

## THE GREAT SELL OUT SUMMARY



**Former PERC Chairman  
Rajan Asirwatham —  
Why had he to resign?**

*The Sunday Leader* over the recent several weeks has been publishing analytical exposures on the privatisations of the plantations, essentially in the public interest, pursuing a policy of investigative journalism, in the light of the government's declared policies on transparency, public accountability, and corruption, defined as knowingly causing loss to the government or conferring any wrongful or unlawful benefit, favour or advantage to any person. The government has unequivocally repeatedly stressed, that action would be taken to uphold and enforce such policies enunciated and laws enacted.

The Secretary, Ministry of Finance's recently reported pronouncement to the state sector media, that they were duty bound to project a proper image of government since the state was funding them, makes it even more necessary in the public interest, to steadfastly pursue the policy of investigative journalism, for the very purpose of ensuring adherence to policies enunciated and laws enacted by the government, which alone will help to protect and safeguard the image of any government.

*The Sunday Leader* has been analytically so publishing, because the plantations sector is undisputedly a most valuable national asset and a vital sector of the economy. Privatisation of the plantations could not have been dealt with, as a mere one off privatisation deal of a public sector industrial or commercial organisation. It required the highest levels of consideration, due diligence and abundance of caution, taking into cognisance the several multifaceted aspects of such nationally important economic sector.

*The Sunday Leader* has dealt with the privatisations of the plantations, analysing and exposing in depth the various aspects, strategies and procedures, devoting several Sundays on this very subject, in view of its national importance and significance. As to whether, those who were responsible for implementing the privatisations of the plantations, had dealt with this matter, taking adequate cognisance of such national importance and significance, is the core question, that is left to the judgement of the intelligent reading public.

A very comprehensive, cogent and valuable report on the plantation sector was in fact readily available, having been compiled by a Committee comprising of highly respected and well regarded knowledgeable persons, after they having carried out extensive and exhaustive investigations, upon receiving evidence from several experts from the plantation sector. The findings of this Committee, obviously led to the then nationalisation of the plantation sector, presumably due to the malignancies in the sector, that were identified to be detrimental to public and national interests.

Nationalisation no doubt was not the remedy and solution to such malignant malaise. Nevertheless, ought not those, who carried out the de-nationalisation process, have delved into such valuable report, to have apprised themselves of such malignancies in the plantation sector, that was then in the hands of the private sector, that had been diagnosed, so that proper safeguards to protect public and national interests could have been considered and provided for as warranted, in carrying out the process of de-nationalisation/privatisation. One such malignancy that had been diagnosed is, partners of leading audit firms also holding positions of directorates in connected or related companies, which could serve to impugn their independence as auditors and that this problem falls within the area of professional conduct of auditors.

*The Sunday Leader* today endeavours to summarise the several issues focused upon hitherto, to afford an overview of what has transpired in the privatisation of the plantations, for the benefit of the reading public, who have been showing keen interest in this subject.

## **QUESTIONABLE MANAGEMENT CONTRACTS & SHARE PURCHASE OPTIONS**

In March 1995, Her Excellency the President appointed a Special Presidential Commission of Inquiry to investigate and inquire into several matters pertaining to the period of the previous regime. Amongst such several matters, that were within the purview of such investigations and inquiries by such Special Presidential Commission, was the subject - "contracts for the management of plantations".

Nevertheless, those at the Public Enterprises Reform Commission [PERC], in the very teeth of such Presidential warrant, and regardless thereof, in 1995 itself, afforded the plantations Management Companies, the questionable exclusive beneficial options to purchase the controlling interest of 51% majority shareholdings of the respective plantation companies, that they were managing, whilst ironically such very management contracts had been warranted to be the subject matter of the Special Presidential Commission of Inquiry. Would not such patent contradiction be a pertinent issue?

The arguments dished out, that there were contractual obligations and requirements to afford such Management Companies, such questionable beneficial options to purchase the controlling interests of 51% majority shareholdings of the respective plantation companies that they managed, is patently given lie to, by the subsequent sale of such controlling interest of 51% majority shareholdings of the plantations companies, privatised after the first six plantation companies. Accordingly, would it not prove that such arguments trotted out, have been false and misleading and that thereby, the government, that is the public, has been taken for a ride, causing colossal loss to the state, that is the public? Who takes responsibility therefor?

The very plantation management contracts, that had been so put in question had provided only for extensions of such management contracts, that too specifically, if agreed levels of profitability had been achieved, with no default, whatsoever, of any of the conditions stipulated in such management contracts. As to whether, such contractually stipulated criteria were adhered to, as was contractually obligatory, would be relevant and pertinent issues to have been considered, even to have extended such management contracts, let alone to have afforded beneficial options to have purchased controlling interest of 51% majority shareholdings of the plantation companies on such ludicrously absurd basis, unjustly benefitting such Management Companies and causing colossal losses to the state, that is public. How did this transpire?

Contrary to all declared policies of government, on transparency and the commitment to open competitive bidding, with fairplay and equality of opportunity on a level playing field for all, such questionable beneficial options, resulting in favoured privilege only to a few selected parties, have essentially been by private treaty, apparently in contravention of stipulations and regulations governing the sale of public assets by the public sector, with scant regard therefor. Should not those responsible be held accountable? Why were such questionable deals by private treaty and arrangement opted for and open competitive bidding shunned, resulting thereby in colossal losses to the state, that is the public?

Such beneficial options to purchase the controlling interest of 51% majority shareholdings of the plantations companies was determined to be shockingly at the lowest price, on the fragmented sale of 20% of the shareholdings of the respective plantations companies, in the stock market contrary to all known business sense, commercial norms and stock market practices, where such controlling interest of 51% majority shareholdings would be normally sold at a price, even higher, than the highest price established for such fragmented sale of such 20% shareholdings in the stock market; generally carrying for such controlling interest, a premium of around 15-20% above the highest price, since such controlling interest affords management control and possession.

### **CONSPIRACY OF MAJORITY SHARE ACQUISITION**

Not only was such lowest price on the fragmented sale of 20%, questionably and ludicrously fixed for the sale of the controlling interest of 51% majority shareholdings of the plantation companies, but ironically, even the very sale of such 20% shareholdings was not professionally promoted and marketed, by the significant non-adherence to all known established conventions and practices in the market, by those responsible for such sale of the shares of the plantation companies; it being ironically acknowledged by those, who were committed and responsible to safeguard the very interests of such plantation companies, that it was not in the interest of the Management Companies, who were given such beneficial share purchase options, to have promoted the sale of such shares of the plantation companies and that there was an agreement amongst the parties in such regard. Could this ever be an acceptable position?

Even such fragmented sale of the 20% shareholdings was in two portions. One, 40% of the 20% was made available at the lowest price possible at the nominal value of Rs 10/- per share, and two, the balance 60% thereof at a bid price; structured restrictions and the sale of such one portion at the minimum price of Rs. 10/- per share, quite obviously and apparently intentionally pegged down such bid price. Such complexity was doomed to have failed.

In fact, such failure is clearly borne out by the fact, that only 0.95% upto 7.36% of such shareholdings were subscribed for, through such professionally non-promoted sales, the balances being taken up, by the conveniently arranged underwriters, which included state banks. Even in the face of such bad failures on the very initial sales, PERC persisted, thereby revealing the real intentions. Was such stock exchange process mere facade, to anyhow sell the controlling interest of 51% majority shareholdings of the plantation companies to the Management Companies at the lowest possible price of Rs. 10/- per share?

The inevitable resulted, in the controlling interest of 51% majority shareholdings in these plantation companies being sold to the Management Companies at the nominal value of Rs. 10/- per share only. Without any regard to established professional and conventional practices of valuations, the share capitals of the plantation companies having being structured questionably to have the same total share capitals of Rs. 200 million each, the total purchase consideration for such controlling interest of 51% majority shareholdings of these several plantation companies was the same Rs. 102 million each in all such cases, irrespective of the size, profitability and agro-economic evaluation of the respective plantation companies. Who takes responsibility for such strategy, that caused colossal loss to the state, that is the public?

Though it was held out and made out, that controlling interest of only 51% majority shareholdings of the plantation companies were being so disposed of to the Management Companies, in actual fact, through a strategic arrangement of debenture loans to the respective plantation companies from the Management Companies, to be converted into shareholdings after a period of two years, that too ridiculously at the same price of Rs. 10/- per share, whilst the actual market prices were much higher, the Management Companies have been afforded controlling interest, varying from 60.8% upto 71.2% of majority shareholdings of the respective plantation companies, and not 51% as had been held out. Who takes responsibility for such structured strategy? Is it not the established business practice, that such future share purchase options on the conversion of debenture loans are normally stipulated to be at the future prevalent market prices, but not less than the nominal value? How was it conspired and structured otherwise in this instance?

### **HOW WAS STRATEGY FOISTERED ON GOVERNMENT?**

It had been the publicly pronounced intention to have given 10% shareholdings, as in the other cases of privatisations to the plantation employees as well. Such structured strategy to convert debenture loans by the Management Companies to the plantation companies into shareholdings, has pre-empted the plantation employees from receiving such 10% shareholdings in such plantation companies, as had been promised and held out; the plantation employees actually receiving only 5.88% varying upto 8% shareholdings in the respective plantation companies. Yet for all, PERC, regardlessly confirms and assures the public and such plantation employees of such mythical 10% shareholdings to be given to the plantation employees. Why such misleading misconception?

Ironically on the contrary, the Management Companies, who had managed the respective plantation companies on lucrative profit sharing basis, having been already given their due shares of the profits for the year 1995, have apparently been further afforded a majority portion of the balance profits of the year 1995, that rightfully belonged to the government, by transferring such majority shareholdings of the plantation companies to the Management Companies at the end of the year 1995, without requisite and appropriate accounting adjustments made in respect of such profits, that rightfully belonged to the government to be credited to the government, thereby causing further considerable loss to the government. Who takes responsibility therefor?

After the horse had bolted, as it were, the government closed the stable door and halted the sale of such controlling interest of 51% majority shareholdings of the plantation companies on such ridiculously questionable and absurd basis, that caused colossal loss to the state. Nevertheless, this was only after having incurred a colossal loss to the state, reckoned to be in the levels of Rs 2,500 million on the sale of the first six profitable plantation companies alone, without those responsible having been held accountable for such loss to the state and without any investigations, as to how such questionable strategies ever came to be structured and foisted on the government and as to who was responsible therefor? How come such impunity in the very teeth of the government's avowed policies on public accountability and specifically enacted laws on corruption?

The irony is that the profitability of these plantation companies would have been very well known to those, who handled the privatisation of these plantation companies in 1995. Nevertheless, agro-economic evaluations to determine professional valuations, prior to the sale of such public property, as mandatory, appear to have been questionably dispensed with, in contravention of such public sector regulatory requirements. The known profitabilities of these respective plantation companies, reckoned in the light of price earnings ratios, that were then prevalent in the Colombo stock market, as reported by the Colombo Stock Exchange, would have easily determined the market price potentials of these respective plantation company shares.

The established market prices of such plantation company shares today are in conformity with such price earning ratios that were then known and prevalent in the Colombo stock market. It would be quite naive to concede, that those of the private sector, who negotiated for the purchase of such controlling interests of 51% majority shareholdings of the plantation companies, would have been blissfully unaware or had not anticipated such potential share valuations. The prices at which such controlling interests of 51% majority shareholdings of the plantation companies had been disposed of has been at unbelievable price earnings ratios or pay back periods, varying from as low as 1.6 years upto 4.3 years only.

### **CATASTROPHIC FIASCOS**

The catastrophe of such fiasco is clearly borne out by the fact, that some of the Management Companies could now very well sell off their excess shareholdings over and above the controlling interest of 51% majority shareholdings at current market prices, by converting into further shareholdings the debenture loans in the respective plantation companies, thereby realising huge cash considerations, to recover, not only the full costs of their total share acquisitions, but also to have cash surpluses around Rs. 150 million each to their credit; thereby continuing to own such controlling interest of 51% majority shareholdings in the respective plantation companies absolutely free of any costs, and in addition, such super cash bonanzas

— unbelievable deals!! Who takes responsibility for such catastrophic fiasco? Would this come within the definition of conferring any wrongful or unlawful benefit, favour or advantage to any person and causing loss to the government, as has been stipulated by the government itself, as corruption?

The Plantation Ministry Committee that had studied and made recommendations for the privatisation of the plantations, deemed the plantations sector, as a national asset and the largest and the most important segment of the national economy, and accordingly, recommended that whilst the disposal of shareholdings in the plantation companies should maximise government revenue, the benefits of the privatisation of the plantations should be passed on to all citizens of the country in an equitable manner and that it is desirable that the citizens of the country have a direct stake in the plantation sector and that 20% of the shareholdings of the plantation sector should be distributed equally among all households in the country.

Would all this not be mere farce and only make belief in the light of what has really transpired ? Or was this mere red herring as a facade to cover up and conceal the real strategies? Ironically, as much as 49% foreign shareholdings has been allowed into the plantation companies and the 20% shareholdings equally to be distributed to all Sri Lankan households for all citizens to have a direct stake in the plantations sector has turned out to be mere pipedream!

A golden shareholding of only one share had been created in the privatised plantation companies, supposedly to protect the national interests and the interests of the government. Nevertheless, it is apparent, that such golden shareholder, the government, could only discuss once in three months, receive informations once in three months and inspect books of account, whenever. The government cannot give any direction and is not a party in the decision making process and management control, and the government does not even have legal status to institute even minority litigation, concerning such a nationally important and vital economic sector - a lame duck shareholding, merely gilt-edged in gold? !!

### **ADHOC MID-COURSE CORRECTIONS**

Having abandoned the sale of such controlling interest of 51% majority shareholdings of the plantation companies on such ridiculously absurd basis that caused colossal losses to the state, with unjust enrichment of a selected few, the controlling interest of 51% majority shareholdings of the subsequently privatised plantation companies were put up for open competitive bidding on the Colombo Stock Exchange, that too without the conventional fan fare of professional share promotions, and without a minimum floor price stipulation, based on professional valuations, as would have been normally warranted under such circumstances, resulting in the controlling interest of 51% majority shareholdings of yet another plantation company being sold at only Rs. 10/- per share.

Subsequently, with the learning process, minimum floor price stipulations were introduced by PERC. As to whether, such minimum floor price stipulations were based on professional evaluation is not known. Furthermore, a new institution, Plantation Investment Management Co. (Pvt) Ltd. [PIMC] entered the fray to bid for the controlling interests of 51% majority shareholdings of some of the plantation companies. As to whether, PIMC could be deemed to be a government sponsored bidder, bidding on the sale of shareholdings owned by the government, itself, and as to whether this impugns the gazetted Rules of the Securities & Exchange Commission [SEC] particularly Rules 19 and 20 concerning market prices of securities, is no doubt an important matter, that would need serious consideration by the SEC,

in the interest of the broader objectives of the SEC and the stock market. Furthermore, would it be proper for a regulatory authority in the very plantation sector, to be seen to be a collaborative party in such very process? Is this not reflective of the bankruptcy of proper strategy?

Subsequently, the controlling interests of 51% majority shareholdings of the ensuing plantation companies were put up for bid on the Colombo Stock Exchange, but only open for bidding to pre-selected/pre-qualified parties, resulting in one bid essentially having only one such pre-selected/pre-qualified party, thereby undermining the whole process of bidding on the Colombo Stock Exchange and the competitiveness of the price naturally being subject to justifiable public question, particularly moreso, since another plantation company had sold for very much more only a few days previously. Another cogent issue is the sanctification by the SEC of such selective process of sale and whether such option would be available also to all others? The PMIC, however, did not bid against such sole private sector bidder in this instance? PERC on the other hand has gone on record to claim, that such pre-selection/pre-qualification process, inter-alia, was an anti-money laundering feature, which however is not an universal practice enforced by the SEC on other foreign acquisitions at the Colombo Stock Exchange!!

Again making further adhoc and mid-course corrections, amendments have been effected to the Articles of Association of the balance plantation companies not yet privatised, preventing the controlling interests of 51% majority shareholding purchased in the first instance from being resold for a minimum period of 5-years. Nevertheless, the majority ownership of the very corporate purchaser could quite easily still change hands and how could this be stopped and why in a free and open economy?

The above is reflective of the government's calamitous and turbulent process, with so many adhoc and mid-course corrections, of privatisation of the plantations — a national asset and the largest and the most important segment of the economy. This has clearly resulted in creating unequal competition in such a vitally important economic sector, with private sector entrepreneurs having paid widely divergent prices for the acquisitions of controlling interests in plantation companies, completely unrelated to their real valuations. How could this augur well, for the future healthy development and growth of the plantations sector a vital sector of the economy, with such unequal competition on such uneven playing field? Has the privatisation of the plantations achieved the desired objectives?

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