

IN THE HIGH COURT OF JUSTICE

2006 Folio No. 271

QUEEN'S BENCH DIVISION

COMMERCIAL COURT

BETWEEN:

TAJIK ALUMINIUM PLANT

Claimant

-and-

- (1) **ABDUKADIR GANIEVICH ERMATOV**
- (2) **ANSOL LIMITED**
- (3) **AVAZ SAIDOVICH NAZAROV**
- (4) **ASHTON INVESTMENTS LIMITED**
- (5) **ALEXANDER VITALYEVICH SHUSHKO**
- (6) **ANNA OSADCHAYA**
- (7) **CHERZOD ABDOKADIROVICH ERMATOV**
- (8) **ANSOL RESOURCES LIMITED**
- (9) **ANSOL CAPITAL LIMITED**

Defendants

**AMENDED REVISED DEFENCE OF
DEFENDANTS 2, 3, 4, 5, 6, 8 AND 9
(‘the Ansol/Ashton Defendants’)**

Introduction

1. By Decree no. 191 of the Government of the Republic of Tajikistan dated 3 April 2007, **H99/37(38)** Tajik Aluminium Plant was ‘transformed into Tajik Aluminium Company State Unitary Enterprise’. This pleading is without prejudice to the Ansol/Ashton Defendants’ contentions that the Claimant (‘TadAZ’) either no longer exists or is not the proper Claimant herein.
2. In this Defence, save where otherwise stated or where the context otherwise requires:
 - 2.1. references to paragraph numbers are to paragraphs of the Revised Particulars of

- 48.1. Presidential trip to Geneva in June 2000. The delegation comprised approximately 40 individuals, including President Rakhmonov and his immediate family, Mr Alimardonov (the Chairman of the National Bank of Tajikistan), Mr T Nazarov (Minister of Foreign Affairs), Mr K Yuldashev (Adviser to the President on Foreign Relations), Mr Zubaidov (Chief of Protocol, the Ministry of Foreign Affairs) and Mr Ermatov.
- 48.2. Presidential trip to Tokyo in May 2001. The delegation was similar to that identified in sub-paragraph 48.1 above.
- 48.3. Presidential trip to Paris and Washington in December 2002. The delegation included President Rakhmonov, Mr Zubaidov, Mr Naimiddinov (Finance Minister), Mr Soliev (Minister for Trade and Economy), Mr Alimardonov and Mr Ermatov.
- 48.4. Presidential trip to Geneva in June 2003. The delegation comprised approximately 20 individuals, including President Rakhmonov and his immediate family, Mr Alimardonov and his immediate family, Mr Naimiddinov, Mr Zubaidov, Mr Kholboboev (Adviser to the President on Economic Matters), Mr T Nazarov, Mr Rahmatullaev (Adviser to the President on Foreign Matters), Mr Soliev and Mr Ermatov.

49. Further:

- 49.1. Such payments were made with the full knowledge and consent of the Government of Tajikistan, including the President and the Prosecutor General Bobohonov, who were themselves the beneficiaries of such payments (see Schedule 3 hereto), and were demanded of Ansol whenever such officials travelled. For example, in Geneva in June 2003 Mr Alimardonov requested Mr Shushko (via Mr Ermatov) to ask Mr Nazarov to arrange payment in the Kerdanian jewellery store to pay for jewellery for the President in the sum of US\$768,000 (approximately £482,000). Similarly, in May 2001 Mr Shushko was required by Mr Alimardonov via Mr Ermatov and Mr Nazarov to fly to Tokyo to pay a shopping bill from the Mikimoto store for pearls for the President totalling £61,911.27 and also bills from other stores (see Schedule 3 hereto). Further, in April 2004 Mr Saduloev told Mr Shushko that he needed to buy some jewellery for the President's wife (his sister) and Ansol was required by Mr Saduloev to

pay for the jewellery, which it did, in the sum of US\$755,000. All such payments were made by Mr Shushko on behalf of Ansol and at Mr Nazarov's direction.

49.2. In addition, the President's representatives (including Mr Alimardonov) demanded that payments be made by Mr Nazarov or Ansol for the President's personal benefit as the price of continuing to do business with TadAZ. In particular, in 2003, a demand was made for a monthly fee of US\$1 million per month to be paid to the President. The consequence of not complying with this demand would have been the loss of the business and all of the money that Ansol had invested in TadAZ. Mr Nazarov requested that such payments be formalised in a written agreement. On 27 August 2003 an agreement for consulting services was entered into between JSC Pakhtai Shakhritus (represented by an R.A. Saduloev) and Ansol. The agreement provided for a monthly fee of US\$1 million to be paid to the account of Pakhtai Shakhritus at Orienbank in Dushanbe. No services were rendered under the agreement. The President was the ultimate beneficiary of the payments made under the agreement. Such payments were not repaid by TadAZ in aluminium.

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50. Such payments are not 'unlawful' in Tajikistan, nor were they made with the intention of influencing the recipients, including Mr Ermatov, to do or not do anything. They were made because that is the way Tajikistan is run: Ansol was simply required to make these payments.

The position under Tajik law

51. It is averred that any causes of action available to TadAZ arising out of any alleged 'relationship' between Mr Nazarov and Mr Ermatov in this regard are governed by Tajik law because:

51.1. The events relied on, alternatively the significant or most significant element of those events, occurred outside England, and in particular in Tajikistan;

51.2. Mr Ermatov's relationship with TadAZ was governed by Tajik law; and

51.3. Mr Nazarov and Mr Ermatov's relationship concerned TadAZ and its operation.

52. In so far as any claim based on 'bribery' or 'corrupt payments' is concerned, the relevant principles of Tajik law in summary are that: