

## DIRT CROPS UP ON PLANTATIONS

*The Sunday Leader* last week in the public interest, analytically spotlighted the enormous losses to the state, that could be reckoned to have been incurred, on the sale of the majority shareholdings in the six profitable plantation companies, - Agalawatte, Horana, Kegalle, Kotagala, Bogawantalawa and Kelani Valley, under the privatisation programme carried out by the Public Enterprises Reform Commission [PERC]. The simulated computations by *The Sunday Leader*, based on the price earnings [PE] ratios of 8, 10 and 12, revealed that such losses to the state on the sale of the majority shareholdings in these six profitable plantation companies could be reckoned to amount in total to levels of Rs. 2,284 m., Rs.2,892 m., and Rs. 3,437 m., respectively, at such expectable levels of price earning [PE] ratios then prevalent in the Colombo Stock Exchange.

The actual average of the price earnings [PE] ratios, that prevailed in the Colombo Stock Exchange for the calendar year 1995 was in fact 12. The majority shareholdings of these six profitable plantation companies were sold towards the latter part of the year 1995, i.e. at a time that such levels of price earnings [PE] ratios were prevalent in the Colombo Stock Exchange. Such share valuations of these six profitable plantation companies were simulated by *The Sunday Leader* at such expectable price earnings [PE] ratio levels of 8, 10 and 12 on the basis of the simple average of the respective net profits after tax, actually achieved by these six profitable plantation companies for the calendar years 1995 and 1996.

The sale of the majority shareholdings in these six profitable plantation companies were carried out towards the latter part of the year 1995 and hence, the net profits for the year 1995 would have been quite well known at that time and the net profits for the immediately ensuing calendar year 1996 could have been reasonably well anticipated then. In fact, processed applications in the requisite formats would have been submitted to the Securities & Exchange Commission [SEC] and the Colombo Stock Exchange [CSE] to obtain approvals for the issuance of the respective Offer Sale Documents by these six profitable plantation companies between August 1995 and November 1995. Such applications to the SEC and the CSE, ordinarily and normally would have required the inclusion of the estimated net profits for the then current year 1995 and the projected or forecasted net profits for the immediately ensuing year 1996 and for a few years thereafter. Therefore, such profits and profitability levels of these six profitable plantation companies for the years 1995 and 1996 would have and could have been known to those, who were responsible for handling the privatisation and the sale of the majority shareholdings of these six profitable plantation companies.

The actual market prices, at which the shareholdings of these six profitable plantation companies recently traded in the Colombo Stock Exchange, compare very well, with the corresponding share valuations simulated on the basis of such profitability levels of 1995 and 1996 in respect of these six profitable plantation companies, at the price earnings [PE] ratios levels of 8, 10 and 12.

In the cases of Agalawatte and Kegalle shares have traded at price earnings [PE] ratio levels between 8 and 10, Bogawantalawa has traded at a price earnings [PE] ratio level around 10, Kelani Valley has traded at price earnings [PE] ratio levels between 10 and 12, exceptionally, Horana has even traded at price earnings [PE] ratio levels well above 12. Significantly, the most profitable company, Kotagala shares have traded, even though at Rs. 37/50 per share, but at a price earnings [PE] ratio level well below 8, obviously, due to the several controversies and uncertainties created thereby, in relation to this company.

The given chart sets out comparatively, such share valuations simulated at the price earnings [PE] ratio levels of 8, 10 and 12 and the corresponding actual market prices at which these shares recently traded in the Colombo Stock Exchange. The chart also sets out the reckoned enormous losses to the state on the sale of the majority shareholdings of these six profitable plantation companies, on the basis of such share valuations simulated at the respective price earnings [PE] ratio levels of 8, 10 and 12 and the actual price of Rs. 10/- per share, at which such majority shareholdings had been sold.

### ENORMOUS LOSSES TO THE STATE

Sales of such majority shareholdings in these six profitable plantation companies had all been effected incredibly at Rs. 10/- per share, in accordance with exclusive purchase options given to the respective management companies, on the basis of a ludicrously absurd price formula, questionably without any open competitive bidding, virtually and essentially as and by way of private treaty and arrangement. The consequential enormous losses to the state reckoned amount in total to levels of Rs. 2,284 m., Rs. 2,892 m. and Rs. 3,437 m. at price earnings [PE] ratio levels of 8, 10 and 12, respectively. The chart also computes the losses to the state on the sale of such majority shareholdings of these six profitable plantation companies at Rs. 10/- per share, in comparison with the corresponding market prices of such shares, at which they recently traded in the Colombo Stock Exchange, which actual market prices compare very well with the simulated price valuations on the basis of profitability at the price earnings [PE] ratio levels of 8, 10 and 12. Such computation of losses on the basis of actual market prices at which these shareholdings have recently traded in the Colombo Stock Exchange amounts to a total of Rs. 2398 m.

NAME	EFFECTIVE OWNERSHIP % SOLD	SHARE VALUATIONS @ Price/Earnings Ratios			RECENT MARKET PRICES	PRICE PER SHARE SOLD	RECKONED ESTIMATED LOSSES @ Price/Earnings Ratios			RECKONED ESTIMATED LOSSE @ Recent Market Prices
		8	10	12			8	10	12	
		Rs.	Rs.	Rs.			Rs.M.	Rs.M.	Rs.M.	
Agalawatte Plantations Ltd.	60.8%	33/10	41/10	49/70	35/50	10/-	281	382	483	310
Horana Plantations Ltd.	60.8%	18/65	23/35	28/00	34/00	10/-	105	162	219	292
Kegalle Plantations Ltd.	60.8%	31/50	39/40	47/30	35/25	10/-	262	358	454	307
Kotagala Plantations Ltd.	68.4%	50/75	63/45	76/15	37/50	10/-	566	742	919	382
Bogawantalawa Plantations Ltd.	70.7%	33/00	41/25	49/50	41/50	10/-	325	442	559	445
Kelani Valley Plantations Ltd.	71.2%	26/35	32/95	39/55	34/50	10/-	233 1772	327 2412	421 3053	349 2085
Add: Premia for controlling interests of 60.8% - 71.2% [PE 8 -20%, PE10 -15%, PE 12 -10%, Market Price - 15%]							512	480	384	313
							<u>2284</u>	<u>2892</u>	<u>3437</u>	<u>2398</u>

Such levels of enormous losses reckoned should be considered in comparison with the total of the effective sales values actually realised on the sale of the majority shareholdings of these six profitable plantation companies, amounting in total to only Rs. 787.3 m. The reckoned loss levels being incredibly as much as 3 times the actual total sales values realised on these sales. In other words the sales values realised being 1/4th the reckoned valuations.

At that very time on 8th December 1995, 51% controlling interest of the majority shareholdings of a considered loss making plantation company, Watawala Plantations Ltd., realised Rs. 306 m. upon being sold on the basis of open competitive bidding at the Colombo Stock Exchange. Therefore, if one were to look at it purely from a rudimentary and pragmatic point of view, it would stand to logical reason, that 51% controlling interest of majority shareholdings of a profitable plantation company could have most certainly realised very much more than Rs. 306 m. Even comparing with such price level realised of Rs. 306 m. for 51% shareholding of a loss making plantation company, on mere commonsense, on the basis of a pro-rata reckoning, it would be conceded that 60.8% of Agalawatte, Horana and Kegalle could have realised very much more than Rs. 365 m. in each case and 69.4% of Kotagala, 70.7% of Bogawantalawa and 71.2% of Kelani Valley could have realised very much more than Rs. 417 m., Rs. 425 m. and Rs. 428 m. respectively, i.e. very much more than a total of Rs. 2365 m. in comparison with the total of Rs. 787.3 actually realised on the sale of the 51% controlling interest of the majority shareholdings of these six profitable plantation companies.

One does not need professionals and professional evaluations to have known and realised the gravity of these transactions and the enormity of the losses caused to the state i.e. is the public. Does this not cry out to be dealt with under the law? It is now nearly 1½ years since such transactions were effected and the government suspending the sales on such basis. Why has no action being taken and those responsible dealt with under the law?

### **CONVENTIONS ABANDONED**

It is normal and conventional well established practice in share markets to aggressively advertise and carry out professionally designed promotional campaigns, when carrying out sales of shareholdings to the public, through a Prospectus or an Offer for Sale Document. In fact, financial institutions that under-write such public share issues, even review such advertising and professional promotional campaigns in the context of the risks of their under-writing.

In this instance, in carrying out the sale of one of the most valuable national assets, the plantations, the sale of such shareholdings were quite curiously not advertised and professionally promoted in such normal and conventional manner. Why was this? Was this not deliberate and who takes the responsibility? Ought not the sale of the majority shareholdings in these six profitable plantation companies have been well advertised and professionally promoted, particularly more so, in view of its national importance, as ordinarily done as a normal commercial custom? What would the actual realisations from the sales of the 51% shareholdings in these six profitable plantation companies have been, had such 51% shareholdings been sold on the basis of such open competitive bidding, with minimum floor price stipulations, on the trading floor of the Colombo Stock Exchange, with aggressive advertising and professional promotional campaigns? Should not the losses incurred to the state actually be considered and reckoned in the context of such grave lapse?

Who takes responsibility for such blatant lapses that has caused enormous losses to the state, i.e. the public? What action would be taken in such regard? If not, why? The law specifically enacted unanimously in October 1994 by Parliament, under the government's commitment to prevent such pillage, plunder and loss to the state is found in Section 70 of the Bribery Act, as amended by the Bribery [Amendment] Act No. 20 of 1994, which reads: —

## CORRUPTION & THE LAW

" Corruption: 70. Any public servant who, with intent, to cause wrongful or unlawful loss to the Government, or to confer a wrongful or unlawful benefit, favour or advantage on himself or any person, or with knowledge, that any wrongful or unlawful loss will be caused to any person or to the Government, or that any wrongful or unlawful benefit, favour or advantage will be conferred on any person — (a) does, or forbears to do, any act, which he is empowered to do by virtue of his office as a public servant; — (b) induces any other public servant to perform, or refrain from performing, any act, which such other public servant is empowered to do by virtue of his office as a public servant; — (c) uses any information coming to his knowledge by virtue of his office as a public servant; — (d) participates in the making of any decision by virtue of his office as a public servant; — (e) induces any other person, by the use, whether directly or indirectly, of his office as such public servant to perform, or refrain from performing, any act, — shall be guilty of the offence of corruption and shall upon summary trial and conviction by a Magistrate be liable to imprisonment for a term not exceeding ten years or to a fine not exceeding one hundred thousand rupees or to both such imprisonment and fine."

It is quite clear therefore, that a public servant, who knowingly causes loss to the government or confers any wrongful or unlawful benefit, favour or advantage to any person, by participating in making of any decision or by carrying out an act, as a public servant, is liable to be dealt with under this Act. As defined in the Act, amongst others, a public servant, includes a Minister and a Deputy Minister. The privatisation of the plantations and the sales of the majority shareholdings of these six profitable plantation companies were carried out in 1995, after the enactment of the above law in 1994 and therefore, such law would be applicable and should be invoked and enforced. Members of PERC and other concerned officials were not only on notice thereby, but also, more so particularly, by the government's roaring repetitive rhetoric of rip-offs, particularly on the previous privatisations.

PERC, which handles the government's privatisation programme, functioning under a Minister and Deputy Minister, is a scheduled institution within the meaning of the Bribery Act, as per Section 14 of the Public Enterprises Reform Commission of Sri Lanka Act No. 1 of 1996; quote:— " 14. The Commission shall be deemed to be a scheduled institution within the meaning of the Bribery Act, and the provisions of that Act, shall be construed accordingly."

The Commission to Investigate Allegations of Bribery or Corruption Act No. 19 of 1994, that was also unanimously enacted in October 1994 by Parliament, to set up the Permanent Commission on bribery and corruption for investigation and institution of prosecutions under the Bribery Act, at Section 4(1) & 4(2) reads;

" 4(1) An allegation of bribery or corruption may be made against a person (whether or not such person is holding on the date on which the communication is received by the Commission, the office or employment by virtue of holding which he is alleged to have

committed the act constituting bribery or corruption) by a communication to the Commission...." — " 4(2) upon receipt of a communication under sub-section (1) the Commission, if it is satisfied that such communication is genuine and that the communication discloses material upon which an investigation ought to be conducted, shall conduct such investigation as may be necessary for the purpose of deciding upon all or any of the following matters:- (a) prosecution or other suitable action under the provisions of the Bribery Act or ...."

### **WOULD G.L. PEIRIS RESIGN?**

G.L. Peiris, as the Minister of Justice and Deputy Minister of Finance, formulated and introduced in Parliament in November 1996, the Rehabilitation of Public Enterprises Act No. 29 of 1996, to deal with previous privatisations;— one could say a retroactive piece of legislation, but justifiably so. On 23rd April 1997, in moving the vesting orders under such law, to deal with Colombo Commercial Fertilizers, Hingurana Sugar Industries, Kahatagaha Graphite Mines, Kantale Sugar Industries, Lanka Loha Hardware and Mattegama Textiles Mills, in response to the exhortations by the former Finance Minister, Ronnie de Mel, urging the government to take more action to bring to book those responsible, Minister G.L. Peiris, in reply, inter-alia, stated on the floor of the house;— "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 make them pay what is due not only to the state ...."

Accordingly, will Minister G.L. Peiris, who even introduced retroactive legislation for a limited purpose, now invoke the provisions of the applicable and enforceable law under the Bribery Act, dealing specifically with losses to the state, which he himself formulated and introduced in October 1994, and cause the Permanent Bribery Commission to speedily investigate into the privatisation of the plantations, more particularly, the sale of the majority shareholdings of these six profitable plantation companies, that has caused enormous losses to the state ? If not, why? Or, would it be left to any person of the public, to cause such investigation and action, by making a communication to the Permanent Commission on Bribery and Corruption, as provided in the relevant law quoted above? In view of his role as the Deputy Minister of Finance on the government's privatisations, should not Minister G.L. Peiris, accordingly resign, enabling free, independent and proper inquiry and investigation? Being an Oxford scholar, should he not emulate such noble and honourable practices prevalent in the British Parliament?

### **STATE PROFITS GIFTED**

The irresponsible, lackadaisical and indifferent manner, in which the privatisation of these six profitable plantation companies have been carried out is clearly borne out by the following blatant and costly blunder, ofcourse amongst many others! The net profits after tax, achieved by these six profitable plantation companies for the year 1995 have been Agalawatte Rs.58.4 m. , Horana Rs. 40.4 m. , Kegalle Rs. 66.2 m., Kotagala Rs. 113.7 m., Bogawantalawa Rs. 59.7 m. and Kelani Valley Rs. 45.8 m. As per the profit sharing Management Agreements had by the respective Management Companies with these six profitable plantation companies, the Management Companies were entitled to the following approximate profit shares for the year 1995;— Agalawatte Rs.27 m., Horana Rs.6 m., Kegalle Rs.28 m., Kotagala Rs.30 m., Bogawantalawa Rs.19 m. and Kelani Valley Rs.22 m.

Quite clearly and plainly, the balance profits for the year 1995 therefore, after deducting such approximate profit shares to the Management Companies, legitimately and rightfully belonged to the sole shareholder of these six profitable plantation companies, that is the Secretary Treasury, who then owned 100% of the shareholdings of such companies. Therefore, such full balance profits, after deducting such profit shares due and payable to the Management Companies, should have been appropriated and credited to the Secretary Treasury, as fully payable to the state, as had been done in previous privatisations; even in instances where there were no such profit sharing Management Companies.

But what happened in the case of these six profitable plantation companies? Towards the end of the year 1995, effective majority shareholdings of 60.8% upto 71.2% of these six profitable plantation companies were sold virtually by private treaty and arrangement to these very Management Companies, through exclusive purchase options, without making such legitimate and rightful appropriations of such balance profits for 1995, after deducting the profit shares due to the Management Companies, which balance profits legitimately and rightfully belonged to the state. Therefore, after having given the Management Companies, their profit shares of the 1995 profits of these six profitable plantation companies, they were also further afforded the benefit of 60.8% to 71.2% of the balance profits of 1995, that rightfully and legitimately belonged to the state; the sales of majority shareholdings having been affected towards the end of the year 1995.

Such proportionate amounts of the balance profits of 1995, that legitimately belonged to the state, but the benefit of which was so afforded to the respective Management Companies would approximately amount to; — Agalawatte Rs. 19 m. , Horana Rs. 21 m. , Kegalle Rs. 24 m., Kotagala Rs. 58 m., Bogawantalawa Rs. 29 m. and Kelani Valley Rs. 17 m. Would members of PERC, Rajan Asirwatham, then Chairman, PERC, Thilan Wijesinghe, Chairman/Director-General, BOI, Chandra Jayaratne, Managing Director, CTC Eagle Insurance, Saman Kalegama, Institute of Policy Studies, Aritta Wikremanayake, then Director General, SEC, P.B.Jayasundera, Chairman, PERC and A.S. Jayawardena, then Secretary Treasury, and in addition, Rajan Brito, visiting Consultant from London functioning at PERC, who handled the privatisation of these six profitable plantation companies, stand responsible and accountable ? Would professionals concerned, be responsible and accountable for any professional negligence in such regard and could any member of the public, the state having suffered loss, be entitled to complain to the relevant professional institutions, both here and abroad? If not, why? — Could the President of the Institute of Chartered Accountants, M.R. Mihular, enlighten the reading public?

### **GIFT OF 51% AND GRAND BONANZA**

With the strategy of freely transferable mandatorily convertible debentures, [convertible within 2 years from 1995], provided for in terms of such private treaty and arrangement, the respective Management Companies have actually effectively acquired 60.8% upto 71.2% of the shareholdings of these six profitable plantation companies, very much more than the 51% that was publicly held out. Very interestingly, if the Management Companies were to dispose of such excess shareholdings, over and above a 51% shareholding in these six profitable plantation companies, at the market prices such shares recently traded in the Colombo Stock Exchange, the Management Companies could receive the following potential sales values — Agalawatte Rs. 86.9 m., Horana Rs. 83.3 m., Kegalle Rs. 86.3 m., Kotagala Rs. 220.5 m., Bogawantalawa Rs. 274.5 m. and Kelani Valley Rs. 236.6 m., and the Management Companies

would still be left with 51% majority shareholdings in these six profitable plantation companies.

The appropriation to the Management Companies of a further proportion of the 1995 balance profits, that legitimately belonged to the state, and such potential realisations of sales values at recent market prices, on the excess shareholdings over and above the 51% shareholdings, in total amount to — Agalawatte Rs. 105.9 m., Horana Rs.104.3 m., Kegalle Rs.110.3 m., Kotagala Rs.278.5 m., Bogawantalawa Rs.303.5 m. and Kelani Valley Rs.253.6 m.

In such context, when one takes into account the effective purchase considerations paid by the respective Management Companies, viz;— Agalawatte Rs.121.6 m., Horana Rs. 121.6 m., Kegalle Rs. 121.6 m., Kotagala Rs. 138.7 m., Bogawantalawa Rs. 141.5 m. and Kelani Valley Rs. 142.3 m. to acquire 60.8% to 71.2% of the shareholdings of these six profitable plantation companies, would it not be a truism to state that 51% shareholdings in these six profitable plantation companies have been virtually gifted to these Management Companies and some given absolutely free, together with a grand bonanza in addition ? If not, how would it be explained otherwise ? How could this grave and catastrophic tragedy ever be justified?

The well experienced and knowledgeable former Finance Minister, Ronnie de Mel, also on 23rd April 1997, speaking in Parliament referring to some of the recent privatisations, inter-alia, stated — "Not only selling the family silver, they are selling the entire family! They are selling the entire family! They are selling Sri Lanka down the river. That is all I can say, Sir... What type of jugglery is this? What type of jugglery is this? You talk of UNP privatisation. I think some of these privatisations will deserve a full Presidential Commission, if we come into power."



**Finance Minister  
Chandrika  
Kumaratunga — can  
she be held responsible  
for losses incurred?**

**Leader of the opposition  
Ranil Wickremesinghe  
— reacting to moves for  
a special parliamentary  
select committee**

*The Sunday Leader* learns, that the Leader of the Opposition, Ranil Wickremasighe immediately reacting to the recent analytical exposures by *The Sunday Leader*, has decided to call for the appointment of a special Select Committee of Parliament to go into the privatisation of the plantations, a valuable national asset of the public of this country. No doubt the public will be looking forward to seeing what speedily action would result therefrom and how all those responsible would be dealt with?

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