*   **IN THE HIGH COURT OF DELHI AT NEW DELHI**

%   *Judgment reserved on: 6th March, 2016*
Judgment pronounced on: 29th April, 2016

+   **O.M.P.(I) No.542/2015**

UNITECH DEVELOPERS AND PROJECTS LIMITED ..... Petitioner
Through Mr.Amit Sibal, Sr. Adv. with Mr.Sanjeev Kapoor, Mr.Rajat Jariwal & Mr.Aakash Bajaj, Advs.

versus

ATEN PORTFOLIO MANAGERS PRIVATE LIMITED ..... Respondent
Through Mr.Rajat Navet, Adv.

CORAM:
HON'BLE MR.JUSTICE MANMOHAN SINGH

MANMOHAN SINGH, J.

1. The petitioner in the abovementioned case has filed the petition under Section 9 of the Arbitration and Conciliation Act, 1996 for seeking various interim orders/direction of this Court.

2. On 21st September, 2015, the following order was passed by the earlier Bench which reads as under:-

> "1. Issue notice to the respondent by all modes including registered speed post and/or approved courier on filing process fee within one week returnable on 26th November, 2015. Dasti in addition. The affidavit of service, enclosing the tracking report of the postal authority and/or courier agency be filed by the petitioner at least one week before the next date of hearing.
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> 2. Learned senior counsel for the petitioner submits that the petitioner paid Rs.60 crores during the period 25th March, 2014 to 8th April, 2014 to the respondent who is a portfolio manager for being invested in securities in terms of the portfolio management service agreement dated 24th March,

2014. It is submitted that despite repeated requests and reminders, the respondent has not furnished the particulars of the securities in which the investment has been made and therefore, the petitioner has approached this Court for seeking particulars of the securities in which the respondent has invested the petitioner's money. The petitioner is also seeking an injunction against the respondent from transferring, alienating or creating any third party interest in respect of the investments, funds, assets and receivables of the petitioner.

3. The respondent is directed to disclose the particulars of the securities in terms of prayer (f) on affidavit within one week of the date of receipt of the notice. The respondent is restrained from transferring, alienating or creating any third party interest in respect of such securities till the next date of hearing.

4. Copy of this order be sent to the respondent along with the notice.

5. Copy of this order be given dasti to counsel for the petitioner under the signature of the Court Master."

3. The brief facts of the case in order to decide the petition are that a Portfolio Management Services Agreement dated 24th March, 2014 (hereinafter referred to as the "PMSA") was entered between the petitioner Company and the respondent Company where under the respondent Company was authorized to act on behalf of the petitioner as the portfolio manager and manage the investments/funds/assets of the petitioner. It is pertinent to mention that the PMSA was for an investment upto Rs. 100 crores.

4. The petitioner says that based upon the assurances of the respondent Company, the petitioner during the period of March-April, 2014 invested Rs. 60 crores in terms of the PMSA.

5. The petitioner Company by its letter dated 1st August, 2014 asked the respondent Company to repay the entire investment amount (along with the pending interests etc.) to it at the earliest

and in no case later than 15 business days from the date of the said letter, in view of breach of various clauses on behalf of the respondent Company as the details of the investment amount has not been provided to the petitioner. It is alleged by the petitioner that the respondent-Company in order cover up the gross delay on their part to refund the securities / investment in the petitioner's account under the PMSA, issued a letter dated 25th August, 2014 to the petitioner, wherein it was stated that the respondent Company has decided not to seek renewal of its Certificate of Registration and therefore it desired to terminate the PMSA as per Clause 7 of the PMSA though the respondent required the petitioner to choose one of the two options provided in the said letter within seven days of the receipt of the letter.

6. It is alleged by the petitioner that on 8th September, 2014 Unitech Corporate Parks PLC (erstwhile indirect holder of 60% of equity share capital in the petitioner Company) and IDFC Limited (erstwhile owner of 40% of equity share capital in the petitioner Company), specifically instructed the respondent to refrain from taking any actions / steps pursuant to the letter dated 25th August, 2014. It is further submitted that by way of the said letter, Unitech Corporate Parks PLC and IDFC Limited also sought information regarding the securities / investment made by the petitioner Company under the PMSA but the respondent Company by its letter dated 10th September, 2014, which was in any event evasive, rejected the request made by Unitech Corporate Parks PLC and IDFC Limited. Due to the transfer by Unitech Corporate Parks PLC and purchase by an affiliate of Brookfield Asset Management, Inc. of the 60% shareholding of the petitioner, in November, 2014 the financial

accounts/status of the petitioner Company were frozen until the transaction was consummated.

7. On 9th January, 2015 the petitioner sent a legal notice to the respondent Company wherein it was categorically stated that the respondent Company is obligated to repay the entire investment amount (along with all accruals, benefits, entitlements, or any other beneficial interest), to the petitioner Company. In view of the same, the respondent Company was called upon to repay the entire investment amount along with the beneficial interest etc. to the petitioner Company at the earliest and in no case later than 7 business days from the date of this letter. The petitioner Company also asked the respondent Company to give various information/documents regarding the portfolio of the petitioner Company within 7 days from the date of this letter.

8. In response to the notice dated 9th January, 2015, the respondent Company vide its letter 20th January, 2015 stated that the claims raised by the petitioner Company are false, incorrect and baseless. It was further stated that the respondent is in process of obtaining relevant data in order to provide a detailed response.

9. O.M.P. (I) No. 214 of 2015 titled *"Unitech Realty Projects Limited* v. *ATEN Portfolio Managers Private Limited* was listed for hearing on 19th May, 2015 during the course of the hearing the issue regarding no response to the notice dated 9th January, 2015 by the respondent was mentioned. The statement was made across the bar by the counsel appearing on behalf of ATEN Capital Private Limited (the same counsel appeared on behalf of the respondent of which the respondent is 100% subsidiary) that the respondent has been

advised to provide the information/documents as sought by the petitioner.

10. The petitioner by its letter dated 22nd June, 2015 again called upon the respondent to repay the entire investment amount along with the beneficial interest etc. to the petitioner at the earliest and in no case later than 7 business days from the date of this letter. Being the petitioner further requested the respondent to provide the information / documents specified therein within 7 days from the date of this letter. Being not satisfied with information sought, the petitioner on 18th September, 2015 has filed the present petition.

11. The respondent in compliance with order dated 21st September, 2015 filed the affidavit of Mr. Chandra Prakash Srivastava, who is authorized signatory of the respondent. By the said order, the respondent was directed to disclose particulars of securities in terms of prayer (f) of the petition. It was mentioned in the affidavit that the petitioner is fully aware of the particulars with regard to its portfolio. The details of investments made by the respondent on behalf of the petitioner, which stands credited to petitioner's depository participant account bearing Client ID: 11741651, DP ID: IN300095 with IL & FS Securities Services Ltd. Mumbai, were also mentioned in the said affidavit. The same are read as under:-

S.No.	Portfolio/Investee Company	Par Value(Rs.)	No. of NCDS	Investment (Rs.)
1.	Elkins Project and Financial Advisors Pvt. Ltd.	1,00,00,000	10	10,00,00,000
2.	Feni Precision Equipment Pvt. Ltd.	1,00,00,000	10	10,00,00,000
3.	Koyana Infra	1,00,00,000	10	10,00,00,000

	Developers Pvt. Ltd.			
4.	Lifelong Steel and Alloys Pvt. Ltd.	10,00,000	140	14,00,00,000
5.	Zesty Constructions Pvt. Ltd.	10,00,000	160	16,00,00,000

12. It was also mentioned in the affidavit that after the signing of the PMSA, the respondent had time and again kept the petitioner informed of the status of the investments made by the respondent on behalf of the petitioner in various securities by way of emails, letters and quarterly reports. The respondent had after its termination notice dated 25th August, 2014, issued letters dated 30th September, 2014 and 1st October, 2014. The respondent gave details of all documents executed with respect to the said investments as well as the portfolio appraisal as on 30th September, 2014.

13. The said letters dated 30th September, 2014 and 1st October, 2014 dispatched to the petitioner and its officers/directors, by way of registered post and said letters have been duly received by the petitioner which is evident from the postal receipts and the certificate issued by the postal department with regard to delivery of the said letters. Proof of dispatch of letters dated 30th September, 2014 and 1st October, 2014 along with certificate issued by the postal department confirming delivery thereof have been placed on record. In the letter dated 1st October, 2014, the respondent had duly informed the petitioner that with the termination of the PMS Agreement, the respondent was no longer acting as attorney under the Power of Attorney to maintain and operate petitioner's DP

Account with ILFS Securities Services Ltd. The petitioner was also advised to provide alternate and new set of authorized signatories to ILFS Securities Services Ltd. to access, maintain and operate the said DP Account.

14. It is stated that on account of some *inter se* disputes between the erstwhile shareholders and present shareholders of the petitioner Company (with which the respondent has no connection whatsoever) the petitioner has filed the present petition in order to harass the respondent.

15. The respondent has filed the fresh application being I.A. No. 2891/2016 under Section 152 CPC for correction of typographical mistake in the order dated 27th January, 2016. In view of the details given in the para 2 to 5 of the application, the typographical mistake occurred in the order dated 27th January, 2016 is corrected and the same be read as mentioned in para 4 of the application.

16. The response to the affidavit has been filed by the petitioner by way of affidavit of Mr. Graham Roger Smith wherein *inter alia* it was submitted that pursuant to the said order dated 21st September, 2015 the respondent in partial compliance thereof had filed the affidavit. The petitioner by its letters dated 19th November, 2015 and 9th January, 2016 again asked the respondent to provide it with the following:

a) Information relating to the basis for and on whose advice, the investments were made;
b) The manner in which ATEN PM monitored the investments (as it was required to do under the Agreements) and details of the steps taken in the course of that monitoring;

c) For each NCD for UDPL and URPL; details of the amount paid, the yield, the maturity date and terms of repayment;

d) All documentation in connection with the NCDs including the underlying documentation governing the NCDs and

e) Details of the location of all monies received from UDPL and URPL including any monies repaid to either or to any related companies.

17. It is submitted in the affidavit that the respondent has failed to respond to the letters dated 19th November, 2015 and 9th January, 2016 of the petitioner.

18. In view of such situation, by order dated 27th January, 2016 the directions were issued to the petitioner to appoint an authorized representative for collecting the documents as listed in Annexure-1, which was part of the affidavit within one week from that date.

19. Learned Senior counsel appearing on behalf of the petitioner submits that the respondent has still not provided the full details in compliance with the order dated 21st September, 2015 and thus, deficient in disclosing the particulars regarding the portfolio investment of the petitioner. Both sides have restricted their submissions in the present petition only in respect of details sought by the petitioner. For other reliefs sought, no arguments were addressed by either side. There are two versions before this Court. One version is of the petitioner which is that as per terms of the agreements, the requisite details are not provided. The other version of the respondent is that all the details are given. Irrespective of anything, one thing is very clear that as per agreement, it is obligation of the respondent to provide details which cannot be denied by the respondent.

20. The following details of the documents are to be provided by the respondent to the petitioner by order dated 21st September, 2015. The petitioner after passing of the said order by letter dated 19th November, 2015 requested the respondent to provide the following details/documents:-

S.No.	Documents/information requested	Documents/information not provided as per the case of the petitioner
1.	Information relating to the basis for and on whose advice, the investments were made.	No document/ information is provided. Whereas the respondent was obligated to provide all the details of the transactions including Transaction Documents under the Debenture Subscription Agreements as well as the prospectus or proposal, if any, given by the investee companies.
2.	The manner in which ATEN PM monitored the investments (as it was required to do under the Agreements) and details of the steps taken in the course of that monitoring.	No document/information is provided. Whereas the respondent was obligated to provide all the details of the transactions including transaction documents and financial statements, accounts and all other information under the Debenture Subscription Agreements.
3.	For each NDC for UDPL [and URPL]; details of the amount paid, the yield, the maturity date and terms of repayment.	The documents provided do not provide the details/information regarding the yield from the investment, the interest, the maturity date etc.
4.	All documentation in connection with the NCDs including the underlying	In substance, the documents provided are only the Debenture Subscription Agreement and the Share

	documentation governing the NCDs.	Pledge Agreement and Unattested Deed of Hypothecation related to the said Debenture Subscription Agreements. No other document including the Transaction Documents (as referred to in the Debenture Subscription Agreement) and other security documents have been provided by the respondent.
6.	Details of location of all monies received from UDPL [or URPL] including any monies repaid to either, or to any related companies.	No information/document has been provided in relation to the same.

21. If any of the details as per petitioner is not provided by the respondent, in order to avoid any controversy, let the same be provided again by the respondent, as no harm may cause to them. In view of the above, the respondent is directed to provide complete details of documents as desired by the petitioner within the period of eight weeks from today as per the details referred in letters dated 19th November, 2015 and 9th January, 2016, if the same are in their power and possession. After the said compliance, the respondent shall file an affidavit within two weeks thereafter.

22. The interim protection already granted by order dated 21st September, 2015 shall continue until the order is modified or vacated.

23. The petition is disposed of accordingly.

(MANMOHAN SINGH)
JUDGE

APRIL 29, 2016