

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

In the matter of an application for a mandate in the nature of Writs of *Mandamus* and *Prohibition* under and in terms of Article 140 of the Constitution of the Democratic Socialist Republic of Sri Lanka.

C.A. (Writ) Application

No: 0401 / 2018

1. Nawaloka Polysacks (Private) Limited

No.42,

Negombo Road,

Peliyagoda,

Sri Lanka.

2. Upali Dharmadasa

Chairman/ Managing Director,

Nawaloka Polysacks (Private) Limited,

No.42, Negombo Road,

Peliyagoda,

Sri Lanka.

PETITIONERS

Vs.

1. Mrs. D. R. Karunaratne,

Director,

Department of Foreign Exchange,

Central Bank of Sri Lanka,

No. 30, Janadipathi Mawatha,

Colombo 01.

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

2A. Dr. P. Nandalal Weerasinghe,
Governor
Chairman
Governing Board,
Central Bank of Sri Lanka.

2B. Mr. Nihal Fonseka,
Appointed Member,
Governing Board,
Central Bank of Sri Lanka.

2C. Dr. Ravi Rathnayake,
Appointed Member,
Governing Board,
Central Bank of Sri Lanka.

2D. Mr. Anushka Wijesinha,
Appointed Member,
Governing Board,
Central Bank of Sri Lanka.

2E. Mr. Vish Govindasamy,
Appointed Member,

Governing Board,
Central Bank of Sri Lanka.

2F. Mr. Rajeev Amarasuriya,
Appointed Member,
Governing Board,
Central Bank of Sri Lanka.

2G. Mr. Manil Jayasinghe,
Appointed Member,
Governing Board,
Central Bank of Sri Lanka.

3. Nawaloka Construction Company
(Private) Limited,
No. 115,
Sir James Peiris Mawatha,
Colombo 02.

4. Jayantha Dharmadasa,
Managing Director,
Nawaloka Construction Company
(Private) Limited,
No. 115, Sir James Peiris Mawatha,
Colombo 02.

RESPONDENTS

Before : Dhammika Ganepola, J.
: Adithya Patabendige, J.

Counsel : Chandaka Jayasundere, P.C. with Chinthaka Fernando and Praveen
Wijayaweera instructed by Paul Ratnayake Associates for the Petitioner.

Manohara Jayasinghe, D.S.G. for the 1st and 2nd Respondents.

Ruwantha Cooray with Kesara Hewavissa and Suvini Abeyratha
instructed by Sanath Wijewardena for the 3rd and 4th Respondents.

Argued on : 17.10.2025

Written Submissions

Tendered On : 21.11.2025 by the Petitioner.
24.11.2025 by the 4th Respondent.

Decided on : 23.01.2026

Adithya Patabendige, J.

The Petitioners have filed this application, seeking, *inter alia*, a mandate in the nature of a *writ of mandamus* to compel the 1st and 2nd Respondents to conduct an inquiry in terms of **Section 10 of the Foreign Exchange Act No. 12 of 2017**, and a mandate in the nature of a *writ of prohibition* to restrain the 1st and 2nd Respondents from granting any further licenses, approvals, and/or permissions relating to foreign exchange transactions in respect of Nawaloka Polysacks (Private) Limited, Sharjah.

The facts material to the determination of the application may be summarized briefly as follows.

The 1st Petitioner, Nawaloka Polysacks (Private) Limited, (hereinafter referred to as the 1st Petitioner) is a company incorporated under the Companies Act in Sri Lanka. The 2nd Petitioner claims that he is the Chairman/Managing Director and the main shareholder of the 1st Petitioner.

The 1st Respondent is the Director, Department of Foreign Exchange of the Central Bank of Sri Lanka, and the 2nd Respondent is the Central Bank of Sri Lanka. The 3rd Respondent, Nawaloka Construction Company (Private) Limited, is also a company incorporated under the Companies Act in Sri Lanka. The 4th Respondent is the Managing Director of the 3rd Respondent Company. It is common ground that the 2nd Petitioner and the 4th Respondent are siblings.

The 1st Petitioner conducts the business of manufacturing woven polypropylene bags and allied plastic products, and it was granted permission by the 2nd Respondent, as reflected in the letter marked **P3**, to establish a branch of it in Sharjah in 1999. The 2nd Respondent had also granted permission to the 1st Petitioner to remit USD 1.5 million to invest in the aforesaid branch to be established in Sharjah as per the said document **P3**.

The 2nd Petitioner, due to his ill health, decided to appoint the 4th Respondent to manage the branch in Sharjah by the Power of Attorney marked **P4** in 2004.

Even though the pleadings of the Petitioners do not expressly state so, it could be reasonably inferred that there were disputes between the 2nd Petitioner and the 4th Respondent regarding the ownership of Nawaloka Polysacks (Private) Limited, Sharjah.

The Petitioners had come to know that the 3rd Respondent had sought permission to apply for a bank guarantee of USD 550,000 for the branch in Sharjah in 2009, and accordingly, the Petitioners informed the 1st Respondent that the financial controller of the 3rd Respondent sought permission to apply for a bank guarantee of USD 550,000 for the branch in Sharjah.

The 1st Respondent, by the letter marked **P7**, confirmed that the Central Bank permitted the 1st Petitioner to remit USD 1.5 million to establish a manufacturing unit in Sharjah in 1999 and to make an additional investment of USD 356,948 in 2002.

Thereafter, the Petitioners requested an inquiry, in terms of Section 10 of the Foreign Exchange Act No. 12 of 2017, from the 1st Respondent regarding the granting of permission for the aforesaid bank guarantee in 2017.

Although the Petitioners failed to submit any documents regarding the request for the aforesaid inquiry, the 2nd Respondent, by its letter dated 31st August 2017 marked **P9**, informed the 2nd Petitioner and the 4th Respondent that the Central Bank was unable to reach a decision regarding

the ownership of Nawaloka Polysacks (Private) Limited, Sharjah. It further requested that both parties come to an amicable settlement regarding the ownership issue.

According to the Petition, the 3rd and 4th Respondents have instituted an action against the Petitioners, bearing No. DSP/131/2014, seeking, *inter alia*, a declaration that the Nawaloka Polysacks (Private) Limited, Sharjah, was held by the Petitioners in trust for the benefit of the Respondent, before the District Court of Colombo, marked **P5**. An Interim Injunction was granted in favour of the above Respondents, on 6th June 2014, and the said order has been challenged before the Civil Appellate High Court of Colombo in the case bearing No. WP/HCCA/COL/173/2014/LA, marked **P6**.

The learned State Counsel appearing for the 1st and 2nd Respondents informed the Court that they did not wish to file objections as reflected in the minutes dated 14th December 2023. However, they reserved the right to make oral submissions.

According to the written submissions filed on behalf of the 1st and 2nd Respondents on 27th July 2023, prior to the Order made in respect of the issuance of formal notices, their position was that the 1st Petitioner had transferred the sole ownership of Nawaloka Polysacks (Private) Limited, Sharjah, to the 4th Respondent. Based on this, the 3rd Respondent sought approval from the Central Bank for a bank guarantee, which was subsequently approved.

Upon considering the demand made by the Petitioners to the 1st and 2nd Respondents to hold an inquiry under Section 10, it was further stated that, as there was no foreign exchange transaction and the arrangement involved only a bank guarantee, no financial transaction occurred between Sri Lanka and Sharjah. Therefore, the 1st and 2nd Respondents argued that the Petitioners have no right to demand an inquiry under Section 10.

The 1st Respondent, in his motion dated 12th June 2019, tendered an affidavit along with the documents marked **X1** to **X3**. The document marked **X2** is a copy of the board resolution of Nawaloka Polysacks (Private) Limited held on 14th May 2008. It states as follows.

It was resolved that Nawaloka Polysacks Ltd., Sri Lanka, has given the sole ownership of Nawaloka Polysacks (Private) Limited, Sharjah, (F.Z.E) to Mr. H.K. Jayantha Dharmadasa. We, the other Directors, M/s H.K. Dharmadasa and H.K. Upali Dharmadasa of Nawaloka Polysacks

Limited, Sri Lanka, will not be held liable for any dealings or for any borrowings of Nawaloka Polysacks (FZE) Sharjah. We wish him all the best in all his endeavours in the future.

X3 are the License Certificates issued by the Government of Sharjah in respect of Nawaloka Polysacks (Private) Limited, Sharjah. According to the license Certificates dated 03/08/2004, 19/10/2004, 30/10/2005, 18/10/2006, 14/11/2007, 20/10/2008, and 30/10/2013, the owner of Nawaloka Polysacks (Private) Limited, Sharjah, was Nawaloka Construction Co., Ltd., and the Manager was Jayantha Dharmadasa. However, it is important to note that the Petitioners remained silent on the contents of **X1-X3** in their counter objections dated 9th February 2024 and written submissions dated 21st November 2025.

The 3rd and 4th Respondents in their objections dated 13th December 2023, raised three preliminary objections namely;

- The Petitioners' application is seriously misconceived,
- The Petitioners have failed to come to the Courts with clean hands,
- The matters set out in the Petition of the Petitioners contain factual disputes (vide paragraph 3).

The principal argument of the 3rd and 4th Respondents, as per the objections, is that until the ownership of the Nawaloka Polysacks (Private) Limited, Sharjah, is resolved, an inquiry under Section 10 cannot be held, and therefore, the decision to reject the inquiry by the 1st and 2nd Respondents was correct.

When this application was taken up for argument, the principal contention advanced by the learned President's Counsel appearing for the Petitioners was that the 1st and 2nd Respondents were under a statutory duty to cause an inquiry to be held upon the request made by the Petitioners, on the basis that Section 10 is mandatory in nature.

Conversely, the learned Deputy Solicitor General appearing for the 1st and 2nd Respondents, together with the learned Counsel for the 3rd and 4th Respondents, contended that Section 10 is directory and discretionary, and no *writ of mandamus* can be issued to compel the initiation of an inquiry thereunder. Furthermore, the learned Counsel argued that the Central Bank is not in a position to consider the dispute regarding the ownership of Nawaloka Polysacks (Private) Limited, Sharjah.

In response to the ownership issue, the learned President's Counsel appearing for the Petitioners contended that it had been litigated before a Court of Law in Sharjah and decided in favour of the Petitioners. However, notwithstanding this assertion, the Petitioners did not contest the jurisdiction of the District Court to adjudicate the ownership issue of Nawaloka Polysacks (Private) Limited, Sharjah.

As noted earlier in this judgment, I have summarized the pleadings, the written submissions filed by all parties, and the oral submissions advanced by learned counsel.

According to the petition dated 14th December 2018, the Petitioners had initially requested the 1st and 2nd Respondents to hold an inquiry by their letter dated 18th September 2017, marked **P10**. It is also evident that this request was subsequently withdrawn by them, by the letter dated 28th September 2017, marked **P12**. Thereafter, the 2nd Petitioner, by letter dated 25th July 2018, marked **P17**, once again requested from the 1st Respondent to hold an inquiry under Section 10 of the aforesaid Act.

Upon a perusal of **P17**, it is apparent that, apart from the third paragraph appearing on page 3 of **P17**, the contents of the letter predominantly set out disputes relating to ownership and related matters.

For ease of reference, the third paragraph is reproduced below in its entirety.

Later, we found that there was also an attempt by the officials of Nawaloka Construction Co. Ltd. to seek approval for a bank guarantee. By letter dated 07.10.2009 the Financial Controller of Nawaloka Construction Co. Ltd. has informed about the aforesaid alleged change of ownership of the Company, and via their letter, he has also sought approval of the Central Bank for a bank guarantee amounting to USD 550,000 which was to be issued from Nawaloka Construction Co. Ltd, in favour of invest bank to grant banking facilities to Nawaloka Polysacks Ltd. Sharjah. It is also noted that the letterhead used in one of many disputed resolutions is of Nawaloka Polysacks Ltd. which name ceased to exist after February 6, 2008 and renamed as Nawaloka Polysacks (Pvt) Ltd. Therefore, the said documents appear clearly fraudulent and invalid.

The above paragraph makes it clear that the basis for the inquiry under Section 10, as reflected in **P17**, relates primarily to the decision to grant approval for a bank guarantee.

However, paragraph 5 of the Counter Objections of the Petitioners dated 9th February 2024, states as follows:

*While specifically denying the averments pleaded in paragraph 7 of the Statement of Objections of the 3rd and 4th Respondents, the Petitioners specifically state that, **the subject matter of this application** is with regards to the refusal of the 1st and 2nd Respondents to hold an inquiry (as per the statutory demand in terms of Section 10 of the Foreign Exchange Act No. 12 of 2017) concerning the granting of permission for the remittance of USD 1.5 million to the 1st Petitioner with a subsequent additional investment of USD 356,948.00 at the request of the 3rd and 4th Respondents.*

This assertion demonstrates that the stance of the Petitioners regarding the principal cause for requesting an inquiry under Section 10 differs materially between the Petition and the Counter Objections.

The written submissions of the Petitioners dated 28th July 2023 are almost identical to the Petition dated 14th December 2018. Further, the 1st paragraph of the post argument written submissions of the Petitioner dated 21st November 2025 states as follows;

*In this application, the Petitioners are seeking in the mandate in the nature of a writ of mandamus directing the 1st and/or the 2nd, 2A to 2G Respondents conduct an inquiry into the complaint of the Petitioners to ascertain if there has been a violation of the Exchange Control Regulations by the 3rd and/or 4th Respondents, as set out in the letter sent by the Petitioners to the Controller of Exchange, the 2nd Respondent Central Bank (vide. **P10**).*

It is significant that, when drafting the above paragraph, the Petitioners relied on the document marked **P10**. However, as acknowledged by the Petitioners themselves in paragraph 12 of the Petition, the said letter **P10** was expressly withdrawn by them, by their letter dated 28th September 2017, marked **P12**.

The question that arises is whether the Petitioners, having withdrawn the very document (**P10**) relied upon as the foundation of their complaint, can nevertheless demand an inquiry under Section 10 and seek a mandate in the nature of a *writ of mandamus* on the basis of that same document.

Upon careful consideration of the aforesaid inconsistent positions adopted by the Petitioners at different stages of these proceedings, I am of the view that the Petitioners have failed to establish a clear and consistent legal basis for considering a mandate in the nature of a *writ of mandamus*.

Be that as it may, I will now turn to the legal basis of Section 10 of the Foreign Exchange Act No. 12 of 2017.

The issue, based on Section 10, that arises for consideration in this application is whether Section 10 imposes a mandatory statutory duty on the 1st and 2nd Respondents to conduct an inquiry upon receipt of a complaint, thereby justifying the issuance of a *writ of mandamus*, and whether the refusal to do so, as communicated by the decision marked **P9**, is illegal, arbitrary, unreasonable, or *ultra vires*, warranting the issuance of a *writ of prohibition*.

Section 10(1) states as follows.

The Central Bank may, at any time, cause an investigation to be made, of foreign exchange transactions or foreign assets of any authorized dealer or a restricted dealer or any other person, class or classes of persons as the case may be, by an officer of the Department of Foreign Exchange authorized in writing by the Central Bank (hereinafter referred to as an "authorized person") in that behalf.

Interpreting the word “may.” ***Maxwell on The Interpretation of Statutes*** states as follows;

In ordinary usage, “may” is permissive and “must” is imperative, and, in accordance with such usage, the word “may” in a statute will not generally be held to be mandatory. (12th Edition, p234).

However, it is to be noted that in certain instances, under prevailing circumstances, the aforesaid words had been interpreted differently, that is, “may” as “must” and *vice versa*.

N.S. Bindra’s INTERPRETATION OF STATUTES reads as follows;

It is no doubt that the rule of interpretation permit the interpretation of the word “may” in certain context as “shall” and vice versa, namely, permit the interpretation of “shall” as “may.” (9th Edition, p1546).

The decision in *Julius v Bishop of Oxford* (1874 – 80) *ALL ER Rep 43*, in my view, is very useful to interpret the words “may,” “shall,” and “it shall be lawful.” *In the case of Julius v Bishop of Oxford*, the issue was centred around the meaning that should be attached to the words “it shall be lawful.” *Lord Cairns*, states as follows;

The words "it shall be lawful" are not equivocal. They are plain and unambiguous. They are words merely making that legal and possible which there would otherwise be no right or authority to do. They confer a faculty or power, and they do not of themselves do more than confer a faculty or power. But there may be something in the nature of the thing empowered to be done, something in the object for which it is to be done, something in the conditions under which it is to be done, something in the title of the person or persons for whose benefit the power is to be exercised, which may couple the power with a duty, and make it the duty of the person in whom the power is reposed, to exercise that power when called upon to do so. (p47).

According to the principles enunciated in the judgment in *Julius*, *Lord Cairns*, a word becomes mandatory only if;

- The Nature of the Power Conferred,
- Object of the Power,
- The Conditions Under Which the Power is to be Exercised,
- The Persons for Whose Benefit the Power is to be Exercised.

Lord Cairns further stated;

Whether the power is one coupled with a duty such as I have described is a question which, according to our system of law, speaking generally, it falls to the Court of Queen's Bench to decide, on an application for a mandamus. And the words "it shall be lawful" being, according to their natural meaning, permissive or enabling words only, it lies upon those, as it seems to me, who contend that an obligation exists to exercise this power, to shew in the circumstances of the case something which, according to the principles I have mentioned, creates this obligation.

I think that if these principles are kept in mind, it will be found that all the cases on this subject are easily understood and reconciled, and I will refer shortly to the most important of those which

were mentioned to your Lordships before examining further the circumstances connected with the present case. (p47).

This approach was reiterated by the Supreme Court of India in *Pankaj Jain v Union of India*, decided on 23rd February 2018, where the Court, relying on *Julius v Lord Bishop of Oxford*, affirmed that the word “may” is ordinarily permissive and becomes mandatory only where the statutory power is coupled with a duty. It further stated that the enabling words are construed as compulsory whenever the object of the power is to effectuate a legal right.

When the aforesaid principles are applied to the instant application, it is apparent that Section 10 confers an investigative power on the Central Bank, not on a complainant. As explained by *Lord Cairns* under the limb “**something in the conditions under which it is to be done,**” Section 10 does not prescribe any preconditions upon the fulfilment of which the Central Bank is bound to act. It also does not want a receipt of complaint, representation, or allegation for the exercise of such power. The provision expressly states that the Central Bank itself may, at any time, cause an investigation to be made.

Further, in considering the persons for whose benefit the power is to be exercised, it is evident that Section 10 does not identify complainants, investors, shareholders, or any class entitled to demand an inquiry. Another relevant consideration identified in *Julius* is the object for which the power is conferred. Which must be examined in the context of the Act as a whole.

The preamble of the Act states thus;

AN ACT TO PROVIDE FOR THE PROMOTION AND REGULATION OF FOREIGN EXCHANGE; TO VEST THE RESPONSIBILITY FOR PROMOTING AND REGULATING FOREIGN EXCHANGE IN THE CENTRAL BANK AS THE AGENT OF THE GOVERNMENT; TO PROVIDE FOR THE REPEAL OF THE EXCHANGE CONTROL ACT (CHAPTER 423); AND TO PROVIDE FOR MATTERS CONNECTED THEREWITH OR INCIDENTAL THERETO.

Considering the Statute as a whole, together with its preamble, the objects of the Act appear to be as follows.

- Promotion and regulation of Foreign Exchange of Sri Lanka,
- Responsibility vested in the Central Bank,

- The Central Bank acts as the agent of the Government
- Matters connected or incidental thereto.

The Act does not provide for resolving disputes between private parties. It does not create complaint-based entitlements or mandatory investigation upon request. The object of the Act is to enact public regulations relating to Foreign Exchange, not the enforcement of private entitlements.

For the foregoing reasons, it is abundantly clear that Section 10 of the Foreign Exchange Act No. 12 of 2017 does not prescribe any condition precedent, complaint, or circumstance upon the fulfilment of which a private party becomes entitled to demand the initiation of an investigation by the Central Bank. In the absence of such legislatively defined conditions, the word “may” in Section 10 cannot be construed as imposing a mandatory obligation so as to justify the issuance of *writs of mandamus or prohibition*.

The investigative power conferred on the Central Bank by Section 10 of the Foreign Exchange Act No. 12 of 2017 is regulatory and discretionary in character, and the refusal to invoke that power does not, in the absence of a clear statutory duty, constitute illegality or *ultra vires*.

Hence, it is my considered view that the decision contained in **P9** did not violate any legal right of the Petitioners.

Considering all the circumstances aforesaid, I am of the view that the issuance of mandates in the nature of a *Writ of Mandamus* and a *Writ of Prohibition* as prayed for in the Petition of the Petitioners is not warranted, and accordingly, the relief sought by the Petitioners in the instant application is refused.

I make no order as to the costs of this application.

JUDGE OF THE COURT OF APPEAL

Dhammika Ganepola, J

I agree.

JUDGE OF THE COURT OF APPEAL