

SC. FR. No. 191/09 with Nos. FR. 192/09, 197/09-206/09, 208/09-216/09, 225/09, 226/09, 244/09, 246/09-255/09, 315/09, 335/09, 372/09

10.03.2014

Before : **Mohan Pieris, PC, CJ**
Dep, PC, J &
Wanasundera, PC, J

Prof. H.M. Zafulla with Thilan Liyanage for Petitioners (SC/FR No. 191/09 & 192/09).

V.K. Choksy for Petitioners in SC. FR. No. 208/09 and 252/09.

Dr. Asanga Gunawansa with Dilshan Jayasuriya and Mrs. Dinusha Mirihana for 6th Respondent.

Romesh de Silva, PC for 7th Respondent.

Faisz Musthapha, PC for 10th, 11th and 14th Respondents.

D.P. Kumarasinghe, PC with M.A. Kumarasinghe for 13th Respondent.

S.A. Collure for 15th Respondent (SC/FR No. 191/09)

Ikram Mohamed, PC for Intervenient Petitioner.

Nigel Hatch, PC with Ms. S. Illanage for Intervenient Petitioners. (Nation Lanka Finance (Pvt) Ltd & Seylan Bank PLC.)

K. Iswaran, PC with Kuvera de Zoysa, PC, Sanjeeva Jayawardane, PC, Dilshani Wijewardane and Senaka de Seram for CIESOT Pvt. Limited.

Viraj Dayaratne, DSG for 1st, 3rd - 5th and 17th Respondents.

The Learned Deputy Solicitor General submits the third report of the Task Force dated 7 March 2014 which is filed of record marked X1.

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The report in paragraph 1 sets out the efforts taken to locate assets, in paragraph 2 the identification of assets and in paragraph 3 the investigations that have been terminated. The second paragraph which identifies assets also include recommendations made in respect of properties of Mrs. S P C Kothalawala, Mr. A D Jegasothy, Mr. W G B M Ranaweera, Mrs. P K Karunanayake and Mr. S T Karunaratne. This Court will revert to these matters at a later point in this Order.

Learned Deputy Solicitor General also refers to a parcel of gems which is presently the subject matter of a Customs inquiry, and submits that the Customs inquiry will be concluded within a week of today, the findings of which will be communicated to the Court in due course. The Counsel for the 13th Respondent Mr. Kumarasinghe submits that the Court be pleased to make an Order that at the point of examination and valuation of the gems, his client be permitted to be present at such time so as to ensure that he will be in a position to fulfill his obligations to the Court.

The Chairman of the GKCCCL, Mr. Priyantha Fernando submits a progress report which is structured in 10 parts. The first four parts addresses the repayment mode up to February of this year and the proposed repayment in the months of March, April, May and June of 2014, which the Chairman describes as a **“Time Bound Repayment Approach”**. The fifth part of the report deals with the mechanisms which sets out how the plan will operate on a self-sustaining model. The sixth part deals with how the GKCCCL has taken action to facilitate this process. Part 7 deals with the mechanisms adopted to deal with those matters that were taken up before this Court on 06 November 2013. We have been informed that there is reference to the matters delivered as per that Order and the matters that are pending and arising from the Court Order. Part 8 sets out the Orders that are sought by GKCCCL today. Part 9 is a report on the legal entity styled CIESOT. Part 10 is with regard to a legal entity report styled PICTET AND CIE. It has also been brought to our notice that there has been a transfer of Rs. 6,677,230/- from The Finance Company Ltd. to another entity and moves that the typographical error in the description of names appearing in page 13 of

that Order be rectified. Consequently, 3 motions have been filed, firstly regarding the name change, which this Court directs, be effected immediately, secondly with regard to an Order made by this Court for a transfer of shares which has not been complied with by Ceylinco Investments and thirdly regarding the transfer of money from The Finance Company to another entity.

Mr. Kanag-Iswaran, PC made submissions on behalf of CIESOT which company is referred to at page 21 of our last Order. He also makes subsequent reference to part “C” which is at page 65 and 66 of the Order. He submits that CIESOT was incorporated in the year 2000 essentially as a Trustee Company and for this reason alone does not fall within the ambit of this investigation. It is alleged that the Trustee Company was created to hold in trust a parcel of shares for the benefit of the employees, and that he would in due course, submit sufficient material to satisfy this Court of the genuineness of this mechanism.

Mr. Avindra Rodrigo who represents a depositor submits that this mechanism of a trust was a legal sham, and that documents 4 to 7 of the annexures clearly show the contrary, as the position taken therein is that it was not a share ownership scheme for the benefit of the employees and that steps would be taken soon to have them disposed. We observe that the decision taken by CIESOT was in response to a query made by the Securities Exchange Commission.

Mr. Romesh de Silva PC submitted that the application for the cancellation of bail as set out in page 12 and referred to in the proceedings of 23rd October 2009 has been complied with fully by his clients by a full disclosure of all assets.

Mr. Kanag-Iswaran, PC further submits in unequivocal terms that Mr. Lalith Kothalawala is not the Chairman of CIESOT. We shall come back to this aspect at a later point of this Order.

We were then referred to an entity described as PICTET AND CIE. The Court has been informed that PICTET AND CIE is a Swiss Bank incorporated in Switzerland and it holds a large parcel of shares for a client (whose identity has still not been disclosed by Ceylinco Insurance Ltd.)

Mr. Avindra Rodrigo moves that an Order be made for the appointment of an independent person in place of Mr. Lalith Kothalawala to the Board of Ceylinco Insurance Ltd. with a mandate to hold the parcel of shares in trust until this matter is finally determined, as the PICTET AND CIE is the actual and beneficial owner of the shares.

Mr. Faiz Mustapha who appears for the 10th Respondent referring to paragraph 2.2 of the report submits that the Order to sell the assets of a client, more particularly the residential premises, should be excluded from the recovery mechanism and refers this Court to the proceedings of 10th March 2014.

Mr. Zafrullah, Attorney-at-Law submits that as this whole transaction is a corporate fraud, that all assets held by the Directors are liable to be seized.

Mr. Nigel Hatch PC submits that he appears for Nation Lanka which matter has been referred to at page 20 of the report of 2nd December 2013, and that he will reserve his rights to make submission on the next date as he is scheduled to take instructions from Nations Lanka regarding this matter next week.

Mr. Ekanayake Attorney-at-Law representing his client Mr. Marco Perera seeks three Orders of this Court structured consequent to the Orders made by this Court on 29th April 2009 and 29th December 2009.

Mr. Choksy brings to our notice that there are 3 cases pending in the Commercial Court and he will apprise this Court of their progress in the course of these proceedings.

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Mr. Saman Galappatti, Attorney-at-Law brings to our notice two important matters. He also submits that there are two cases in the High Court of Colombo which have commenced and another in the Magistrates Court of Mt. Lavinia. He submits that the case in Mt. Lavinia relates to the misappropriation of Rs. 126 million by the use of 6 credit cards by a person named Pakianathan Kumar who has transferred Rs. 10 million of that money to a company in Australia styled "Arts and Life" and that the CID on the instructions of the Attorney-General has surprisingly sought to make an application for the discharge of the suspect. He submits that she also claims a parcel of jewelry which is presently in the safe of the GKCCCL.

Learned Deputy Solicitor General undertakes to stay any action on this matter until an appropriate Order is made by this Court. Through an abundance of caution, we hereby direct the Learned Judge of the Magistrates Court in Mt. Lavinia that no steps should be taken in respect of the said parcel of jewelry and for the discharge of Pakianathan Kumar, the suspect in the credit card fraud until a further direction is made by this Court and that no application be entertained with regard to this matter. We would also request the Hon. Attorney-General to apprise this Court of the facts and circumstances of this transaction and the reasons why an application to discharge is made.

Mr. Kamran Aziz Attorney-at-Law refers us to a motion dated 28 February 2014, the contents of which we have noted. He submits that his client be given an opportunity to pursue the matters set out in the motion with the "Committee". We direct that an opportunity be granted to this party.

Mr. Ekanayake, Attorney-at-Law refers us to a motion dated June 2013 in which he makes representation for an entity styled "Ceylinco Limited". The outstanding matters that will be pursued with GKCCCL regarding Ceylinco International Realty Pvt. Ltd. is the deposit to the value of Rs. 200 million and the undertaking to transfer half of a floor in Ceylinco House.

A submission was also made on behalf of Ceylinco Printing and Stationery Company Ltd. The Court has been informed that the matter is before the Commercial Court and that on the 29th of July 2013 the case has been laid by. It has also been brought to our notice that certain statutory dues have to be recovered by the state and a limited variation of the Order staying the proceedings of the case be made by this Court to enable the Court's cases to proceed with, for the recovery of the outstanding dues.

We make Order that the proceedings in the Magistrates Court and in the High Court (Revision application) for the recovery of statutory dues be proceeded with.

This Court now proceeds to consider the recommendations made in the 3rd Report of the Task Force dated 7th March 2014. The report, we note is a product of 10 meetings with its members during the course of which the former Directors Mr. S.T. Karunaratne, Daniel Jegasothy and D G S P Sumanasekera were called for discussions. While Karunaratne appeared before the Task Force on 10th December 2013, Jegasothy and Sumanasekera appeared on 30th January 2014. The Task Force has also identified properties owned by Mrs. S P C Kothalawala, Mr. W G B M Ranaweera, Mrs. P K Karunanayake which had not been declared hitherto.

On the basis of these recommendations, this Court makes the following Orders : -

1. Properties of Mrs. S P C Kothalawala referred to at page 4 of the said report.

We Order staying the alienation of Lot No. 29 in Plan No. 1309 of 9th October 1977 prepared by Mr. K D G Weerasinghe, Licensed Surveyor at Ruskin Island conveyed to Mrs. S P C Kothalawala by Deed of Transfer No. 4184 on 29th August 1999 attested by L L Ponnukone, N.P. in extent of 1 Rood and 12.19 perches by whatsoever manner, until further directed by this Court.

2. The Registrar General of Lands is directed to make an entry in the relevant folio of the Land Register that the Supreme Court has stayed the execution of any conveyance of whatsoever nature until further directed.

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3. We Order staying the alienation of all such lands set out at para 2.2 (a), 2.2(b), 2.2 (c) and 2.2 (d) of the properties of Mr. A D Jegasothy at pages 4, 5 and 6 of the said report by whatsoever manner, and direct the Registrar General of Lands to make an entry in the relevant folios of the Land Register that the Supreme Court has stayed the execution of a conveyance of whatsoever nature until further directed.
4. We Order staying the alienation of all the lands set out at para 2.3 (a), 2.3(b), 2.3(c), 2.3(d), 2.3 (e), 2.3(f), 2.3(g), 2.3(h), 2.3(i), 2.3(j) owned by Mr. W G B M Ranaweera in pages 6, 7 8, 9, 10, 11 and 12 of the said report. The Registrar General of Lands to make an entry in the relevant folios of the Land Register that the Supreme Court has stayed the execution of a conveyance by whatsoever nature until further directed.
5. We Order staying the alienation of the land set out at para 2.4(a) at Ruskin Island owned by Mrs. P K Karunanayake at page 12 of the said report. We direct the Registrar General of Lands to make an entry in the folios of the Lands Register that the Supreme Court has stayed the execution of a conveyance by whatsoever nature until further directed.
6. We Order staying the alienation of the land set out at para 2.5 owned by Mr. S T Karunaratne at page 13 of the said report. We direct the Registrar General of Lands to make an entry in the folios of the Lands Register that the Supreme Court has stayed the execution of a conveyance by whatsoever nature until further directed.

This Court has taken appropriate cognizance of the matters set out in para 3 of the report. We have also taken cognizance of the documents X2, X3, X4 and X5 submitted by the Registered Attorneys for the 6th Respondent-Respondent, Ceylinco Consolidated International Property Development Pvt. Ltd., the Intervient Petitioner.

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We direct the Task Force to give the matters set out in the aforementioned motions and submit a report to Court having given due consideration to the matters set out therein. This Court has also given appropriate consideration to the matters set out in a motion dated 3rd March 2014 supported by an affidavit of Mr. Rajkumar Renganathan, a Director of CIESOT Pvt. Ltd. The Task Force is directed to give appropriate consideration to the matters set out therein and submit a report to Court on the next date. However, this Court will now proceed to deal with the entity styled CIESOT Pvt. Ltd. having regard to the material that is before this Court today.

We note that, notwithstanding the Order made by this Court on 2nd December 2013 and an undertaking given by the Counsel to comply with this Order that no steps have been taken by CIESOT Pvt. Ltd. to register the GKCCCL as a holder of 10 shares held by Mr. J L B Kothalawala in CIESOT. Counsel for CIESOT submits that the failure to carry out this order was due to an allegedly contradictory Order made by this Court directing the said parcel of shares be transferred to the GKCCCL Special Purpose Vehicle and that there is no refusal by CIESOT if the position is clarified. This Court, by way of clarification makes the following Orders which will supersede all other Orders made hitherto.

1. CIESOT Pvt Ltd. shall register the GKCCCL as the holder of 10 shares held by Mr. J L B Kothalawala in CIESOT Pvt. Ltd. and issue a share certificate accordingly.
2. All Directors of GKCCCL shall henceforth be appointed as Directors of the GKCC Special Purpose Vehicle.
3. The Registrar General of Companies is directed to register the names of all Directors of the GKCCCL as Directors of the GKCC Special Purpose Vehicle forthwith. The present Directors of GKCC Special Purpose Vehicle are directed to take cognizance of the aforementioned Order and ensure the appointment of the GKCC Special Purpose Vehicle at the next meeting of the Board.

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4. We also make Order to the Company Secretary to comply with the aforementioned Orders forthwith and inform the Registrar General of Companies of the new ownership of the shares and take all such other steps as necessary in terms of the provisions of the Company's Act No. 7 of 2007.
5. We note that Ceylinco Insurance Plc whilst maintaining that CIESOT Pvt. Ltd. is not governed by the transitional provisions of an Employee Share Option Scheme/Purchase Scheme as contemplated by Section 5.6.10 of the Colombo Stock Exchange Listing Rules and that by letter dated 19th December 2012 informs the Securities and Exchange Commission that Ceylinco Insurance Plc would be taking steps to dispose of the shares held by CIESOT Pvt. Ltd. prior to 1st March 2015, through the Colombo Stock Exchange. The exchange of letters through the Securities Exchange Commission and Ceylinco Insurance Plc. on the face of them confirms the position that CIESOT Pvt. Ltd. is a mechanism resorted to, for a collateral purpose, and that a share ownership scheme does not genuinely exist.

We, therefore, make Order that the Securities and Exchange Commission in co-operation with the Financial Investigation Unit of the Central Bank investigates this transaction to determine its true nature, transgressions of any of the legal provisions, and submit a report to this Court within two weeks of the receipt of this Order. The Registrar of this Court is directed to communicate a copy of this Order to the Director General of the Securities and Exchange Commission and the Director of FIU of the Central Bank forthwith.

By a motion filed on 31st March 2014, the Chairman of the GKCCCL has informed this Court of an impending declaration of a dividend by Ceylinco Insurance Ltd. the benefit of which will also accrue to CIESOT Pvt. Ltd.

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We therefore make Order enjoining the Directors of Ceylinco Insurance Ltd. from paying out a dividend in favour of CIESOT Pvt. and directing them to pay such dividend to GKCCCL who will hold it in trust until further directed by this Court. In the event of a dividend having being declared after the 2nd April 2014 and the communication of this Order, such dividend shall be paid to GKCCCL which will hold it in trust until directed by this Court. The Registrar of this Court will communicate this Order to the Chairman, Managing Director and Company Secretary of Ceylinco Insurance Plc. forthwith. We further Order CIESOT Pvt. Ltd. restraining and/or appropriating and/or disposing of the dividend income in the event of the declaration of a dividend or any other payment or disbursement on or after the 2nd of April 2014 without the prior approval of this Court. Having regard to the aforesaid circumstance we also make the following Orders.

1. CIESOT Pvt. Ltd. is enjoined from disposing of the shares in Ceylinco Insurance Ltd. until further directed by this Court.
2. The Securities and Exchange Commission and the Colombo Stock Exchange will ensure that no transactions takes place of the said shares until further directed by this Court.
3. Nilika Abhayawardena, the Company Secretary of CIESOT Pvt. Ltd. to take steps forthwith to record GKCCCL as the owner of 10 shares hitherto held by Mr. J L B Kothalawala and take necessary steps to record the ownership change including, informing the Registrar General of Company's, of the new ownership and all other steps as are necessary in terms of the Company's Act No. 7 of 2007.
4. The Board of Directors of CIESOT Pvt. Ltd. are removed with immediate effect. The shareholders Mr. H D K P Alwis and E T L Ranasinghe will appoint the Chairman of the GCCCL Mr. Priyantha Fernando and upto 4 members as nominated by him to the Board of Directors of CIESOT Pvt. Ltd. with immediate effect.

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5. The new Board members as appointed by the aforementioned Order will act in consultation with the Hon. Attorney-General who shall have overall supervision of their activity.

We now turn to the entity described as “PICTET and CIE”. It is brought to our notice that this entity commenced purchasing shares in Ceylinco Insurance Plc. through the custodian bank Citibank N.A. of 67, Dharmapala Mawatha, Colombo 7 on 29th May 2009 and has continued to purchase Ceylinco Insurance shares until 29th September 2009 and has accumulated 2,136,100 shares in Ceylinco Insurance Plc. equivalent to 10.68% of the issued share capital. PICTET AND CIE has issued the proxys in respect of the shares to the Board of Directors of Ceylinco Insurance Plc. through its Power of Attorney Citibank N.A. The Task Force has made several requests to PICTET and CIE to disclose the source of funds for the purchase of the said shares, the names of the final beneficiaries and the details in respect of the proxys. A request has also been made to Citibank N.A. the Power of Attorney holders to disclose the source of funds and the details of the proxys and of any remittances made on behalf of PICTET AND CIE. We have informed that during the period leading up to 28th September 2009 several Ceylinco Group Companies have disposed large quantities of shares of Ceylinco Insurance Plc. and that PICTET AND CIE have been purchasing directly from the Ceylinco Group of Companies. It could well be that the said shares have been purchased for the purpose of maintaining control of the Ceylinco Insurance Plc. and that the said shares were purchased from the shares disposed of by Ceylinco Group of Companies. We also take cognizance of the fact that Mr. J L B Kothalawala has been in control of the Ceylinco Insurance Pl.c prior to the collapse of Golden Key and that Mr. Kothalawala is also a controlling member of the Board of Trustees of CIESOT Pvt. Ltd. and that it is therefore highly probable that the said shares have been purchased by PICTET AND CIE for and on behalf of Mr J L B Kothalawala. We also note that PICTET AND CIE is a private Swiss Bank which resorts to banking secrecy to veil the identity of investors and have been sued with US\$ 156 million by the Trustees in the

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Bernard Madoff case which is presently under investigation by the Justice Department of the United States as a part of a probe on Swiss Bank's aiding tax evasion.

We, therefore, make Order -

1. that the 2,136,100 shares of Ceylinco Insurance Plc. held by PICTET AND CIE (Banque PICTET AND CIE SA) be transferred to a blocked account at the Bank of Ceylon until further ordered by this Court.
2. That PICTET AND CIE to disclose the identity of the investor on behalf of the aforementioned parcel of shares in Ceylinco Insurance Plc.
3. That Citibank N.A. the Power of Attorney holder to disclose the details of the proxy they hold on behalf of PICTET AND CIE and all such other information that they have in their custody regarding this transaction.
4. That the Director Bank Supervision of the Central Bank will seize all such documents in the possession of Citibank N.A. with regard to this transaction and to submit a comprehensive report with regard Citibank's role as the Power of Attorney holder.
5. That the Financial Investigation Unit (FIU) of the Central Bank will probe into this transaction and furnish a comprehensive report of the role of each and every party concerned in this transaction and to invoke the provisions of the Money Laundering Act and the Financial Transaction Reporting Act for the purposes of such an investigation.
6. That the Central Depository System Pvt. Ltd. will suspend the dealing of the 2,136,100 shares held by PICTET AND CIE in Ceylinco Insurance Plc. and furnish the details of all transactions which have been effected through the Central Depository System Pvt. Ltd to the FIU of the Central Bank.
7. That the Colombo Stock Exchange takes cognizance of the Order made to the Central Depository Systems Pvt. Ltd. directing them to suspend the dealing of the 2,136,100 shares held by PICTET AND CIE held in Ceylinco Insurance Plc. and to ensure compliance of that direction.

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8. This Court has also considered the matters set out in the motion dated 10th March 2014 with regard to the audited financial statements of GKCCCL as at 31.03.2013 and Accounts for subsequent transactions upto 30th April 2013.

We make Order directing the Committee of Chartered Accountants to furnish the relevant financial statements set out in the said motion, (a copy of which shall be served with this Order) to the Board of Directors of GKCCCL, within two months of the receipt of this Order.

This matter will be mentioned on 29th May 2014.

(Approved by Hon. Chief Justice)