of Rs. 171 million, and if this was the book value, this would have to be further revised in the context of the market value, particularly of the land and buildings and also the plant and machinery. Was this done? If not why? If it was done, what were such valuations? Incidentally, what were the valuations of stocks, debtors and cash? Would it not have been much more than the mere US \$ 500,000, that is SL Rs. 29 million purchase consideration paid by Kabool Lanka (Pvt) Ltd.?

WHY NO ACTION FOR LOSSES CAUSED ?

The liabilities of Mattegama Textiles Mills Ltd. as at October 1993, when the previous government privatised Mattegama Textiles Mills Ltd., was reported to have been Rs. 60.955. This was to have been taken over and settled by the government in 1993. Accordingly, is it that the present liabilities of Rs. 345.9 million were incurred and run-up thereafter? Therefore, would not those, who took over the company in 1993 and ran-up such liabilities causing a resultant loss to the state be held accountable and responsible therefor? Minister G.L. Peiris, when amongst other, Mattegama Textile Mills Ltd. vesting order was presented to Parliament stated, that action would definitely be taken. He emphasised that the government would invoke both criminal and civil laws of the country to pursue such persons and make them pay. Has this been done? If so, what action has been taken? If not, why?

Here again is the "*Dr. P.B. Jayasundera logic and doctrine*" in action. As in the case of the Steel Corporation sale, the sale of 100% shareholding in Mattegama Textile Mills Ltd. for only US \$ 500,000 that is SL Rs. 29 million only is being justified on the basis, that the buyer would invest US \$ 10 to 12 million on an investment programme. Evenso, what is the guarantee of such investment? Has a bank guarantee been put in place? If not, why? If there is default, what is the consequence? If not, what meaning is such condition?

But once Kabool Lanka (Pvt) Ltd. purchases 100% ownership in Mattegama Textile Mills Ltd., then that is entirely their own property and any investment incurred is only on themselves for their own benefit only. This does not justify the sale of public property, below its real market value and in violation of public sector procedure. Would this not amount to the pillage and plunder of public property? If not, how and why?

Kabool is also in ownership of the Thulhiriya Textile complex. What steps have been taken to ensure, that such BOI approval and concessions readily granted to import plant and machinery to Mattegama Textile Mills Ltd., will only be dedicated and be applicable to Mattegama Textile Mills Ltd.? Would BOI take responsibility to ensure that all such plant and machinery imported is installed at Mattegama only or could such plant and machinery be installed at Thulhiriya as well? The question arises from the controversy concerning Crescat and Oberoi !

REPORT TO PARLIAMENT

Former Finance Minister Ronnie de Mel, speaking in Parliament on 23rd April 1997 on the vesting order, amongst other, of Mattegama Textile Mills Ltd., inter-alia, stated; — "PERC is ultimately accountable and answerable to this House and through this House to the people of this country for each and every sale and disposal. PERC is not something above the law. Section 19 of the PERC Act, No. 1 of 1996 reads as follows:— `19. *The commission shall at the end of each sale or disposal by lease or otherwise as the case may be, made in pursuance of a recommendation made under paragraph (e) of Section 5, submit to Parliament through the Minister a report in respect of all matters pertaining to such sale or disposal.*"



Finance Minister Kumaratunga — Why was there no foreign advertising? Below: The cabinet memo on the divestiture of failed privatised public enterprises — one of which was Mattegama Textile Mills Limited

Mattegama Textile Mills Ltd., had been vested in the government in February 1997, vesting order approved by Parliament in April 1997 and the sale to Kabool Lanka (Pvt) Ltd. approved by Cabinet in May 1997. It certainly has been on the fast track, apparently without advertisements in the international media, to seek internationally competitive bids, with due and proper disclosure of all material conditions, which normally and ordinarily ought to have been approved by the Cabinet Appointed Committee, itself. Ironically, it had been re-vested and Minister G.L. Peiris had told Parliament — "We are on the right track!"

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