

TRANSLATION

ECONOMIC COURT OF TASHKENT CITY
700097, TASHKENT, CHUPOM-OTA STR., CHILANSAR, QUARTER TS, BUILDING 6, PH. 77-87-85
ON BEHALF OF THE REPUBLIC OF UZBEKISTAN

VERDICT

TASHKENT

JUNE 23RD, 1998

CASE NO. 1470 -T-N

MR. I. I. NASRIEV, THE JUDGE OF THE ECONOMIC COURT OF THE CITY OF TASHKENT,
HAVING CONSIDERED THE DISPUTE BETWEEN

PLAINTIFF: GAK "UZKHLFBOPRODUCT", TASHKENT
DEFENDANT: PRIVATE COMPANY "ODIL", TASHKENT

REGARDING RECOVERY OF USD 10'570'875.39, WITH PARTICIPATION OF
THE PLAINTIFF'S REPRESENTATIVE MR. U.T. ERNAZAROV, THE
ASSISTANT OF THE CHAIRMAN OF THE CORPORATION ON LEGAL
ISSUES, AND THE DEFENDANT'S REPRESENTATIVE MR. U. SH.
ASADULLAEV

HAVE FOUND:

ON OCTOBER 2ND, 1995 GAK "UZKHLFBOPRODUCT" AND COMPANY
"ODIL" HAD CONCLUDED CONTRACT FOR THE DELIVERY BY ODIL OF
450.000 TONS OF 3RD CLASS MILLING WHEAT. AS PER CONTRACT
TERMS THE DELIVERIES OF GRAIN HAD TO BE MADE WITHIN 15 DAYS
UPON OPENING OF A LETTER OF CREDIT AND ADVANCE PAYMENT.
BUT, AFTER THE BUYER HAD PERFORMED HIS OBLIGATION RE
OPENING OF AN L/C, THE DEFENDANT HAD NOT DELIVERED 40.0
THOUSAND TONS FOR TOTAL USD 10'510'629.12.

AS THE DEFENDANT HAD NOT DELIVERED THE ABOVE QUANTITY OF
GRAIN, THE SWISS COMPANY "ROMAK S.A." GOT INVOLVED INTO THE
DELIVERIES BASIS AN AGREEMENT CONCLUDED BETWEEN THE
PLAINTIFF, THE DEFENDANT, COMPANY "ROMAK S.A." AND FTC
"UZDON", AS PER WHICH ROMAK S.A. UNDERTOOK TO DELIVER 50
THOUSAND TONS OF GRAIN. IN EXECUTION OF THIS AGREEMENT
ROMAK S.A. HAD DELIVERED 39'411 TONS AND CONFIRMED BY
LETTERS OF JUNE 24TH 1996 AND DECEMBER 16TH 1996 THE DELIVERIES
OF GRAIN UNDER THE CONTRACT NO. 6-2/005 DATED 02.10.1995,
CONCLUDED BETWEEN THE PLAINTIFF AND THE DEFENDANT. IN ITS
TURN COMPANY "ODIL" BY THE 4-PARTIES AGREEMENT AND LETTER
OF 28.03.1997 HAD CONFIRMED THEIR PAYMENT OBLIGATIONS
(MUTUAL SETTLEMENT) TOWARDS COMPANY "ROMAK S.A." FOR THE
GRAIN DELIVERED BY THE LATTER.

ON OCTOBER 24TH 1996, AFTER ROMAK S.A. HAD EFFECTED DELIVERIES OF GRAIN TO BE COUNTED UNDER THE CONTRACT 6-2/005 DATED 1995, THE PLAINTIFF AND THE DEFENDANT HAD MADE THE COMPARISON ACT ON DELIVERIES OF GRAIN AND PAYMENT, WHICH HAD CONFIRMED THE BALANCE BETWEEN THE QUANTITY OF THE DELIVERED GRAIN AND THE AMOUNTS OF THE PAYMENTS EFFECTED. BY THIS ACT THE PARTIES CONFIRMED THE LACK OF ANY CLAIMS TOWARDS EACH OTHER WITH RESPECT TO THE EXECUTION OF THE OBLIGATIONS UNDERTAKEN BY THEM UNDER THE ABOVE MENTIONED CONTRACT.

IN THE MEANWHILE COMPANY "ODIL" HAD NOT HONORED THEIR PAYMENT OBLIGATIONS FOR THE GRAIN DELIVERED BY "ROMAK S.A.", THAT IS WHY THE PLAINTIFF HAD TURNED TO THE COURT WITH THE REQUEST TO EITHER OBLIGE COMPANY "ODIL" TO EFFECT PAYMENT OF USD 10'510'629.12 IN FAVOUR OF COMPANY "ROMAK S.A." OR TO CONSIDER THE MATTER REGARDING CANCELLATION OF THE COMPARISON ACT ON DELIVERIES OF GRAIN AND PAYMENT DATED 24.10.1996 AND RECOVERY OF THE DEBT IN THE AMOUNT OF USD 10'570'657.39 INCLUDING BANKING INTEREST IN FAVOUR OF GAK "UZKHLEBOPRODUCT".

THE DEFENDANT HAD NOT ACCEPTED THE CLAIM IN THEIR SUBMISSION, NEITHER HAD THE REPRESENTATIVE OF THE DEFENDANT DONE SO IN THE COURT HEARINGS, ON THE GROUNDS THAT THE ACT OF 24.10.1996 THE BOTH PARTIES HAD CONFIRMED THE PERFORMANCE OF THE OBLIGATIONS UNDER THE CONTRACT NO. 6-2/005, AND THAT "ODIL" COMPANY WILL REGULATE THE MUTUAL ACCOUNTS WITH COMPANY "ROMAK S.A." INDEPENDENTLY, WITHOUT PARTICIPATION OF THE STATE BODIES.

AFTER HEARING OF THE REPRESENTATIVES OF THE PARTIES AND UPON STUDYING THE MATERIALS OF THE CASE, THE COURT FINDS THE CLAIM SUBJECT TO REJECTION ON THE FOLLOWING GROUNDS:

AS PER THE TERMS OF THE CONTRACT NO. 6-2/005 DATED 02.10.1995 CONCLUDED BETWEEN THE PLAINTIFF AND THE DEFENDANT, COMPANY "ODIL" HAD UNDERTAKEN THE OBLIGATIONS TO DELIVER 450.000 TONS 3RD CLASS SOFT MILLING WHEAT.

BASIS AGREEMENT CONCLUDED 10.07.1996 BETWEEN GAK "UZKHLEBOPRODUCT", COMPANY "ODIL", COMPANY "ROMAK S.A." AND FTC "UZDON", ROMAK S.A. HAD UNDERTAKEN TO DELIVER THE NON-DELIVERED PORTION OF GRAIN WITH FUTURE MUTUAL SETTLEMENT OF THE ACCOUNTS BETWEEN COMPANY "ROMAK S.A." AND COMPANY "ODIL".

COMPANY ROMAK S.A., BEING THE EXECUTOR INVOLVED BY COMPANY "ADEL" (KAZAKSTAN) INTO EXECUTION OF THE CONTRACT NO. 38/11 DATED 02.10.1995 AND NO. 4 DATED 19.09.1996, HAVING BEEN CONCLUDED BETWEEN COMPANY "ADEL" (KAZAKSTAN) AND PRIVATE FIRM "ODIL" (UZBEKISTAN), HAD PERFORMED FULLY THEIR

OBLIGATIONS REGARDING DELIVERIES OF GRAIN UNDER CONTRACT 6-2/005. THE FACT OF DELIVERIES OF GRAIN BY COMPANY "ROMAK S.A." UNDER THE ABOVE CONTRACT IS CONFIRMED BY LETTERS DATED 24.06.1996 AND 16.2.1996 ADDRESSED BY COMPANY "ROMAK S.A." TO THE PLAINTIFF, AS WELL AS BY GTD (CARGO CUSTOMS DECLARATIONS) NBR'S. 043658, 043657, 043656, 055168, 055173, 055169, 055167, 055172, 055171, 055170.

THE ACT MADE BETWEEN THE PARTIES ON 24.10.1996 ALSO CONFIRMS THE FACT THAT THE DEFENDANT HAD PERFORMED UNDERTAKINGS TO DELIVER GRAIN.

THEREFORE, THE COURT FINDS THE OBLIGATIONS OF COMPANY "ODIL" ON GRAIN DELIVERIES UNDER CONTRACT NO. 6-2/005 DATED 02.10.1995 HAVE BEEN EXECUTED, DUE TO WHICH THE CLAIM TO BE REJECTED AND LEGAL COSTS TO BE BORN BY THE PLAINTIFF.

DUE TO CHANGES IN PROCEDURES ON PAYMENTS OF DUTIES TO THE BUDGET AS WELL AS TO THE FUND FOR DEVELOPMENT OF THE ECONOMIC COURTS 454'547.55 SOUMS TO BE RETURNED TO THE PLAINTIFF FROM THE BUDGET, AND 454'547.55 SOUMS TO BE DEDUCTED TO THE FUND FOR DEVELOPMENT OF THE ECONOMIC COURTS.

BEING GUIDED BY ARTICLE 333 OF THE CIVIL CODE OF THE REPUBLIC OF UZBEKISTAN, AS WELL AS BY THE ARTICLES 90, 135, 136 OF THE ECONOMIC CODE OF THE REPUBLIC OF UZBEKISTAN THE COURT

D E C I D E D:

TO REJECT THE CLAIM.
TO RETURN TO THE PLAINTIFF OUT OF THE REPUBLICAN BUDGET 454'547.55 SOUMS REPRESENTING THE OVERPAID AMOUNT OF THE STATE DUTY.
TO ISSUE THE RECEIPT.
TO DEDUCT FROM THE OPERATING ACCOUNT OF GAK "UZKHLEBOPRODUCT" 454'547.55 SOUMS IN FAVOR OF FUND FOR THE DEVELOPMENT OF THE ECONOMIC COURTS.
TO ISSUE EXECUTION.

THE DECISION CAN BE APPEALED WITHIN ONE MONTH IN THE ECONOMIC COURT OF TASHKENT CITY.

JUDGE

I.I. NASRIEV