

## PLANTATIONS PLUNDERED



Between 60-70% of shareholdings in plantation companies were handed over to the management companies virtually on a platter, by deliberate strategy. Why was there no competitive bidding? asks **Bismarck**, probing the issue in depth



*The Sunday Leader* last week turned the spotlight onto the privatization of the plantations - the most valuable vast resource belonging to the public of this country and the future generations to come. These plantations were held by the state, of course on behalf of the public. The privatization endeavours of the plantations therefore needed a much greater degree of skill, concern and expertise, than the exercise of privatizations of other industries or commercial state corporations and companies.

The country's position as a leading exporter of tea in the international markets, the strategies of global marketing for safeguarding such position and the national interests, socio-political complexities of mass labor implications, state acquisitions from the previous owners, historical concerns of the Kandyan peasantry, the need to broad-base the ownerships to a greater spectrum of the public of this country, transparency and competitive accountability of the management and performance of the plantations, are some of the more important and cogent concerns that needed great depth of analytical consideration.

Transparency and visibility in the very process of privatisation, and the public interaction with the active involvement and participation of those knowledgeable, experienced and expertised in the plantation sector, was the requisite strategy. In the given scenario, without prior proper consideration of and public debate on all salient aspects in full public view, could quick fix and ad hoc strategies hastily and privately pursued, in such a vital and nationally important sector, later to be lamented and relented upon, with adjustments and mid-course corrections in implementation, be the proper discharge of public duty and responsibility? Are the public not entitled to insist upon otherwise?

Last week's analytical exposure in *The Sunday Leader* revealed that in the case of the first six plantation companies privatized, namely, Agalawatte, Horana, Kegalle, Kotagala, Bogawantalawa and Kelani Valley, though the public pronouncements mainly focused, that a controlling interest of 51% of the shareholdings of the respective plantation companies were being sold, but in actual fact, what was sold was very much more than the 51% so held out. In fact through a very clearly intentional strategy of mandatorily convertible debentures, over 60% of the shareholdings in three of these plantation companies and around/over 70% of the shareholdings in the other three plantation companies had, in effect been virtually given on a platter to the respective management companies without any competitive bidding, whatsoever. Why? For whose benefit and who takes responsibility now?

## **SALE BY PRIVATE TREATY?**

Except to the uninitiated and gullible, for all intrinsic purposes, the sale of such valuable controlling interests of majority shareholdings in these profitable plantation companies had essentially been carried out by private treaty and arrangement; and by no means, by way of competitive public sale, that a proper process of privatization would have demanded. If one is to be intellectually honest, how could it ever be explained otherwise ?

The controlling interest of 51% majority shareholdings as was held out, was ingeniously priced on the basis of a ludicrously absurd formula. The sale price of such controlling interest of 51% majority shareholding was fixed to be at the lowest price offered by the public for the fragmented sale of a 20% minority shareholding in the Colombo Stock Exchange, whilst a cognisable portion, as much as 40% of such 20% minority shareholding was already fixed to be sold at the minimum nominal price of Rs. 10/- per share, thereby pegging the price down. What was to prevent the management companies, themselves, causing collusive bids to be made at the lowest price of Rs. 10/- per share to fix the lowest price to their benefit and advantage? The respective management companies were curiously given exclusive options to purchase such controlling interest of 51% majority shareholdings at such lowest price, intriguingly camouflaged the "market clearing price per share" !! Whose ingenuity was this and who takes responsibility now?

## **NO PROPER VALUATIONS**

On the contrary, it is very basic and elementary knowledge in share valuations, that let alone the lowest price for such fragmented 20% minority shareholding, that even the highest price for such fragmented 20% minority shareholding would not automatically be the price for valuing a controlling interest of 51% majority shareholding of such companies. Would not the controlling interest of 51% majority shareholding have an intrinsic and unique value by itself, since the management control and the possession of the company would go together with such controlling interest of 51% majority shareholding? In this instant case, the effective majority controlling interests varied in respect of these six different plantation companies, from 60.8% to as much as 71.2% as set out in the given Chart. Would not the size of such shareholdings also act as an influencing factor to enhance the price valuation of such controlling majority shareholdings?

Pertinently, how could the price valuations of these controlling majority shareholdings in each of these six plantation companies ever be the same at Rs. 102 million for each of such entire 51% shareholdings? Would not the specific and different acreages, assets, agro-economic considerations and profitability potentials of the respective plantation companies have determined the proper valuations of these plantation companies and of such controlling majority shareholdings? Is this not very elementary and simply basic? Why were such professional share valuations not pursued? Is not such share valuation mandatory in the case of the sale of public assets? Ironically, this is one of the core issues before the Special Presidential Commission probing the previous sales of public assets?

Even under normal circumstances, even the highest bids received at the Stock Exchange would not be entertained and has not been accepted as the criteria for the determination of the sales price valuations, whereas this was a classic case of uniquely ingenious strategy of endeavoring to determine the lowest price per share! Is this how we are going to approach the next millennium, giving rewards for the lowest in the grades and prizes for the slowest in the race?

## **OPEN BIDDING SHUNNED!**

Shareholdings placed on offers for sale at the Colombo Stock Exchange, have had stipulated minimum floor prices, more so in the case of controlling interests of majority shareholdings. The controlling interest of the majority shareholdings in Trans Asia Hotels Ltd. [Ramada Renaissance] was withdrawn on several occasions by the government on not realizing the minimum floor price that had been stipulated, and on being re-introduced, was finally sold above such minimum floor price stipulation. The very elementary question that cries out loudly is, why were these controlling interests of 51% majority shareholdings in these profitable plantation companies not offered for open competitive bidding at the Colombo Stock Exchange, with reserve prices stipulated on the basis of proper share valuations determined in respect of each of such shareholdings? Why was this not done? Who takes responsibility now?

For an effective price of Rs. 121.6 million, an effective controlling majority shareholding of 60.8% was sold in each of the cases of three of these plantation companies, namely Agalawatte, Horana and Kegalle, whilst, in the case of Kotagala, Bogawantalawa and Kelani Valley, effective controlling majority shareholdings of 69.4%, 70.7% and 71.2% was sold for effective prices of Rs. 138.7 million, Rs. 141.5 million and Rs. 142.3 million, respectively, to the respective management companies by such private treaty and arrangement.

The annual Net Profits after Tax for 1995 and 1996 and forecasts for 1997 as per the publication by C.T. Smith Stockbrokers (Pvt) Ltd., dated 10th February 1997 titled "Sri Lanka Earnings Guide 1997" are set out in the given Chart. The selling price of the controlling majority shareholdings of the respective plantation companies should be reckoned in the context of such annual Net Profits earned and forecasted.

For instance, the effective controlling interest of 60.8% shareholding of Kegalle Plantations Ltd., has been sold for an effective price of Rs. 121.6 million, whilst the immediate three-year Net Profits after Tax are given and forecasted as Rs. 66.2 million, Rs. 91.4 million and Rs. 126 million for 1995, 1996 and 1997, respectively; the 1995 Net Profit after Tax of Rs. 66.2 million could have been reasonably well anticipated at the time the Offer Sale Document was issued on 11th October 1995.

Similarly, the effective controlling interest of 69.4% of Kotagala Plantations Ltd., has been sold for an effective price of Rs. 138.7 million, whilst, the immediate three-year Net Profits after Tax are given and forecasted as Rs. 113.7 million, Rs. 140.1 million, and Rs. 145 million for 1995, 1996 and 1997, respectively; the 1995 Net Profit after Tax of Rs. 113.7 million could have been reasonably well anticipated at the time the Offer Sale Document was issued on 30th August 1995.

## **FREELY TRANSFERABLE**

Extracts from the respective Offer Sale Documents of these profitable plantation companies in relation to the mandatorily convertible debentures, which were attached to the controlling interest of 51% majority shareholdings, are as follows;

- " The following conditions will be attached to the purchase of the block of 51% of the ordinary shares of the Company, whether the purchaser is [the management company] or any other investor. ... Purchase of Debentures: Simultaneous with

the purchase of the shares on offer, the purchaser of these shares must purchase, or arrange for another party or parties to purchase, Rupees ... worth of debentures issued by the Company. ... The conditions applicable to the debentures will be as follows: - The debentures will be freely transferable ... - The debentures will be exchangeable by the Company at the discretion of the purchaser, or any person to whom the debentures have been transferred by the purchaser, for ordinary shares of the Company ... - All debentures which have not been exchanged for ordinary shares by the day prior to the fifth anniversary of their date of issue shall be mandatorily exchanged by the Company for ordinary shares on the fifth anniversary date."

It is patently clear that such mandatorily convertible debentures and conditions pertaining thereto were attached to the controlling interest of 51% majority shareholdings. Such mandatorily convertible debentures, which could have even been subscribed by any other investor, were specially and specifically stipulated to be freely transferable, whereas in this capital market it would ordinarily have not been so. Furthermore, it goes even without saying, that the controlling interest of 51% majority shareholdings of these listed public companies were also freely transferable; no restrictions, whatsoever, having been placed on them.

The very stipulation, that the management companies, who were given the beneficial option to purchase the controlling interest of 51% majority shareholdings, should arrange even for another party to purchase such freely transferable mandatorily convertible debentures attached to such 51% majority shareholdings, in itself, very clearly held out, that the collaboration of another party was not only welcome, but even solicited and that such shareholdings were freely transferable. Of course it should have been known then, that such transfers would obviously be at market prices. How could anyone be heard to complain now?

### **NO PERFORMANCE EVALUATION?**

The exclusive beneficial options to purchase such controlling interests of majority shareholdings in these profitable plantation companies had been afforded, clearly by private treaty and arrangement, to the following management companies, who have had 5½ year management agreements entered into on 15th June 1992 expiring on 31st December 1997, to manage the respective plantation companies on a profit sharing basis; 5-year extensions of such management agreements had been provided for, only if agreed levels of profitability had been achieved and there had been no default of any of the conditions that had been stipulated in the management agreements.

Agalawatte	-	Mackwoods Plantations [Pvt] Ltd.
Horana	-	Ceyexxe Plantations Ltd.
Kegalle	-	RPK Management Services [Pvt] Ltd.
Kotagala	-	George Steart Management Services [Pvt] Ltd.
Bogawantalawa	-	Metropolitan Management Services [Pvt] Ltd.
Kelani Valley	-	DPL Plantations Ltd.

Prior to having afforded to the management companies such exclusive beneficial options to purchase such controlling interests of majority shareholdings in these profitable plantation companies, should not the performance of these management companies under the management agreements, have been critically reviewed and examined to consider whether, the agreed profitability levels had in fact been achieved and whether, there had been no default of

any of the conditions that had been stipulated in the management agreements ? If not, why was such review and examination not carried out? If yes, what were the results of such reviews and examinations and should not they be transparently made available to the public?

After such review and examination of the performances, even if the management companies were to be given such exclusive beneficial options to purchase such controlling interest of majority shareholdings in these profitable plantation companies, should not such options have been on the basis of first refusals at the highest bid price on open competitive bidding at the Colombo Stock Exchange? If not, why? Who takes responsibility now for loss, if any, caused to the government thereby?

As per Section 2.6 of the respective Offer Sales Documents, the management companies had been entitled to the following profit shares, as management fees, on the 1995 profits;

Agalawatte	- 45 % of the 1995 profits
Horana	- 12 % of the 1995 profits
Kegalle	- 42 % of the 1995 profits
Kotagala	- 25 % of the 1995 profits up to a profit of Rs. 100 million, and lower percentages thereafter
Bogowantalawa	- 31 % of the 1995 profits up to a profit of Rs. 150 million, and lower percentages thereafter
Kelani Valley	- 40 % of the 1995 profits up to a profit of Rs. 50 million, and 5 % thereafter

#### **GIVE AWAY PRICE CUSHIONED?**

For such profit sharing purpose, profit had been defined as gross revenue less all expenditure inclusive of gratuity liability and depreciation, but excluding capital expenditure, interest received or paid, corporate taxes, profit from sales of capital assets and profits or losses from extraordinary activities. Accordingly, the quantum of profits entitled to, as management fees, by the respective management companies on the basis of the 1995 profits could be approximated as follows; [ \* Interest, if any, not adjusted for]

	1995 Profit	Purchase	Effective
	Share	Price	Ownership
	<u>Rs. Mn.</u>	<u>Rs. Mn.</u>	<u>%</u>
Agalawatte	26.3*	121.6	60.8%
Horana	5.6	121.6	60.8%
Kegalle	27.8*	121.6	60.8%
Kotagala	30.0	138.7	69.4%
Bogowantalawa	18.5*	141.5	70.7%
Kelani Valley	21.7	142.3	71.2%

Section 2.5 of the respective Offer Sales Documents have stipulated thus; "In terms of the management contract, the contract and the secondment periods of all seconded persons will stand terminated thirty days from the day 51% of ordinary shares of the Company are sold to a single investor. Such a sale to take place following the sale of the initial 20% of shares on offer in terms of this Offer for Sale Document."

The sale of the 20% shareholdings to the public in the case of all these six plantation companies having taken place towards the end of 1995, and hence these management companies would have been entitled to a share of the major portion of such 1995 profits, if not almost the entirety. These profit shares would have further cushioned the purchase prices paid by the respective management companies for such majority shareholdings of these profitable plantation companies made available on the basis of exclusive beneficial options. Should not such profits have been taken into reckoning in determining the sale price of such majority shareholdings? Is this not how a normal business deal would have been dealt with?

Name	Ownership Sold %	Sales Price Rs. M	1995 Rs. M	Profits	
				1996 Rs. M	1997 Rs. M (Forecast)
Agalawatte Plantations Ltd	60.8%	121.6	58.4	107.2	80.0
Horana Plantations Ltd.	60.8%	121.6	40.4	52.9	80.0
Kegalle Plantations Ltd	60.8%	121.6	66.2	91.4	126.0
Kotagala Plantations Ltd	60.4%	138.7	113.7	140.1	145.0
Bogawantalawa Plantations Ltd	70.7%	141.5	59.7	105.3	130.0
Kelani Velley Plantations Ltd	71.2%	143.3	45.8	85.9	120.0

### PERC RESPONSIBLE & ACCOUNTABLE

Would not the members of the Public Enterprise Reform Commission [PERC], who handled the privatization of these plantation companies be accountable and responsible? Would not the public be entitled to hold such members of PERC so accountable and responsible? After all, it is the assets belonging to the public, that have been caused to be so disposed of by such members of PERC. Such accountability and responsibility would be even more graver, given the scenario, that such privatizations were carried out during a period that previous privatizations were being openly criticized by the government, as questionable rotten deals at give away prices smacking of cronyism, whilst a Special Presidential Commission was warranted to examine and probe such privatizations.

Therefore, were not the members of PERC on notice and committed to uphold the government's policies to have acted otherwise? Accordingly, should not the government hold the members of PERC accountable and responsible in the same manner the government has caused public officials, who had carried out previous privatizations to be held so accountable and responsible before a Special Presidential Commission? If not, why? Even more so, since public officials are now said to have been given the freedom and exhorted publicly to act independently and fearlessly, free of interference from and fear of political masters. The very pertinent and cogent question that cries out aloud is as to whether, the members of PERC would have handled the sale of their own private properties in such manner?

The trusted officials handpicked to carry out these privatizations, by Her Excellency the President, also the Minister of Finance and who had spearheaded the criticism of previous privatizations, were the then Chairman, PERC, Rajan Asirwatham, a chartered accountant, a senior partner of Ford, Rhodes, Thornton & Co., Thilan Wijesinghe, Director-General BOI, a US graduate and one who closely worked with Ian Hardy, who is pushing for Hong Kong standards, Chandra Jayaratne, a chartered accountant and managing director of CTC Eagle Insurance, Dr.Saman Kalegama, a doctor of economics researching at the Institute of Policy Studies, Aritta Wikremanayake, then Director General of the SEC, who accordingly, would have also had to approve these Offer Sales Documents, Dr. P.B.Jayasundera, a doctor of economics and A.S. Jayawardena, then Secretary to the Treasury, who together with Dr. Lal Jayawardena, were the chief proponents of the new economic policies, which were critical of the alleged cronyism of the past. In addition Rajan Brito, a chartered accountant based in London, functions at PERC, as a visiting Consultant to the Ministry of Finance & Planning.

Since these are public assets that have been dealt with, would not the public be entitled to expect certain professional standards from those professionals involved, and hold them responsible and accountable, should there be any professional negligence on their part ? If not, why ?

### MARKET PRICE OF SHARES

Interestingly, the balance shareholdings held by the Secretary to the Treasury in these profitable plantation companies were sold through the Colombo Stock Exchange very recently, on an all or nothing basis. These sales fetched prices well above the nominal value of Rs. 10/- per share, at which price the controlling interests of 51% of majority shareholdings in these profitable plantation companies were disposed of to the management companies.

	<u>Date</u> <u>Sold</u>	<u>No.of</u> <u>Shares</u> <u>Mn.</u>	<u>Price per</u> <u>Share</u> <u>Rs.</u>	<u>Total</u> <u>Price</u> <u>Rs.Mn.</u>
Agalawatte	29.4.'97	3.80	35.50	134.90
Kegalle	5.5.'97	3.80	31.50	119.70
Kelani Valley	5.5.'97	1.55	31.00	48.05
Horana	7.05.'97	3.80	32.00	121.60

Reacting to the recent upturn boosted by the above sales in the Colombo Stock Exchange, Prof. G.L. Peiris was reported in the Daily News of 6th May 1997 to have stated that the Colombo Stock Exchange performed well during the past few weeks and that the transparent, sustainable and farsighted monetary and fiscal policies of the government have led the country's economy to the dramatic upturn now being witnessed.

*The Sunday Leader* leaves it to the intelligence of the reading public to judge, as to how the fundamentals of economic policies have been dealt with in the privatisation of these profitable plantation companies, a base of the national economy, and of course the cogent issue of transparency. It is in the very furtherance of such government policies on transparency and public accountability, that *The Sunday Leader* is carrying out these analytical exposures, which would assist to ensure the adherence to and compliance with such policies of government.

Interestingly, how would the World Bank, USAID and Asian Development Bank, who have known to have funded and rendered technical assistance to the privatization programme, evaluate such performance?

*- Published in The Sunday Leader on 11.5.1997 by Nihal Sri Amersekere under the pseudonym 'Bismark'*