GOVERNMENT TAKEN FOR A RIDE?

The startling revelations by *The Sunday Leader* last week, on the sale of the majority shareholdings in the six profitable plantation companies, namely Agalawatte, Horana, Kegalle, Kotagala, Bogawantalawa and Kelani Valley, has aroused considerable public interest and concern; many readers requesting for more details. In response to requests for more details and clarifications on *The Sunday Leader's* exposure last week - *"Plantations gifted with bonanza"*, two very informative and revealing Charts are given, setting out the logical computations.

Business and political circles being quite shocked and aghast are buzzing, as to how such unbelievable deals had in fact taken place, that too with a government, that was committed to achieving the best possible deals on the privatisations, having decried many a privatisation of the past; the question in focus is, whether the government actually has been taken for a ride ?

These six plantation companies, considered very profitable plantation companies, had been picked for privatisation, as the forerunners, by the Public Enterprises Reform Commission [PERC], that handled these privatisations. Therefore, the members of PERC and those others, who were involved and responsible for these privatisations were consciously aware, that these six plantation companies were in fact very profitable plantation companies.

The Offer Sale Documents of these six profitable plantation companies issued between August 1995 and November 1995, in fact gives the Net Profits, for the 6 month period to 30th June 1995 in the cases of - Agalawatte Rs. 17.6 m., Horana Rs. 16.7 m., Kegalle Rs. 17.5 m., and Kelani Valley Rs. 13.2 m. and the Net Profits for the 3 month period to 31st March 1995 - in the cases of Kotagala Rs. 39.3 m. and Bogawantalawa Rs. 31.8 m. Therefore, those who handled and were responsible for these privatisations cannot now be heard to say, that they were quite unaware of the profitability of these plantation companies for the year 1995, at the time they carried out the privatisations of these six profitable plantation companies, i.e. towards the end of the year 1995.

WAS THIS BY DESIGN ?

The Offer Sale Documents specifically stipulated, that the respective Management Companies, who were managing these six profitable plantation companies were entitled to their respective profit shares from the 1995 profits of these plantation companies, for managing them under the management contracts that subsisted and that were entered into in 1992. Therefore, after deducting from the 1995 profits, ranging from Rs. 40.4 m. to Rs. 113.7 m., [Total Rs. 384.2 m.], of these six plantation companies, the profit shares for management payable to the Management Companies, ranging approximately from Rs. 6 m. to Rs. 30 m. [Total Rs. 132 m.], the balance profits for the year 1995 of these six plantation companies ranging from Rs. 23.8 m. to Rs. 83.7 m. [Total Rs. 252.2 m.], rightfully belonged to the then owner of these six plantation companies, which was then the government, represented by the Secretary to the Treasury.

The Offer Sale Documents specifically stipulated that a controlling interests of 51% shareholdings in these six profitable plantation companies were already agreed to be given to the respective Management Companies. Since such privatisations were carried out towards the latter part of 1995, such sale of 51% controlling interests was naturally to be effected towards the end of the year 1995. Therefore, under such circumstances, how a further proportion of the balance profits of 1995 of these six plantation companies, ranging from Rs. 17 m. to Rs. 58 m.

[Total Rs. 168 m.], which rightfully belonged to the government, was given to the benefit of these Management Companies is in question and is most intriguing. The effective purchase prices would immediately reduce by such balance profit shares, since such purchase prices would be deemed to include the purchase of such balance profit shares.

FURTHER SHARES ALSO AT RS. 10/- ?

Whatever the ludicrously absurd pricing formula that was used, such 51% controlling interests in these six profitable plantation companies were all sold at the mere nominal value of Rs. 10/- per share, that too, for a total purchase consideration of only Rs. 102 m. each, since for some unknown reason, the total share capitals in the cases of all these six profitable plantation companies had been fixed at Rs. 200 m. each. How did this ever happen? Even so, would not then, the real value of such shares, vary from such company to company based on the intrinsic factors pertaining to each company? Therefore, how could such shares ever have been sold at Rs. 10/- each in all these cases?

Furthermore, by the conversion of the mandatorily convertible debentures, the controlling interests that would be acquired by the Management Companies in these six profitable plantation companies would be much more than 51% actually going up to 60.8% to 71.2%. By the acquisition of such controlling interests of the share capitals of these six profitable plantation companies towards the end of the year 1995, the respective Management Companies inherit such percentage proportions of the balance profits of these six profitable plantation companies for the year 1995, which rightfully belonged to the government; the Management Companies having already been given their due share of the 1995 profits for managing these plantation companies, the balance therefore belonged to the then owner, the government.

By converting the debentures, which are actually loans to these six profitable plantation companies, into share capital, the total share capital of these six profitable plantation companies, increase above the initial level of Rs. 200 m. to levels between Rs. 250 m. to Rs. 340 m. Since such convertible debenture loans have been advanced to these six profitable plantation companies by the Management Companies/Nominees/Collaborators, the conversion of such debenture loans into share capital, gives additional shares in these six profitable plantation companies to these Management Companies. Even though, the actual market prices, at which these six profitable plantation company shares trade today are in the range of Rs. 34/- to Rs. 41/50 per share, these debenture loans are convertible into shares by the end of the year 1997, at only Rs. 10/- per share in the cases of all these six profitable plantation companies.

By such acquisition of such additional shares, the Management Companies ultimately would own shares well in excess of 51% of the increased share capitals of these six profitable plantation companies. After such conversion of the debenture loans into shares, the number of such excess shares over and above 51%, that would be owned by the respective Management Companies would be - Agalawatte 2.45 m., Horana 2.45 m., Kegalle 2.45 m., Kotagala 5.88 m., Bogawantalawa 6.62 m. and Kelani Valley 6.86 m., shares respectively.

WHAT A BONANZA?

If the Management Companies were to dispose of such excess shares, which they would hold, over and above the 51%, even at the present market prices, they would realise amounts ranging from Rs. 83.3 m. to Rs. 274.5 m. [Total Rs. 988.1], in comparison with the effective purchase prices paid by them ranging from Rs. 121.6 m. to Rs. 142.3 m. [Total Rs. 787.3 m.]; and the

Management Companies would still own a balance of 51% controlling interests in these six profitable plantation companies. Unbelievable, is this not?

Taking into account the 1995 profit shares so inherited and the potential sales values of such excess shareholdings over and above 51%, in the cases of Agalawatte, Horana and Kegalle, the Management Companies would have an immediate benefit of Rs. 105.9 m., Rs. 104.3 m. and Rs. 110.3 m., respectively, against the effective purchase price of Rs. 121.6 m. paid by the Management Companies in each of the cases of these three profitable plantation companies, and the Management Companies would still continue to own a 51% controlling interest in these three profitable plantation companies valued at present market prices - Agalawatte Rs. 498 m., Horana Rs. 477 m. and Kegalle Rs. 494 m. at effective net costs [upon deducting above benefits] of only Rs.15.7 m., Rs.17.3 m. and Rs.11.3 m., respectively.

Whilst in the cases of Kotagala, Bogawanthalawa and Kelani Valley, taking into account the 1995 profit shares so inherited and the potential sales values of such excess shareholdings over and above 51%, the Management Companies would have an immediate benefit of - Kotagala Rs. 278.5 m., Bogawanthalawa Rs. 303.5 m. and Kelani Valley Rs. 253.6 m., respectively, against the effective purchase prices paid by these Management Companies of Rs. 138.7 m., Rs. 141.5 m. and Rs. 142.3 m., respectively, in respect of these three profitable plantation companies; and therefore these respective Management Companies would still continue to own 51% controlling interest in these three profitable plantation companies, valued at present market prices - Kotagala Rs. 673 m., Bogawanthalawa Rs. 780 m. and Kelani Valley Rs. 658 m., absolutely free of cost [upon deducting above benefits] and in addition, would have the balance benefits realisable in cash of Rs. 139.8 m., Rs. 162 m. and Rs. 111.3 m., respectively.

Therefore, would it not be correct to say, that the above three profitable plantation companies have been gifted, together with such grand valuable additional bonanzas, realisable in cash ? Would not the phrase "Selling family silver at give away prices" be a great understatement, in the circumstances of these three profitable plantations companies having been so gifted, together with such grand bonanzas?

These Management Companies have been given such an unbelievable deal, by those who privatised these six profitable plantation companies. These Management Companies have been given their legitimate shares of the profits of the year 1995 for management, they also inherit a majority proportion [60.8% - 71.2%] of the balance profits of the year 1995, which rightfully belonged to the government, and they also gain considerable volumes of excess shares, over and above 51%, on converting the debenture loans at Rs. 10/- into ordinary shares, that too well below even the present market prices of Rs. 34/- to Rs. 41/50 per share, at which these shares trade at present, which excess shares they could realise in cash at market prices.

UNJUST ENRICHMENT?

The value of the above 3 components alone, that are to the benefit of the Management Companies ranges from Rs. 110.3 m. to Rs. 308.5 m. [Total Rs. 1288.3 m.]. The value of the balance 51% shareholdings [if such excess shares are sold] that would still remain and continue to be with the Management Companies at market prices at which these shares trade at present, would be ranging from Rs. 477 m. to Rs. 780 m. [Total Rs. 3580 m.]. On the other hand, the benefit to the government the sale of the majority shareholdings of all these six profitable plantation companies in total was only Rs. 787.3 m. How could this ever be even-handed, equitable and socially justifiable?

Incidently, of the total profits of these six profitable plantation companies for the year 1995 amounting to Rs. 384.2 m., as much as Rs. 300 m. [78%] has been to the benefit of the Management Companies i.e. approximate profit share for management Rs. 132 m. and proportion of balance profits inherited Rs. 168 m. - total Rs. 300 m.

The losses to the government on the sale of the majority shareholdings of these six profitable plantation companies reckoned on the basis of recently traded market prices of these shares amounted to Rs. 2398 m. Further, reckoned on a pro-rata basis in comparison with the price realised, consequent to bidding at the Colombo Stock Exchange at that very same point of time, of Rs. 306 m. for a 51% controlling interest in a considered loss making plantation company, Watawala, it was deduced that such losses to the government from the sale of the majority shareholdings of these six profitable plantation companies would therefore be very much more than a total loss of Rs. 2365 m. It should be noted, that even such loss levels would be influenced by the fact that Kotagala shares are presently trading well below expectable price earnings ratio levels in the stock market in comparison with other plantation shares presumably in view of controversies surrounds and by the fact that even the Watawala share sale was not professionally advertised and promoted contrary to conventional practice.

RESPONSIBILITY & ACCOUNTABILITY?

GL — accountable

Would and could any responsible government be blind and insensitive to what has happened ? Could there be such unconscionable inequitable gains by a few, at the cost of such colossal losses to the government, that is the public? How did all this happen? Who are those responsible? The public have a right to demand to know, after all, surely is this not valuable public property?

Why were such majority shareholdings of these six profitable plantation companies not sold, as normally should and ought to have been done, on the trading floor of the Colombo Stock Exchange, with minimum floor price stipulations based on professional valuations? Why were there no conventional fanfare and professionally designed share promotional campaigns, to get the maximum possible prices, on the basis of open market competition, on the sale of the majority shareholdings in these six profitable plantation companies? Was this not, what ought to have been done? Why were such very basic and elementary practices and procedures not adhered to ? Who takes the responsibility?

Who takes responsibility for the ludicrously absurd price formula, that was destined to be doomed ? Who takes responsibility for having structured these deals, virtually on the basis of private treaty and arrangement and not through open market competition? Why was this? Why were these privatisations in such a nationally important sector, the plantations, hastily carried out, without much transparency and public discourse, as it ought to have been done? Who takes responsibility for the consequences and the colossal losses to the state, i.e. the public?

The corruption laws that were presented to Parliament in October 1994, no sooner the government assumed office, by Justice Minister, G.L. Peiris, who himself, as the Deputy Minister of Finance is also responsible and accountable for the government's privatisation programme and, who has been a responsible chief spokesman of the government thereon, provides penalties for those, who knowingly cause loss to the government or confers any wrongful or unlawful benefit, favour or advantage to any person.

SECRET AGREEMENTS?

Dr. Romesh Dias Bandaranaike, who was the Director, Plantation Management Monitoring Division and, who had assisted PERC on the privatisation of the plantations, was reported in *The Sunday Leader* of January 14, 1996, to have stated that - "it was not in the interest of the underwriters and present Management Company to promote the plantation company, as they had an agreement between them to purchase the shares". Coming from the inner-most circles, that handled the plantation privatisations, is this not undoubtedly a very serious statement with far reaching implications? Would it not appear, that all that has happened has therefore flowed therefrom?

What was such Agreement and who were the persons who had entered into such Agreement? When was such Agreement entered into and was the government a responsible party to such Agreement? How and under what circumstances could such Agreement have ever been entered into? According to Dr. Romesh Dias Bandaranaike such Agreement is said to have been between the Management Company, Plantation Company and the underwriters. Was there really such an Agreement or was this mere conjecture or a mere redherring drawn?

Dr. Romesh Dias Bandaranaike has reportedly stated, that it was not in the interest of the Management Company and the underwriters to have promoted, [obviously the sale] of the plantation company. But ironically, on the contrary, is it not in the very interest of the plantation company i.e. government, that the sale of the plantation company shares should have been professionally promoted?

In whose interests did PERC and those who handled the privatisation of the plantations discharge their responsibilities? Surely, how would they have ever acted in the interest of the Management Companies and the underwriters, since they were bounden in duty to represent and safeguard the interests of the government and the plantation companies, that were owned by the government? How could the government's position have been so compromised?

On the contrary, underwriters of shares offered for sale, normally and ordinarily in fact require and insist upon professional promotional campaigns being carried out for the sale of such shares to minimise their risks, since they ordinarily would be underwriting to earn commissions and not to corner the purchase of such shares. Is not the statement that there was an Agreement to the contrary, most unusual and intriguing?

If, as Dr. Romesh Dias Bandaranaike has stated, there had been such an Agreement, obviously this would have been very private, since such Agreement has not been made known publicly? If so, why was this, in blatant violation of the government's avowed policy of transparency and public accountability ? If, as Dr. Romesh Dias Bandaranaike has stated, there had been such an Agreement, then has this not obviously been detrimental and adverse to and compromised the government's interests, by those who were responsible to safeguard such very interests of government ?

If so, could it not be inferred therefore, that there had been some sort of plot or collusion amongst these parties, resulting in such unconscionable and inequitable gains/unjust enrichment by some, at the cost of colossal losses to the government, i.e. the public? Would this alone, not question the very legal validity of such transactions?

GOVERNMENT'S RESPONSIBILITY?

The experienced and knowledgeable former Finance Minister, Ronnie de Mel, 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."- would not the privatisation of these plantation companies, be very much more than mere jugglery?

Kadi — "whitewash"

Minister Lakshman Kadirgamar in his opinion dated March 22nd, 1995, to the Cabinet of Ministers, inter-alia, stated - "I would strongly press on my colleagues, with respect, the fundamental desirability of making clear to the private sector, both local and foreign, that this Government means what it says -that it will not tolerate malpractice in the market and that it will not condone and perpetuate (or to use a colloquial expression `white wash') malpractice where it has occurred. What has occurred in the Puttlam Cement affair is a gross and calculated fraud on the Government and people of this country. This Cabinet must not condone it in the name of trying to placate the stock market. In the long run stock exchange and a private sector stimulated by dubious means will again fall into disrepute, to the detriment of the national interest, as it did under the previous regime."

Again on January 19th, 1996, Minister Lakshman Kadirgamar in his letter to Her Excellency the President, inter-alia, stated - "I repeat that I'am deeply troubled. Those of us who wish to see that at least the basic tenets of honest Government are observed by our Government cannot rest content until this matter is fully investigated"

The government reacting immediately stopped further sales of the majority shareholdings of the plantation companies on such questionable basis, as far back as December 1995. But is this enough? Should not there be a thorough investigation, particularly more so in the light of Dr. Romesh Dias Bandaranaike's shocking disclosure? Should not a responsible government act immediately, irrespective of political and personal considerations, to hold those responsible accountable and redress such grave social inequitability that has taken place, during the government's own tenure? If not, would not the very credibility of the government be put in question?

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