Neutral Citation Number: [2019] EWHC 1732 (Comm)

Case No: CL-2017-000542

IN THE HIGH COURT OF JUSTICE
BUSINESS AND PROPERTY COURTS OF ENGLAND AND WALES
COMMERCIAL COURT (QBD)

Royal Courts of Justice
7 Rolls Buildings
Fetter Lane, London, EC4A 1NL

Date: 05/07/2019

Before :

SIR MICHAEL BURTON GBE
(sitting as a Judge of the High Court)

- -

Between :

UCP PLC	**Claimant**
- and -	
NECTRUS LIMITED	**Defendant**

- -
- -

Huw Davies QC and Felix Wardle (instructed by **Skadden, Arps, Slate, Meagher & Flom (UK) LLP**) for the **Claimant**
Andrew Butler QC and Andrew Legg (instructed by **Hugh Cartwright & Amin**) for the **Defendant**

Hearing dates: 14, 15, 16, 17, 20, 21, 23 May

- -

Approved Judgment

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SIR MICHAEL BURTON

Sir Michael Burton :

1. This has been the hearing of a claim by the Claimant, UCP PLC ("UCP"), an Isle of Man company, against the Defendant, Nectrus Limited ("Nectrus"), incorporated in Cyprus, a 100% sub-subsidiary of Unitech Limited ("Unitech"); an Indian real estate company. The claim arises out of an Investment Management Agreement ("IMA") dated 14 December 2006, which was a central part of a business of investing in the Indian real estate sector, by UCP as to a 60% share and Unitech as to a 40% share.

2. The IMA was made between UCP and its 100% subsidiary, a Mauritian company, Candor Investments Limited ("Candor") and Nectrus as part of and contemporaneous with the launch of UCP on the Alternative Investment Market ("AIM"). It is common ground between the parties that insofar as there is ambiguity in the construction of the IMA, upon which resolution of this case depends, resort can be made to documents which form part of the contemporaneous suite of documents and the factual matrix. I am satisfied that two such documents are the AIM Admission Document in relation to the listing of UCP on the AIM and the Board Memorandum on the Financial Reporting Procedures, prepared by KPMG for the AIM listing, dated 14 December 2006 ("FRP"). In these documents references to the 'Company' are to UCP (then called Unitech Corporate Parks PLC) and to the 'Board' are to UCP's Board. Nectrus is described as the 'Investment Manager'.

3. The dispute arises out of the discovery, when UCP was negotiating to sell Candor and its entire Indian real estate portfolio to a purchaser ("Brookfield") in 2014, that very substantial sums of money, which UCP understood to have been placed by way of temporary investment of the surplus of monies borrowed for investment in the portfolio, were lost or 'stranded' in India (the "Stranded Deposits"), consisting of INR 243 crore (a crore being 10 million rupees), £26.3 million at the time of sale. INR 150 crore had been invested or deposited in SREI Infrastructure Finance Limited ("SREI") in January and March 2012, and INR 93 crore first with Aten Capital Private Limited ("Aten Capital") in November – December 2012 and then, all but INR 3 crore, with or through Aten Portfolio Managers Private Limited ("Aten PM") in March to May 2014, in seven entities which have been described by the Claimant as "Sham Entities". These entities, certainly entities of no or little substance, are described by the Claimant in a Schedule to the Claimant's Closing Submissions, prepared by Huw Davies QC and Felix Wardle, with which descriptions Andrew Butler QC, who has appeared with Andrew Legg for Nectrus, was unable to take any issue. I annex this as Appendix 1 to this Judgment, without its detailed footnotes.

4. The sale of Candor to Brookfield went ahead, but with the deduction from the otherwise agreed purchase price of the equivalent of 60% of INR 243 crore, on the basis that UCP would be entitled to pursue recovery of the Stranded Deposits and retain its 60% of the recoveries. The position is that in an arbitration which ensued against SREI, SREI asserted that it was entitled to set off, against the INR 150 crore, an equivalent sum which it had loaned to Unitech. Although it seems that such defence has been unsuccessful, and an awards were made against SREI for INR 150 crore plus interest and costs totalling some INR 75 crore, SREI's challenges in some way continue, and, pursuant to orders of the Calcutta High Court and Indian Supreme Court, SREI in December 2018 deposited an amount equivalent to the awards (but not including post-award interest or costs) with the Calcutta High Court, as to 60% in cash and as to 40% by way of a local bank guarantee. The position has been

complicated by Nectrus bringing an application in India for an injunction to restrain repayment by SREI to the Claimant, in circumstances to which I shall refer. As to the INR 93 crore, INR 3 crore remained with Aten Capital, and, after another arbitration, that sum, or rather UCP's 60% interest in it, has been largely recovered. However as to the balance of INR 90 crore, that appears to have been totally lost amidst the Sham Entities.

5. The Claimant claims the amount of 60% of INR 243 crore deducted from the Brookfield purchase price (less the INR 3 crore recovered) and lost, as UCP asserts, by Nectrus' breach of contract, to which I shall refer. The Claimant has withheld approximately £18 million, otherwise payable by way of distribution to Nectrus as a 13.62% shareholder in UCP, to offset against the loss of the Stranded Deposits, and the estimated costs of seeking to recover them in the Indian arbitrations and satellite proceedings, in a sum now estimated at £5.1 million. The Claimant's claim is for a declaration that it has been entitled to retain the amount of that distribution and/or damages. The injunction proceedings in India, to which I have referred, were by Nectrus seeking to restrain SREI and the Indian recipients from repaying the Stranded Deposits to, inter alia, the Claimant, by reference to the unpaid distribution.

6. At the outset of the hearing, Mr Butler for Nectrus sought to present an argument that recovery of the 60% of INR 240 crore by the Claimant is precluded by reference to the concept of reflective loss (see Johnson v Gore Wood [2002] 2 AC 1). This was not pleaded, but, notwithstanding that, Mr Butler submitted that he was entitled to run the defence, and in the alternative sought permission to amend, albeit at the late stage of the start of the trial. Mr Davies submitted that the defence needed to have been pleaded, and that it was now too late to amend to do so. After hearing submissions, I concluded that the appropriate and fairest course was to allow the amendment, but to split the trial between liability and quantum. Hence the issue of loss, as to (1) applicability of the defence of reflective loss (2) the failure to mitigate, if such be pleaded by amendment (3) recoverability and quantum of the £5.1 million legal costs, was hived off to be dealt with in the event that the Claimant succeeds on liability.

7. The Issues in the case are as to:

   (1) Whether duties are owed by Nectrus as Investment Manager to UCP under and by reference to the IMA.

   (2) If such duties be owed to UCP (and not just to Candor), what is the nature of such duties, and in particular does it extend to the duty to report on and advise in respect of the investment of the surplus borrowings which became the Stranded Deposits?

   Both these questions fall to be decided by reference to the construction of the IMA, although as appropriate in the context of the factual matrix.

   (3) Was Nectrus in breach of such duties in respect of the Stranded Deposits?

   (4) Loss: which has now been hived off as above.

8. A significant feature in the case was the fact that the investment activities were carried out in India, and that (i) UCP had no employees, (ii) Nectrus which, as will be seen, was on any basis under obligations by reference to the

IMA to advise and report in respect of the business of property investment, had no employees and was serviced by employees of Unitech.

9. In the FRP at page 4, the following was recorded:-

> "The *Investment Manager will enter into an Investment Management Agreement with Candor pursuant to which it will be responsible for the management of the Company's investment portfolio and the general oversight of the Company's affairs, including procurement of the day to day services and activities…*
>
> *The Investment Manager, i.e. Nectrus Limited, will be governed by its Board of Directors. However, on need basis and from time to time, Nectrus will have the required technical, marketing and legal support from qualified and competent personnel which would be recorded and shared by Unitech. The following resources have been identified by Unitech.*
>
> - *JP Mehrotra will join in January 2007 and the new CFO will be seconded on the full time basis to Nectrus, will be responsible for the financial reporting, funding, financial and strategic planning, and acting as an interface with audit committee.*
> - *Vineet Mathur, (Head Commercial) – will be responsible for managing the* [Special Economic Zone] *regime, marketing and leasing activities.*
> - *Muneesh Sud (General Counsel, Legal and Corporate Affairs) – will be responsible for corporate and legal compliances, management of funds, SPVs, AIM compliance, etc.*"

10. All these gentlemen were Unitech employees, as were (in due course) Mr Mehrotra's successors, Mr Milhotra and Mr Keswani, assisted by Messrs Goyal, Monga and Adukia, and Mr Sud's successor, Mr Malhotra. When a Nectrus Report was given to the Board of UCP, it was always described as "*a report from Nectrus*", regularly presented by Mr Mathur who would have in attendance Mr Keswani, Mr Goyal, Mr Adukia, Mr Malhotra etc, albeit recorded in the Minutes as "Unitech Limited". Unitech per se had no role at the UCP Board meetings, as Mr Lake of the Claimant explained in evidence, and when so attending, and when delivering their reports, they were doing so on behalf of Nectrus.

11. Issues (i) and (ii) are directed to whether Nectrus owed an obligation to UCP under the IMA, and as to what its obligations as Investment Manager comprised. The Defendant's case was that its duties were owed only to Candor, and that although Nectrus only operated through Unitech employees, Nectrus owed no obligation whether to Candor or to UCP, in relation to the

Stranded Deposits, and that a group of Unitech employees (being the same people as those identified above), called the "Project Management, or PMA, Team", were responsible.

12. The evidence has consisted of oral evidence and a substantial quantity of documents. As far as oral evidence is concerned, I heard the extremely impressive evidence of Mr Donald Lake, the Chairman of UCP's Board, who was appointed as non-Executive Director of UCP on 30 November 2006, and was able to give an overview of the whole story, including his account of the Nectrus Reports to the UCP Board, and of Mr Nicholas Sallnow-Smith, a non-Executive Director of UCP, who joined the UCP Board in June 2011. The latter's role related in particular to investment policy, such that he became responsible, in collaboration with Nectrus and KPMG, who had authored the FRP, for overhauling and revising the reporting processes and establishing a new Treasury Policy. He described his communications with Nectrus, commencing at the UCP Board Meeting of 24 April 2012, when, after the presentation of the Nectrus report by Messrs Keswani and Mathur, he agreed to provide Mr Mathur with a template for him to use as a draft to develop a new Treasury Policy. After a great many drafts discussed with Mr Keswani and Mr Goyal, including the first use of the new format for reporting to the UCP Board in January 2013, the UCP Audit Committee on 26 April 2013 approved the new Treasury Policy (as reported to the UCP Board at its board meeting on the same day), and concluded that, in accordance with the new Policy, new reports should be adopted for use at the July 2013 Board Meeting. Mr Sallnow-Smith's evidence, which I accept, was that the UCP Board decided in April to adopt the Policy from July 2013.

13. Both of them described how they had no knowledge of the nature of the Stranded Deposits until Brookfield raised the problem in 2014. I accept the evidence of Mr Lake and Mr Sallnow-Smith in its totality.

14. The evidence for the Defendant was more problematic:-

    (i) No evidence was adduced at all from those involved, such as Mr Mathur, Mr Keswani, Mr Adukia, Mr Monga or Mr Goyal, who had, as described by the Claimant's witnesses, carried out Nectrus' obligations under the IMA. All of them are still alive and available in India, because Mr Malhotra, who did give evidence, said that he had spoken to most of them. Mr Adukia remains employed by Unitech, and Unitech remains the 100% ultimate owner of Nectrus. None of them were called, and no Civil Evidence Act notices were served in respect of any statement emanating from them. Mr Butler submitted, on the basis of Mr Malhotra's evidence, that few people connected with Unitech would be willing to give evidence in legal proceedings. The fact remains that those who could have given an account, because of their close involvement, from the Defendant's point of view have not given any evidence to rebut the case for the Claimant that in relation to the breaches alleged they performed Nectrus' services. This could be called an *argumentum ex silentio*, a conclusion to be drawn from an absence of evidence.

(ii) The only witnesses called by the Defendant were Mr Malhotra, formerly an in-house lawyer employed by Unitech, and since November 2014 in independent practice, but advising Unitech and/or Nectrus, and Mr Mahajan, Executive Vice-President of Unitech until his retirement in 2017 and now a consultant, who was appointed by Unitech to the Boards of the two Indian companies established for the purpose of the Indian investments, Unitech Developers and Projects Limited ("UDPL") and Unitech Realty Projects Limited ("URPL"). They were both unimpressive witnesses. Neither of them had any direct evidence to give as to the investment advisory services provided by Nectrus, or as to the circumstances of the Stranded Deposits, and Mr Mahajan had hardly any knowledge of the IMA, or even of Nectrus itself. Both of them asserted that the Boards of those Indian companies made decisions based upon the advice of something called the "PMA Team". Neither of them were able to identify the nature of this team, its membership or, although they both considered that the PMA Team had had meetings, any documentary evidence whatsoever that even referred to its existence. I do not accept that evidence.

(iii) Two brothers, Mr Ajay Chandra and Mr Sanjay Chandra, were and are Managing Directors/Chief Executives of Unitech, and Mr Sanjay Chandra was a director of Nectrus. Both of them provided witness statements, but both are in prison in India. Although belated arrangements were made by the Defendant by which the two brothers could give evidence by video link from prison in India, in circumstances which I describe in my judgment of 21 May, such arrangements could not be put into effect, and I had to accept that their witness statements would stand without their being cross-examined. In relation to one matter in particular, with which both dealt in their witness statements, I found what was said in those statements particularly unpersuasive. In relation to one particular investment, by way of a structured note in 2007, advised by Mr Sanjay Chandra as director of Nectrus (as Mr Mehrotra confirmed in a 24 May 2007 email), which had been particularly catastrophic, leading to a loss of approximately $10 million, Mr Lake gave evidence, as indeed recorded in the UCP 2009 Annual Report, that Nectrus accepted responsibility in that amount by way of paying compensation; however the brothers, uncross-examined in the circumstances described above, stated that Nectrus had agreed to pay that sum to UCP in order to avoid any embarrassment to the UCP board. I do not accept this. In their witness statements, neither of them explained the circumstances of the Stranded Deposits, even though it seems that Mr Ajay Chandra was involved in at least five of the Aten PM placements, and Mr Sanjay Chandra unpersuasively sought in his witness statement to sidestep his own contemporaneous statement, in an email of 14 February 2014, that Nectrus was *"being paid to perform the executive function, which was never envisaged to be performed by any other party"*.

The contractual documents

15. The relevant clauses or sections of the IMA itself, made between Nectrus (described as the *"Investment Manager"*), Candor and UCP are as follows, after a recitation that:

> *"*
>
> *(A) Candor wishes to retain the Investment Manager to provide or procure the provision to Candor of real estate investment advisory services and related advice (including investment recommendations) in respect of the Properties.*
>
> *(B) Candor and the Investment Manager have agreed that such services will be provided as from the Effective Date on the terms and subject to the conditions set out in this Agreement."*
>
> *"2. APPOINTMENT AND REMIT OF THE INVESTMENT MANAGER*
>
> *2.1 Candor hereby appoints the Investment Manager to provide or procure the provision to Candor of the Services specified in Schedule 1 on the terms and subject to the conditions set out in this Agreement. The Investment Manager hereby accepts such appointment and undertakes to perform the Services and any other obligations contained in this Agreement.*
>
> *2.2 The Investment Manager agrees to provide the Services to Candor and agrees to make itself available to consult with and where required to provide advice to Candor with respect to the Services so provided at all reasonable times, upon the reasonable request of Candor.*
>
> *2.3 The Investment Manager hereby warrants to Candor that it shall perform its duties under this Agreement promptly and with due care, skill, and diligence. The Investment Manager acknowledges that the foregoing warranty will be relied upon by Candor with respect to its retention of the Investment Manager.*
>
> *2.4 In carrying out its obligations under this Agreement the Investment Manager will provide the Services in accordance with:*
>
> *(a) all applicable laws and regulations as are relevant to the Investment Manager's duties and responsibilities hereunder;*
>
> *(b) applicable codes of practice or of professional conduct; and*

(c) all reasonable and proper orders, directions and requirements of Candor which may be given in relation to the Services where these do not conflict with Sections 2.4(a) and 2.4(b).

……

3. THE SERVICES

3.1 The Investment Manager shall provide the Services specified in Schedule 1 from the Effective Date."

Schedule 1 "The Services" contains the following material provisions:

"1. Asset Management and Advice

The Investment Manager shall:

.....

(c) provide asset management advice to Candor in relation to the Portfolio and the Target Assets (as appropriate) including:

(i) monitoring changes in the market environment;

(ii) monitoring the potential for improving net operating income and asset value (in respect of Target Assets as reasonably determined taking into consideration the advice of a third party professional valuer; and

(iii) in respect of the Portfolio only, conducting reviews to evaluate investment performance (including comparison of the asset performance relative to the Investment Policies and Procedures, and the market outlook);

.....

(f) serve as a consultant with respect to periodic review of the Investment Policies and Procedures and monitor the compliance of the investment in the Properties, borrowings and other activities with the Investment Policies and Procedures."

In this regard the definition in clause 1 of "Investment Policies and Procedures" reads:

"the investment policies and procedures of UCP as set out in the Admission Document and as amended and

adopted from time to time by the board of directors of UCP."

"4. REFINANCINGS AND OTHER FINANCIAL TRANSACTIONS

The Investment Manager shall, as appropriate:

(a) review the borrowing terms entered into by each Investee Company;

(b) consider the options available to refinance current borrowing terms of each Investee Company; and

(c) identify appropriate financing and refinancing options to Candor.

5. MONITORING

The Investment Manager shall as and when requested by Candor, identify one or more Project Managers to provide project management services in respect of the Properties. The Investment Manager shall negotiate the terms of agreements to be entered into between the Project Manager and/or Candor and/or an Affiliate of Candor, and shall monitor the Project Manager's performance under the terms of such agreements and keep Candor advised thereof."

Returning to the main body of the IMA:

"5. FEES AND EXPENSES

5.1 In considerations of the Services (other than those described in Section 5.2 below) to be performed by the Investment Manager, Candor shall pay the Management Fees as set out in Schedule 2.

5.2 In consideration of the identifying and recommending of any Investment in any Acquired Assets or Target Assets, Candor shall pay the Performance Fees based on the performance of such Investments as set out in Schedule 2.

5.3 Candor shall pay or procure the payment to the Investment Manager of the Reimbursable Expenses relating to the Investment Manager's obligations under this Agreement, within 30 Business Days of receipt of a claim for payment, together with all reasonable supporting documentation (including receipts) in

respect of the Reimbursable Expenses from the Investment Manager.

5.4 Notwithstanding any other provisions of this Agreement, the Investment Manager shall receive no fees in respect of any Acquired Assets not recommended to Candor by the Investment Manager.

.....

7. TERM AND TERMINATION OF AGREEMENT

.....

7.2 Termination

(a) The Investment Manager shall have the right to terminate this Agreement:

(i) with immediate effect upon the Insolvency of Candor or UCP; or

(ii) with immediate effect if Candor or UCP commit a material breach of any term of this Agreement, if such breach is not capable of remedy; or

(iii) upon 60 Business Days' written notice to Candor and UCP if Candor or UCP commit a material breach of any term of this Agreement, unless within 30 Business Days after notice thereof by the Investment Manager such breach shall have been remedied.

(b) Candor shall have the right to terminate this Agreement:

(i) with immediate effect if there is a Change of Control of the Investment Manager; or

(ii) with immediate effect upon the Insolvency of the Investment Manager or UCP; or

.....

(v) upon not less than 12 months' written notice to the Investment Manager upon the passing of a resolution by the shareholders or board of directors of UCP to commence a winding-up or liquidation of UCP ...; or

(vi) upon 12 months' written notice to the Investment Manager if 75 percent or more of the

shareholders of UCP voting in a general meeting pass a resolution to procure termination of this Agreement.

8. CONFIDENTIALITY

8.1 Confidentiality

Subject to the provisions of Sections 8.2 and 8.3 each Party:

(a) shall treat as strictly confidential and use solely for the purposes contemplated by this Agreement, all information in any form, whether technical or commercial, obtained or received by it as a result of entering into or performing its obligations under this Agreement and relating to the negotiations relating to, or the provisions or subject matter of, this Agreement ("Confidential Information"); and

(b) shall not, except with the prior written consent of the Party from whom the Confidential Information was obtained, publish or otherwise disclose to any person any Confidential Information except for the purposes contemplated by this agreement.

12 EXCLUSIVITY

During the term of this Agreement, the Investment Manager shall not act as adviser to others or perform investment management or other services for any person or entity other than Candor or any Investee Company and, other than as provided for in this agreement, shall not conduct any other business including making investments for its own account or the account of any other person or entity."

[This was amended in circumstances described in the Unitech Board Meeting Minutes of 30 April 2007, namely : "This would enable Nectrus Limited to invest in holding company interests for Unitech Limited in non-conflicting projects with UCP".]

……

"13.5 Further Assurances

The Parties hereto agree that they shall from time to time at the reasonable request of either of them execute and deliver such Instruments and take such further action as may be required to accomplish the purpose of this Agreement."

16. The relevant parts of the FRP to which I have not yet referred are as follows:

> *"2.2 ...*
>
> *Nectrus Limited (The "Investment Manager"), has been appointed to provide services as set out below to the Company via the Company's subsidiary Candor ...*
>
> *(ii) 2.4 Investment Policy*
>
> *The Board is ultimately responsible for the determination and supervision of the investment policy of the Company and will undertake the approval of investment opportunities sourced and recommended by the Investment Manager. A summary of the procedure for the approval of new investments is set out below. The Board will also supervise the monitoring of existing investments.*
>
> *(iii) 2.5.1 Risk Assessment*
>
> *The key risks to be managed by the Board relate to the selection of projects, the stability of any partners, the liquidity of the underlying investments, the safeguarding of invested funds, and reliance on the Investment Manager (and its key personnel) for advice and assistance in execution.*
>
> *(iv) 2.10 Monitoring of existing investments/financings*
>
> *The Investment Manager will report to the Board on the progress of existing financings on a quarterly basis including confirmation of covenant compliance."*
>
> *In Appendix 3 of the FRP, there are described the Responsibilities of the Investment Manager by reference to the IMA, and Appendix 4 "Key Personnel within Investment Manager" gives a similar list of people as appears earlier in the FRP, set out in paragraph 9 above, with the additional information that "a new chief Financial Officer will join in January 2007 ... After joining Unitech he will be seconded to Nectrus Limited on a full time basis and he will act as the main interface with the audit committee"*

17. I finally refer to the AIM Admission Document, of which the following are the most relevant extracts:-

> *(i) "The Investment Manager*

Nectrus Limited, a Cyprus-incorporated affiliate of Unitech, has been engaged to provide non-binding investment advisory services to Candor, a subsidiary of the Company. Pursuant to the Investment Management Agreement dated 14 December 2006 between the Company, Candor and the Investment Manager, the Investment Manager has agreed to provide real estate investment advisory services and related advice, including investment recommendations and real estate management services, in respect of properties owned (directly or indirectly) by the Company and in respect of future real estate investment opportunities in consideration for management and performance fees."

(ii) "Investors must rely on the Company, through its Directors acting on the advice of the Investment Manager, to identify and acquire suitable future investment properties or projects."

(iii) "In addition, the Investment Manager acts exclusively for the Company and has no source of revenue other than the fees payable under the Investment Management Agreement. In the event that the Investment Manager fails to perform its obligations under the Investment Management Agreement, it may have insufficient assets to meet any claim for damages from the Group."

(iv) "Nectrus Limited, an affiliate of Unitech, has agreed to provide investment management services to the Company with respect to the identification, structuring and execution of potential investment opportunities and in connection with the implementation of the Company's investment strategy."

(v) "1. INVESTMENT MANAGEMENT

Nectrus Limited (the Investment Manager) is a private company limited by shares and incorporated and registered in Cyprus. The board of directors of the Investment Manager consists of three directors including Sanjay Chandra, Managing Director of Unitech.

The Investment Manager has been engaged to provide non-binding investment advisory services to the Company and to assist in managing the Company's assets. Pursuant to the Investment Management Agreement dated 14 December 2006 between the Company, Candor and the Investment Manager (the "Investment Management Agreement"), the Investment

Manager has agreed to provide real estate investment advisory services and related advice, including investment recommendations and real estate management services, in respect of properties owned (directly or indirectly) by the Company and in respect of future real estate investment opportunities.

…

Investment Manager's Scope of Services

The Investment Manager's responsibilities shall include:

…

providing advice on any investment opportunities, disposal proposals and other transactions which the Investment Manager considers as potential investments for the Company, having regard to the Company's investment policies;

serving as a consultant with respect to periodic reviews of the Company's investment policies and procedures and monitoring the compliance of the investments, borrowings and other activities with the investment policies and procedures;

...

reviewing borrowing terms and identifying appropriate financing and refinancing options for Candor and its subsidiaries;"

"Investment process

The Investment Manager will liaise, on the Company's behalf, with such persons in relation to investment opportunities, sales proposals, and other transactions which the Investment Manager considers, with regard to the Company's investment policies and procedures, to be suitable investments for the Company."

18. There were also two Project Management Consultant Appointment Agreements ('PMA') between each of the two Indian companies URPL and UDPL and Unitech and two subsidiaries of Candor, both dated 14 December 2006, by which Unitech was appointed Project Management Consultant in relation to the various Indian projects, with an obligation to procure proper and timely completion of those projects, and on the basis of a fee of 5% of the total construction cost (as opposed to Nectrus' fee under section 5 and Schedule 2 of the IMA, which was a management fee of 2% of the book value

of the equity capital of the Indian Property companies, and percentage performance fees relating to the net cash flow generated by the projects).

19. In relation to my conclusion as to the construction of the IMA with regard to resolution of the first two issues, it has been difficult to shut my mind to the evidence, particularly appearing clearly from the documents, but also from the evidence of Mr Lake and Mr Sallnow-Smith, with regard to the work actually done, and the obligations actually fulfilled, by Unitech employees, whom for entirely understandable reasons, the Claimant regarded as acting on behalf of, or as being seconded to, Nectrus. Nevertheless I have sought to be loyal to the authorities of which I have been reminded by Mr Butler, relating to not construing contracts by reference to subsequent conduct (**James Miller & Partners Limited v Whitworth Street Estates (Manchester) Limited** [1970] AC 583**)**. Helpful though some of the subsequent evidence would have been but for such strictures, I have been astute to resolve the issues by reference to the IMA itself and the contemporaneous factual matrix described above. In relation to services which were in fact supplied and reports which were in fact given to the UCP Board by people who were employees of Unitech, the correct approach has been to conclude whether in doing so they were supplying services which Nectrus was obliged to supply under the IMA. I turn then, with the benefit of the rival submissions by counsel, to my conclusions as to the first two issues.

20. I set out the rival contentions by reference to the IMA itself, as to whether Nectrus owed relevant duties to UCP:-

(1) Mr Davies' best point is that UCP is a party to the IMA, and is plainly therefore likely to be entitled to enforce the Defendant's obligations under it. Mr Butler points to the preambles, and to the fact that by sections 2.1 and 2.2 the services are to be provided to Candor, and submits that the reason for joinder of UCP to the agreement may be in order to provide rights and obligations of confidentiality under section 8. Mr Davies submits that this is far too limited a purpose and effect of UCP being joined.

(2) Mr Butler relies upon the fact that the warranty in section 2.3 is only given to Candor.

(3) Mr Davies points to the involvement of UCP in section 7, by way of the significant role of UCP in the termination events. Mr Butler submits that that makes it less necessary for UCP to have a right to enforce the agreement.

(4) Mr Butler points to the exclusivity provision in section 12, which makes no mention of UCP. Mr Davies submits that the section could not possibly have been intended to impact upon Candor's parent UCP, and relies upon the amendment which made this clear.

(5) Mr Davies relies on the obligations of Nectrus relating to compliance with the Investment Policies and Procedures in Schedule 1 clause 1(c)(iii) and (f), which are defined, as set out above, by reference (inter alia) to the

Treasury Policy, as defined in the AIM Admission Document, which is that of UCP.

21. There is plainly ambiguity by reference to the rival constructions. When I consider the factual matrix (see paragraph 2 above), namely the FRP and the AIM Admission Document, there is the plainest support for the Claimant's case:-

(i) There is constant reference to the services to be provided by Nectrus to the Company, namely UCP, and to the Board, being the Board of UCP. These services involved, for example as appears in paragraph 16 (ii) (iii) and (iv) and 17 (ii) (iv) (v) and (vi) above, advising the UCP Board on investment opportunities, and safeguarding and monitoring its invested funds.

(ii) As set out in paragraph 16 (i) above, there is the helpful description of Nectrus being appointed to provide services to the Company via Candor; and in 17(iii) the Investment Manager's exclusive role for the Company, which, it is said, might leave it, if it failed to perform its obligation under the IMA, with insufficient assets to meet a claim for damages *"from the Group"*.

22. I am satisfied that the proper construction of the IMA is that, as a party to it, UCP is entitled to enforce the obligations of Nectrus to provide the stipulated services to Candor, and that Nectrus agreed with UCP and Candor that it would perform those services for Candor. The fact that UCP is Candor's parent may provide a need for specificity in relation to termination events, but does not prevent, but rather informs, the right of UCP to enforce Nectrus' obligations. The obligations relevant to this case are, with one exception to which I shall turn, all plainly explicable by an agreement between UCP (and Candor) and Nectrus that Nectrus will provide the services (sections 2 and 3.1), will provide them in accordance with all reasonable and proper orders, directions and requirements of Candor (section 2.4(c)), will take into account/comply with the Investment Policies and Procedures (Schedule 1 clause 1(c)(iii) and (f)), and will identify appropriate financing and refinancing options to Candor (Schedule 1 clause 4 (c)). This entitles UCP to enforce those obligations.

23. The only section which is more difficult to accommodate to this construction is section 2.3. There are two answers:

(1) that it is simply a personal warranty owed only to Candor; or

(2) that Nectrus has agreed with UCP that it gives that warranty to Candor.

24. The success of the claim in this case does not depend on UCP being able to rely on that warranty, as will be seen, but I return to this in paragraph 34 below.

25. The duty of Nectrus said to have been breached in this case is then said to fall within its obligations to UCP, as so construed under the IMA. Nectrus having advised the UCP Board to take substantial borrowings from an entity called

IndiaBulls, more than was immediately required before investment, but on the basis that the balance not immediately required would be invested *pro tem*, there was a duty to advise (and report) in relation to what was done with such surplus.

26. Mr Butler submits there was no duty on Nectrus so to advise or report. Insofar as there is any evidence provided by the Defendant as to what occurred, the services were carried out by Unitech employees, albeit the same Unitech employees who did perform services on behalf of Nectrus and submitted Nectrus' reports to the Board of UCP:

(i) They were members of the "PMA Team", to which I have referred in paragraphs 11 and 14 (ii) above.

(ii) Any obligation was owed not under the IMA but under the PMAs.

(iii) There was some inhibition upon Nectrus under Indian law from acting as advisers.

(iv) Nectrus' services were limited to property investment and building up the portfolio.

27. It seems to me clear that if the Unitech employees, Messrs Goyal, Mathur, Keswani etc., were carrying out services which were within the ambit of Nectrus' obligation under the IMA, then they were acting on behalf of Nectrus. The obligations under the IMA all plainly applied to the placement of the surplus funds, not least:

(i) identifying appropriate financing and refinancing options (Schedule 1 clause 4(c));

(ii) monitoring compliance with the Investment Policies and Procedures i.e. the Treasury Policy (to which I will return below) (Schedule 1 clause 1(c))(iii) and (f));

(iii) complying *with all reasonable and proper orders, directions* etc (section 2.4)(c), again relating to the Treasury Policy;

all this recompensed by the substantial performance and management fees of over £1.1 million per quarter.

28. As for the points made by Mr Butler set out in paragraph 26 above: -

(i) I have concluded that there was no "PMA team".

(ii) The relevant services in issue in this case were under the IMA and not the PMAs. They did not relate to any project, and were not remunerated by reference to a percentage of construction costs, but by reference to the fees provided by the IMA, as Mr Monga (copying Mr Mathur) emphasised in an email to Mr Lake of October 2013 (and see also Mr Sanjay Chandra's words set out in paragraph 14 (iii) above). In any event, by Schedule 1

clause 5 of the IMA, Nectrus was required to monitor the performance of the Project Manager under the PMAs.

(iii) There has been no evidence produced before me of any Indian law imposing any inhibition upon the provision of the contractual services by Nectrus, although I have no doubt that the use of the word 'non-binding' advice may well arise in that context, which would be of no relevance to the facts of this case. In any event by section 6(b) of the IMA Nectrus warranted that it had full right, power and authority to enter into and perform its obligations under the IMA.

(iv) It is plain from the IMA, but in particular from the FRP and the AIM Admission Document, that the Investment Manager's obligations extended beyond selection and supervision of a property portfolio, but included related advice and services. This is clear from the passages quoted above, including reference to "related advice, including investment recommendations" and "identifying appropriate financing and refinancing options".

29. I have no doubt that reporting and advising in relation to the placement of the surplus funds received from IndiaBulls, and not yet invested in property, was part of Nectrus' obligations.

Breach of duty

30. I begin with consideration of the Claimant's Treasury Policy, in whose formulation and adoption Nectrus, by its Unitech employees, including Messrs Goyal, Mathur, Adukia and Keswani, not to speak of Mr Sanjay Chandra, as Director of Nectrus, played an important role, as described by Mr Sallnow-Smith, whose evidence I have accepted, and as appears from the documents. I have discussed the brief history of the adoption of the Treasury Policy in paragraph 12 above. The particular significance of whether and when it was adopted by the UCP Board is by reference to the definition of "Investment Policies and Procedures", set out in paragraph 15 above, because of the express obligations of Nectrus in relation to them, in Schedule 1 clause 1(c)(iii) and (f), there set out. As to being adopted by the UCP Board, I am satisfied that, as set out in paragraph 12 above, they were so adopted in April and/or July 2013, but in any event it was one of the agreed facts for the purpose of this trial, set out in the Agreed List of Common Ground and Issues at paragraph 10, that "UCP had a Treasury Policy from April 2013". If, contrary to my conclusion, it was not adopted, then compliance with it was certainly part of compliance with "all reasonable and proper orders, directions and requirements of Candor" within section 2.4(c) of the IMA.

31. The Treasury Policy, in place in April and/or July 2013, with which Nectrus was required to comply, and/or conformity with which it needed to evaluate, was in material respects as follows, as contained in the "Group Treasury Manual 30 April 2013", whose purpose was described as setting out *"the Group policies, procedures and guidelines and reporting for Treasury management for UCP PLC and its subsidiaries"*:

"2.2 Policies

- *The Group should only maintain bank accounts and facilities with reputable banks…*

2.3 Banks

- *Only maintain facilities with reputable banks or financial institutions and Non-Banking Financial Corporations ("NBFCs")*

- *For short term deposits (in respect of available deposits in a single SPV exceeding INR250m) the maximum amount invested in a single institution should not exceed INR500m…. Beyond these limits, UCP board approval is required.*

5. Utilisation of surplus funds.

5.1 Introduction

- *Surplus funds will be generated as the SPV projects develop. The objective will be to utilize these funds in the most efficient way.*

- *The use of surplus funds will need to take account of credit risk, counter party risk and liquidity risk.*

- *Surplus funds can be utilized for project cross-funding, mobilisation advances, dividends and share buy-backs.*

5.2 Policies

- *Ensure all assets are preserved and maximise the return on surplus funds.*

- *Ensure that any investments acquired with surplus funds are permitted investments.*

- *The UCP board needs to approve all uses of surplus funds covering permitted investments …*

5.3 Permitted Investments

- *Categories of permitted investments must be approved by the UCP Board.*

- *Permitted investments approved by the board are bank deposits, mutual funds, bonds and inter-SPV transfers.*

- *Permitted investments should be short term (<1 year)*

8 Group organisation and responsibilities

8.4 Management responsibilities

- *Nectrus/Unitech management will be responsible for the implementation of all policies, procedures and guidelines at SPV level.*

9 Management Information

9.1 Introduction

- *The provision and timely and accurate financial information in relation to the Treasury area is fundamentally important.*

9.2 Policies

- *A formal Treasury report will be submitted by the Investment manager to the Audit Committee on a quarterly basis."*

'Sham Entities'

32. There is no doubt that placing monies with the Sham Entities, whose characteristics, not challenged by the Defendant, are set out in Appendix 1, failed to comply with all or any of these requirements of the Treasury Policy, particularly in relation to "utilisation of surplus funds", constituting also obviously inappropriate financing and refinancing options, within the IMA Schedule 1 clause 4 (c). Mr Butler submits that it was necessary for the Claimant to adduce independent expert evidence in order to support a case that no reasonable investment manager would have advised (non-bindingly or otherwise), or done other than recommended against and prevented, such obviously inappropriate investments. He also submitted that business practice is different in India, and that placement in such investments, attracting very high levels of interest (not in the event paid) could be justified. But this was, as set out above, not intended to be a speculative investment, but a place to 'park' surplus funds, pending their investment in the property portfolio.

33. Mr Sallnow-Smith was very persuasive in this regard in his evidence on Day 3:

> *"A… If what we were trying to do as UCP is put surplus capital with a portfolio manager, that would take high equity risk on start-ups in India, then this type of business might have been put forward to us. I am sure that is what Aten PM's business was. But that is not what we were doing. We were trying to place short term bank deposits and get a reasonable yield. These were as far as you can possibly imagine from that. And the only reason we didn't say no to it was because it was hidden from us by the manager.*
>
> *Q … But you were also getting what were, by British standards, probably fantastic rates of return, weren't you?*
>
> *A … We never got paid it, as I understand it.*
>
> *Q… The monthly interest payments were very high.*
>
> *A… You would expect that if you were taking very high equity risks on a start-up portfolio, but that is not what we were in business to do and that is not what the Treasury Policy said the manager should be doing, and they were breaching it.*
>
> *…..*
>
> *A…The idea that that is within a million miles of being compliant with our Treasury Policy makes no sense at all.*
>
> *… Without actually doing real due diligence on them, you wouldn't know what actually the truth is at all. The fact that their balance sheets move around so fast and there is so much money being funnelled through to a whole series of other people would strike me, as a layman, that these are not just genuine construction businesses. They are being used as a conduit for money to certain people."*

34. In effect he said that they were investments which should not have been touched with a bargepole. I do not consider that it requires a report from an independent expert witness for me to reach that conclusion. It is blindingly obvious. If it were necessary for me to conclude that in addition to breaches of the specific clauses to which I have referred, UCP can enforce the warranty in Section 2.3 that Nectrus *"perform its duties…with due care, skill and diligence,"* I would so conclude. There is thus no need for the implication of a term as to due diligence and due care and skill in relation to the performance of Nectrus' services to UCP, but if necessary I would also so conclude, and that Nectrus is in breach of it.

35. The issues which then remain are (i) whether the investments were made when the Treasury Policy was in place (ii) whether they were placed by or with the knowledge of Nectrus. The original investment in Aten Capital of INR 93 crore was placed in 2012 and was not raised until, briefly and inadequately, Nectrus' report of 15 January 2013, and was extended in March 2013, again not reported to UCP. However, the significant fact is that the funds were transferred on by or through Aten Capital to Aten PM (short for Portfolio Manager, which was not explained to UCP until much later) in parcels between March and May 2014, INR 90 crore significantly exceeding the investment cap of up to INR500m per single institution for short term deposits. This was not reported to the UCP Board, and took place at a time when UCP was in fact seeking to collect and consolidate its assets for the sale to Brookfield, as Nectrus knew, on the evidence of Mr Lake, which I accept. But, above all, the 7 entities to which the INR 90 crore was transferred were, as Mr Sallnow-Smith described them, "thoroughly perilous". Nectrus continued to report the funds as effectively deposits in a bank account. Mr Goyal, who was closely involved with the placement of the Sham Entities, never revealed their characteristics, and was not called to give evidence to justify them. Mr Butler accepted that the Sham Entities were "companies of straw".

36. All the placements with the Sham Entities post-dated the Treasury Policy. On 25 August 2014 Aten PM informed UDPL and URPL that it was closing its operations, between 3 and 5 months after accepting the investments.

37. Nectrus reported the obtaining of the IndiaBulls funds to the UCP Board in January 2012. I am satisfied that the placement of a substantial quantity of the surplus in the Sham Entities was known to the Nectrus employees, in particular Messrs Goyal and Keswani, and they caused or permitted investment in them, and did not advise that they should not have been considered, and failed to report upon them, resulting in the loss of the monies. Nectrus failed in every respect in the obligations expected of the Investment Manager.

SREI

38. The INR 150 crore invested in SREI was however quite a different matter. The monies were invested before the Treasury Policy was adopted, and, though not reported at the time, were discovered by KPMG in June 2012. The investment is said by the Claimant to have been inappropriate and not 'liquid', in the sense of not easily recoverable, but as they had already been placed before the introduction of the Treasury Policy and the first extensions of the SREI ICDs in January and March 2013 were also prior to the Policy, the Claimants must rely upon the obligation in the Policy once instituted in relation to the preserving and maintaining of the monies.

39. In the pleadings, and more fully in the opening skeleton, the Claimant complained about the fact, which eventually led to the dispute with SREI with regard to set-off referred to in paragraph 4 above, that when the investment was placed with SREI there had been lending by SREI to Unitech. In the course of his closing submissions, Mr Davies sought and obtained permission

to amend to rely on this allegation, which had not been previously expressly set out, as follows: -

> *"36A.With respect to the SREI ICDAs, Nectrus failed to disclose to UCP, whether in advance of the investments being made, or extended, or at any other material time, that Unitech Ltd had borrowed significant sums from SREI. This included a loan of Rs. 150 crore from SREI to Unitech Ltd made in, or around, January 2012. The loans from SREI to Unitech Ltd resulted in a material risk that SREI (i) would seek to treat Unitech Ltd's borrowings as related to UDPL's lending and (ii) seek to offset one against the other, which is what happened: see, paragraph 40(a) below. As set out at paragraph 22 of the Reply, UCP only became aware of this conflict of interest ahead of the sale of Candor to Brookfield in 2014. Had Nectrus informed UCP about Unitech Ltd's borrowings from SREI before the SREI ICDAs were entered into or extended, UCP would not have authorised the same.*
>
> *36B. Nectrus knew about Unitech Ltd's borrowings from SREI at all material times, including at the point the SREI ICDAs were made and extended. This is evident because (inter alia) (i) the same individuals acted for Nectrus and Unitech Ltd; (ii) Sanjay Chandra was a director of Nectrus and a managing director of Unitech Ltd throughout the material time; and (iii) Sanjay Chandra qua, Nectrus Director told the Chairman of UCP on, or around, 4 June 2014 that Unitech Ltd had substantial exposure to SREI and said words to the effect that "SREI would no doubt be tougher on Unitech if they (SREI) repaid the UDPL deposit" (as recorded in the minutes of the meeting of UCP's Independent Directors on 5 June 2014)."*

40. Because neither of the two Chandra brothers, and neither Mr Goyal nor any of the relevant men who provided Nectrus' services, were called, the allegations could not be put to them, and I am left with the need to draw an inference of such knowledge. In order for the allegations to succeed there must not only be knowledge of the fact of the earlier loan, which I might well conclude that Mr Sanjay Chandra, as director of both Unitech and Nectrus, would have had, but I must also be satisfied that such knowledge extended to the existence of the 'material risk' of set-off at a time, early 2012, when the financial situation of Unitech was not then in jeopardy, which alone in my judgment would have rendered such investment inappropriate. I do not feel justified in drawing such inference. Without that additional case, the allegation of breach by Nectrus in the selection of SREI as an investment does not seem to me to be proved. Although there was a misdescription of SREI as being owned by BNP Paribas, when in fact it was not, and a different SREI entity was in a 50/50 joint

venture with BNP Paribas, I do not consider that was material, and Mr Lake accepted that he is unable to say that SREI was not a financially respectable institution.

41. Nectrus' reporting in relation to the SREI investment leaves much to be desired, and in any event there was a second extension in December 2013 which post-dated the Treasury Policy, but even that was before Unitech's financial crisis in March 2014, which alone would have caused concern about a possible set-off. However, I am left with the very fair words of Mr Sallnow-Smith, namely *"my only comment would have been that had the Treasury Policy been complied with and the reporting happened, then the board might have taken all sorts of actions earlier…and we don't know what the result of those actions might have been."* I am not persuaded that before April 2014, notwithstanding the similarity of the amounts of the INR 150 crore lent to Unitech and the INR 150 crore invested in the SREI ICDs, had Nectrus reported in terms on the existence of that borrowing, that would have caused any concern. I do not find breach of contract in this regard.

42. The fact that an injunction was sought in India by Nectrus to restrain repayment by SREI (and Aten), in circumstances which must have resulted in at least interest loss in India, if, as seems to be the case, it was a contributory factor to the monies now in court not being paid over, may well have consequences. I am prepared to consider an order, if one were sought, directing the Defendant to co-operate in the discontinuance of its application for an injunction or the lifting of any restrictions upon payment out of the monies paid into court or deposited by SREI. But I do not conclude that Nectrus was in breach of contract in relation to the original placement with SREI, or its continuation.

43. I shall therefore leave it to the parties to agree the next step in accordance with the direction for a split trial, in accordance with my conclusions in paragraphs 34, 37 and 41 above.

APPENDIX 1

Details of the Sham Entities

(1) Elkins Project and Financial Advisors Private Limited ("**Elkins**")

1. The company is stated to be a "*Financial Consultancy Business*".
2. By dates between March-May 2014, INR 10 crore (c. £1m) had apparently been transferred to Elkins by Aten PM on behalf of UDPL, with INR 15,00,000 / £14.5k of interest due *per* month. These monies were not repaid to UDPL.
3. The Audited Financial Statements for the entity, which are public and ought to have been available to Nectrus, show that the entity:
   a. Had been in existence for fewer than two years at the time the NCDs were apparently entered (having been incorporated on 22 August 2012);
   b. Had no income from operations and no (current or fixed) assets;
   c. Was in a precarious financial position at the time the NCDs were apparently created, reporting as at 31 March 2013:
      i. Assets (current and non-current) of INR 100,148 (c. £1,000) (*i.e.*, just 0.1% of the value of the UDPL NCDs and 6% of the *monthly* interest due on the NCDs);
      ii. A net annual revenue of INR 7,500 (c. £90); and
      iii. A loss of INR 3,755 (which had increased 2400% by March 2014);
   d. Had the same directors (Sanjay Dua and Vijay Dua) as Feni and Koyana;
   e. Indicated in its March 2014 report that the NCDs were 'secured' "*by way of creating a charge on present and future assets of the company*" / "*share pledging agreement*", but the entity's only asset appeared to be the funds from the NCDs (its total assets were reported as c. INR 10 crore, with less than 5% of that reported as cash & cash equivalents); and
4. Filed no Audited Financial Statement for 2015/16 or thereafter.

(2) Feni Precision Equipment Private Limited ("**Feni**")

1. The company is stated to be in the "*business of Manufacturing, Assembling etc. related to Mechanical & Electrical Products*".

2. By dates between March-May 2014, INR 10 crore (c. £1m) had apparently been transferred to Feni by Aten PM on behalf of UDPL, with INR 15,00,000 / £14.5k of interest due *per* month. These monies were not repaid to UDPL.

3. The Audited Financial Statements for the entity, which are public and ought to have been available to Nectrus, show that the entity:

   a. Had been in existence for fewer than two years at the time the NCDs were apparently entered (incorporated 24 August 2012);

   b. Had no income from operations and no (current or fixed) assets;

   c. Was in a precarious financial position at the time the NCDs were apparently created, reporting as at 31 March 2013:

      i. Assets (current and non-current) of INR 100,147 (c. £1,000) (*i.e.*, just 0.1% of the value of the UDPL NCDs and 6% of the *monthly* interest due on the NCDs);

      ii. A net revenue of INR 8,600 (c. £100); and

      iii. A loss of INR 3,756 (which had increased 2400% by March 2014);

   d. Had the same directors (Sanjay Dua and Vijay Dua) as Elkins and Koyana and lists Koyana as a related party;

   e. Indicated in its March 2014 report that the NCDs were 'secured' "*by way of creating a charge on present and future assets of the company*" / "*share pledging agreement*", but the entity's main asset appeared to be the funds from the NCDs (its total assets were c. INR 13 crore, with only 60% of that reported as cash & cash equivalents); and

5. Filed no Audited Financial Statement for 2015/16 or thereafter.

(3) Koyana Infra Developers Private Limited ("**Koyana**")

1. The company is stated to be a "*Real Estate Development Business*".
2. By dates between March-May 2014, INR 10 crore (c. £1m) had apparently been transferred to Koyana by Aten PM on behalf of UDPL, with INR 15,00,000 / £14.5k of interest due *per* month. These monies were not repaid to UDPL.
3. The Audited Financial Statements for the entity, which are public and ought to have been available to Nectrus, show that the entity:
   a. Had been in existence for fewer than two years at the time the NCDs were apparently entered (having been incorporated on 8 May 2012);
   b. Had no income from operations and no (current or fixed) assets;
   c. Was in a precarious financial position at the time the NCDs were apparently created, reporting as at 31 March 2013:
      i. Assets (current and non-current) of INR 107,242 (c. £1,000) (*i.e.*, just 0.1% of the value of the UDPL NCDs and 7% of the *monthly* interest due on the NCDs);
      ii. A net revenue of INR 11,300 (c. £135); and
      iii. A loss of INR 4,032 (which had increased 2200% by March 2014);
   d. Had the same directors (Sanjay Dua and Vijay Dua) as Feni and Elkins;
   e. Indicated in its March 2014 report that the NCDs were 'secured' "*by way of creating a charge on present and future assets of the company*" / "*share pledging agreement*", but the entity's main asset appeared to be the funds from the NCDs (its total assets were c. INR 14 crore, with only 0.5% of that reported as cash & cash equivalents); and
6. Filed no Audited Financial Statement for 2015/16 or thereafter.

(4) Lifelong Steel & Alloys Private Limited ("**Lifelong**")

1. Stated to be a company incorporated in order to "*carry on in India or abroad business as manufacturing, importers, exporters, buyers, sellers dealers, stockiest, suppliers, warehouses, hires, engineering goods, hardware goods, gardage tools, hardware tools, instruments, agricultural machinery, machinery to be used by gold smiths, dies moulds, spare parts patterns and jigs, auto parts, rubber part, switch gears chains, all other kinds of machinery parts, building hardware, fitting and part of textiles industries automobile and other industries*" (all [sic]).
2. By dates between March-July 2014, INR 14 crore (c. £1.4m) had apparently been transferred to Lifelong by Aten PM on behalf of UDPL, with INR 20,41,667 / £19.8k of interest due *per* month. These monies were not repaid to UDPL.
3. The Audited Financial Statements for the entity, which are public and ought to have been available to Nectrus, show that the entity:
    a. Had been in existence for a little over two years at the time the NCDs were apparently entered (having been incorporated on 23 February 2012);
    b. Had no fixed assets, inventories or receivable balances;
    c. As at March 2013, reported cash & cash equivalents of 0.03% of the value of the UDPL NCDs and 2.6% of the value of the *monthly* interest due on the NCDs (the vast majority of its current assets were reported as current investments / short term loans and advances);
    d. Was loss making as at 31 March 2013 (INR 14,833, being a loss c. four times greater than the previous year); and barely profitable as at 31 March 2014 (reporting a profit of INR 18,583 / c. £200);
4. After UDPL's funds were placed, did not again file any Audited Financial Statements (*i.e.*, no filings for 2014/15 or thereafter).

(5) Zesty Constructions Private Limited ("**Zesty**")

1. The nature of this entity's business is unknown.
2. By dates between March-September 2014, INR 16 core (c. £1.6m) had apparently been transferred to Zesty by Aten PM on behalf of UDPL, with INR 23,33,333 / £22.6k of interest due *per* month. These monies were not repaid to UDPL.
3. The Audited Financial Statements for the entity, which are public and ought to have been available to Nectrus, show that the entity:
   a. Had been in existence for about five years at the time the NCDs were apparently entered (having apparently been incorporated on 13 February 2009) (not a 'start-up');
   b. Had no fixed assets, inventories or receivable balances;
   c. As at March 2013, reported cash & cash equivalents of 0.08% of the value of the UDPL NCDs and 5% of the value of the *monthly* interest due on the NCDs (the vast majority of its assets were reported as current investments / short term loans and advances);
   d. Reported a profit of just:
      i. INR 16,180 (c. £177) as at March 2011;
      ii. INR 73,736 (c. £887) as at March 2013; and
      iii. INR 116,570 as at March 2013 (c. £1,100);
   e. Despite returning (small) profits, it is stated in the context of 'Dividends' in its Director's Report for 2011 and 2013 that the entity had suffered a loss;
   f. Dated (by hand) its March 2013 Financial Statements variously, including '31 September 2014' (a date that does not exist); and
5. Filed no Audited Financial Statement for 2015/16 or thereafter, and may not have filed a March 2012 Audited Financial Statement (as the March 2011 Statement indicates it is the entity's '3rd' and the March 2013 Statement indicates it is the entity's '4th').

(6) Anuj Buildcon Private Limited ("**Anuj Buildcon**")

1. Stated to be a company incorporated to "*carry on the business of real estate*".
2. By dates between May-July 2014, INR 15 crore (c. £1.5m) had apparently been transferred to Anuj Buildcon by Aten PM on behalf of URPL, with INR 26,250,000 / £25.5k of interest due *per* month. These monies were not repaid to URPL.
3. The Audited Financial Statements for the entity, which are public and ought to have been available to Nectrus, show that the entity:
    a. Had been in existence for about nine years at the time the NCDs were apparently entered (having apparently been incorporated on 4 August 2005) (not a 'start-up');
    b. Had no assets (fixed or physical);
    c. As at March 2013, reported cash & cash equivalents of 0.2% of the value of the URPL NCDs and 1.2% of the value of the *monthly* interest due on the NCDs (the vast majority of its assets were reported as current investments / short term loans and advances, the latter being predominantly 'unsecured');
    d. Had decreased in (negligible) profitability as between March 2012 (INR 696,271 / c. £7,000), March 2013 (INR 141,868 / c. £1,500), and March 2014 (INR 112,542 / c. £1,130);
    e. Had directors (Bijender Kumar, Joginder Pal Gupta, and Raju Malik) in common with Nicky Marmo;
    f. Reported relationships (by way of equity shares / long term loans and advances / current investments) in entities that also had relationships with Nicky Marmo (*e.g.*, Anupam Buildmart, Bij Buildcon India, MKR Trading, RSM Sottech Solutions, Delhi Art Gallery, BKR Capital, Ultra Homes Construction); and
6. After URPL's funds were placed, did not again file any Audited Financial Statements (*i.e.*, no filings for 2014/15 or thereafter).

(7) Nicky Marmo Limited ("**Nicky Marmo**")

1. Stated to be in "*the business of trading in miscellaneous items and provide consultancy*" [sic].
2. By dates between May-July 2014, INR 15 crore (c. £1.5m) had apparently been transferred to Nicky Marmo by Aten PM on behalf of URPL, with INR 26,250,000 / £25.5k of interest due *per* month. These monies were not repaid to URPL.
3. The Audited Financial Statements for the entity, which are public and ought to have been available to Nectrus, show that the entity:
    a. Incorporated in 1993, but had no operations until 2011/12 (and no profit in that year);
    b. Had no assets (fixed or physical);
    c. As at March 2013, reported cash & cash equivalents of 0.2% of the value of the URPL NCDs and 1.2% of the value of the *monthly* interest due on the NCDs (the vast majority of its assets were reported as current investments / short term loans and advances);
    d. Had decreased in (negligible) profitability as between March 2013 (INR 508,901 / c. £5,500) and March 2014 (INR 307,241 / c. £3,000);
    e. Misspelled its own name on its letterhead ("*Nicky M**e**rmo*");
    f. Had directors (Bijender Kumar, Joginder Pal Gupta, and Raju Malik) in common with Anuj Buildcon and listed Anuj Buildcon as a related party;
    g. Reported relationships (by way of equity shares / long term loans and advances / current investments) in entities that also had relationships with Anuj Buildcon (*e.g.*, Anupam Buildmart, Bij Buildcon India, MKR Trading, RSM Sottech Solutions, Delhi Art Gallery, BKR Capital, Ultra Homes Construction); and
7. After URPL's funds were placed, did not again file any Audited Financial Statements (*i.e.*, no filings for 2014/15 or thereafter).