

**IN THE COURT OF APPEAL OF THE**  
**DEMOCRATIC SOCIALIST REPUBLIC OF SRI LANKA**

*In the matter of an application for  
mandates in the nature of Writs of  
Certiorari, Mandamus and Prohibition in  
terms of Article 140 of the Constitution of  
the Democratic Socialist Republic of Sri  
Lanka*

C A (Writ) Application No. 321/ 2017

One Asia Investment  
Partners (Pvt) Ltd,  
40/13,  
Longdon Place,  
Colombo 07.

**PETITIONER**

Vs.

1. The Central Bank of Sri Lanka,  
Lanka,  
No. 30,  
Janadhipathi Mawatha,  
Colombo 01.
  
2. The Monetary Board of the Central Bank of Sri Lanka,  
No. 30,  
Janadhipathi Mawatha,  
Colombo 01.
  
3. Dr. Indrajit Coomaraswamy,  
Governor,  
Central Bank of Sri Lanka  
No. 30,  
Janadhipathi Mawatha,  
Colombo 01.

4. W. Ranaweera,  
Director/ Acting Director -  
Department of Supervision  
of Non-Bank Financial  
Institutions,  
8<sup>th</sup> Floor,  
Central Bank of Sri Lanka,  
No. 30,  
Janadhipathi Mawatha,  
Colombo 01.
5. City Finance Corporation  
Limited,  
No. 72,  
Rajagiriya Road,  
Rajagiriya.
6. C. J. P. Siriwardena,  
Senior Deputy Governor,

Central Bank of Sri Lanka,  
No. 30,  
Janadhipathi Mawatha,  
Colombo 01.

7. Udeni Alawaththage,  
Former Director-Department  
of Supervision of Non Bank  
Financial Institution Central  
Bank of Sri Lanka,  
presently  
Controller of Exchange,  
Central Bank of Sri Lanka,  
No. 30,  
Janadhipathi Mawatha,  
Colombo 01.

8. Hon. Attorney General

Attorney General's  
Department,  
Colombo 12.

**RESPONDENTS**

**Before: P. Padman Surasena J (P/C A)**

**A.L Shiran Gooneratne J**

Counsel: N R Sivendran with D Jayasuriya for the Petitioner.

B A Balasuriya for the 5<sup>th</sup> Respondent

Manohara Jayasinghe SC for the 1<sup>st</sup> 2<sup>nd</sup> 3<sup>rd</sup> 4<sup>th</sup> 6<sup>th</sup> 7<sup>th</sup> 8<sup>th</sup>  
Respondents.

Supported on : 2018 - 02 - 16

Decided on : 2018 - 05 - 18

ORDER**P Padman Surasena J (P / C A)**

The Petitioner in this application prays inter alia for following reliefs.

- I. a mandate in the nature of a Writ of Mandamus to compel the 1<sup>st</sup> and/or 2<sup>nd</sup> and/or 3<sup>rd</sup> Respondents to approve the revised Business Plan submitted to the Central Bank of Sri Lanka in or around December 2016,
- II. a mandate in the nature of a Writ of Mandamus to compel the 1<sup>st</sup> and/or 2<sup>nd</sup> and/or 3<sup>rd</sup> and/or 4<sup>th</sup> and/or 6<sup>th</sup> Respondents and any other officials of the Central Bank of Sri Lanka acting under the directions and/or orders of the said Respondents to forthwith permit the Petitioner to appoint four (4) additional directors to the Board of Directors of the 5<sup>th</sup> Respondent and take majority control of the Board of Directors of the 5<sup>th</sup> Respondent;
- III. a mandate in the nature of a Writ of Mandamus directing the 1<sup>st</sup> and/or 2<sup>nd</sup> Respondents to provide matching funds at the time the

Petitioner completes the Full Capitalization of an equal amount to the full Capitalization as per the undertaking;

- IV. a mandate in the nature of a Writ of Mandamus directing the 1<sup>st</sup> and/or 2<sup>nd</sup> and/or 3<sup>rd</sup> and/or 4<sup>th</sup> and/or 6<sup>th</sup> Respondents and any other officials of the Central Bank of Sri Lanka acting under the directions and/or orders of the said Respondents to enable the Petitioner to revive the 5<sup>th</sup> Respondent and act according to their representations/undertakings to the Petitioner;
- V. a mandate in the nature of a Writ of Certiorari quashing the decision conveyed by the letter dated 27<sup>th</sup> September, 2017 sent by the 4<sup>th</sup> Respondent to the Petitioner;
- VI. a mandate in the nature of a Writ of Prohibition preventing the 1<sup>st</sup> and/or 2<sup>nd</sup> and/or 3<sup>rd</sup> and/or 4<sup>th</sup> and/or 6<sup>th</sup> Respondents from engaging in discussions with or permitting any other investor or investors to be involved in any manner whatsoever in reviving the 5<sup>th</sup> Respondent,
- VII. a mandate in the nature of a Writ of Prohibition preventing the 1<sup>st</sup> and/or 2<sup>nd</sup> and/or 3<sup>rd</sup> and/or 4<sup>th</sup> and/or 6<sup>th</sup> Respondents from taking any steps against the Petitioner and in respect of the 5<sup>th</sup> Respondent

consequent to the letters dated 8<sup>th</sup> September, 2017 and 27<sup>th</sup> September, 2017;

The Petitioner has also prayed for following interim reliefs;

- i. an interim order restraining the 1<sup>st</sup> 2<sup>nd</sup> 3<sup>rd</sup> 4<sup>th</sup> and 6<sup>th</sup> Respondents and their agents and/or servants from howsoever taking any steps from making representations to any other proposed investor or investors in the 5<sup>th</sup> Respondent or permitting any other investor or investors to invest in the 5<sup>th</sup> Respondent company until the final determination of this application;
- ii. an interim order restraining the 5<sup>th</sup> Respondent and its agents and/or servants from howsoever taking any steps to issue shares in the 5<sup>th</sup> Respondent to any person until the final determination of this application;
- iii. an interim order restraining the 1<sup>st</sup>, 2<sup>nd</sup>, 3<sup>rd</sup>, 4<sup>th</sup>, and 6<sup>th</sup> Respondents and their agents and/or servants from howsoever taking any steps in respect of the 5<sup>th</sup> Respondent consequent to the letters dated 8<sup>th</sup> September, 2017 and 27<sup>th</sup> September, 2017.



The 5<sup>th</sup> Respondent Company is a non-bank financial institution, which had shown signs of collapsing. The Central Bank being concerned about the implications of such collapses to the national economy had invited interested investors to submit their proposals with regard to the reviving of the 5<sup>th</sup> Respondent Company. The Petitioner is one such proposed investor who had submitted a proposal to resuscitate the 5<sup>th</sup> Respondent Company. According to the said proposal, the Petitioner was to infuse Rs. 1.5 Billion into activities regarding the proposed revival of the 5<sup>th</sup> Respondent Company. The Central Bank was to provide an equal amount of money described as "matching funds" once the Petitioner completes depositing the entire amount of Rs. 1.5 Billion to the proposed reviving activities of the 5<sup>th</sup> Respondent Company.

However, the Petitioner had only invested Rs. 198 Million on his part. The Petitioner has defaulted his undertaking to deposit the balance amount of money as per the proposal. Due to the above default on the part of the Petitioner to fulfill its obligations, the resuscitation of the 5<sup>th</sup> Respondent Company has become unsuccessful.

Accordingly, the central bank has called for fresh proposals in a bid to go ahead with a second attempt to resuscitate the 5<sup>th</sup> Respondent Company. The Petitioner Company was also permitted to submit a fresh revised proposal.

Careful consideration of the case presented by the Petitioner shows to the satisfaction of this Court that the Petitioner had sought a writ of Mandamus to compel the Central Bank to accept the revised proposal (in the second attempt) submitted by the Petitioner.

It was brought to the notice of this Court by the learned State Counsel that the Monetary Board of Sri Lanka has already approved the most attractive and favorable proposal submitted by a company called Lanka Credit and Business Limited (LCBL). It is to be noted that the said LCBL in their proposal had agreed to invest Rs. 565 Million almost immediately in contrast to the Petitioners initial financial commitment of mere Rs. 500 Million to be invested on a staggered basis. Learned State Counsel has also brought to the notice of this Court that the decision by the Central Bank to go ahead with the proposal by the LCBL would immensely benefit the depositors whose money was with the failed 5<sup>th</sup> Respondent Company. This Court cannot permit the Petitioner to thrive unlawfully at the cost of the

helpless depositors who are eagerly waiting to recover their hard-earned money deposited with the 5<sup>th</sup> Respondent Company.

In the case of Sirisena Cooray Vs. Tissa Dias Bandaranayaka and two others<sup>1</sup> the Supreme Court referring to the above case, stated as follows.

*" ... The grounds of judicial review were originally broadly classified as three-fold. The first ground is illegality; the decision-maker must understand correctly the law that regulates his decision making power and must give effect to it. The second is "irrationality" namely Wednesbury unreasonableness (Associated Provincial Picture Houses Ltd. V Wednesbury Corporation. The third is "procedural impropriety". (Halsbury 4<sup>th</sup> ed., Vol 11 para 60). To these grounds, a fourth may be added "proportionality" See Lord Diplock in CCSU V Minister for the Civil Service at 951. ... "*

The Petitioner has failed to satisfy this Court that any of the above grounds for a writ has been made out.

Further, the jurisdiction to issue writs in the nature of certiorari and Mandamus which is vested in this Court by virtue of Article 140 of the

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<sup>1</sup> 1999 (1) S L R 1.

Constitution is a jurisdiction, which this Court could decide in its discretion to exercise in a fit case. This Court is convinced that the instant case is not one such case in which it should exercise its discretionary writ jurisdiction.

In these circumstances, and for the foregoing reasons, this Court decides to refuse to issue notices on the Respondents.

This Application should therefore stand dismissed without costs.

**PRESIDENT OF THE COURT OF APPEAL**

**A.L Shiran Gooneratne J**

I agree,

**JUDGE OF THE COURT OF APPEAL**