FINAL AWARD

in

Arbitration V (146/2008): AS ALTA FOODS V. AS LUTERMA

At the Arbitration Institute of the Stockholm Chamber of Commerce

Rendered on July 20, 2009, in Tallinn (the seat of the arbitration) and Stockholm

Claimant:	**AS Alta Foods** Register code: 11456803 Address: Tartu mnt 2, 16 th floor, 10145 Tallinn, Estonia Email: jaak.raid@altacapital.ee
Claimant's counsels:	**Anton Sigal and Kirsti Tikan** Address: Tartu mnt 2, 16 th floor, 10145 Tallinn, Estonia Telephone: +372 818050; +372 5283822 Fax: +372 818055 E-mail: anton.sigal@altacapital.ee; kirsti.tikan@altacapital.ee
Respondent:	**AS Luterma** Register code: 10000952 Address: Järvevana tee 3A, 10132 Tallinn, Estonia E-mail: allan.viirma@kalev.ee
Respondent's counsels:	**Leon Glikman, Daisy Tauk and Jürgen Valter** Law office Glikman & Partnerid Address: Tornimäe 2, 10145 Tallinn, Estonia Telephone: +372 6657070 Fax: +372 6657071 E-mail: leon.glikman@tgplegal.ee; daisy.tauk@tgplegal.ee; jurgen.valter@tgplegal.ee
The arbitrators:	Professor Erik Nerep, Stockholm School of Economics, Professor Paul Varul, Tartu University and Sven Papp, Attorney at Law, Raidla Lejins & Norcous, Tallinn
Subject matter:	**Refund of the Advance Payment under the SPA following the separate award in these proceedings**

I. THE ARBITRATION DISPUTE, THE PROCEEDINGS, ETC.

1.1 These arbitration proceedings were initiated by AS Alta Foods ("**Claimant**" or "**Alta**", however, by using the term "Claimant" in what follows, reference may occasionally also be made to the original party to the SPA, as defined *infra*, namely Alta Capital Partners S.C.A., **Alta Capital**) on November 20, 2008, by a request for arbitration lodged at the Arbitration Institute of the Stockholm Chamber of Commerce (the "**SCC Institute**" or the "**SCC**") against AS Kalev (AS Luterma, "**Respondent**").

1.2 In its request for arbitration, Claimant referred to an arbitration clause in a Share Purchase Agreement entered into with Respondent (as well as Mr. Oliver Kruuda) on September 20, 2007 (the "**SPA**") section 12.1 b), which provides as follows:

> "Any dispute, controversy or claim arising out of or relating to this Agreement, any breach of the same, its termination or validity or any other related matter shall be settled by arbitration proceedings in the Arbitration Institute of the Stockholm Chamber of Commerce in accordance with its rules. The number of arbitrators shall be 3 (three), of whom the Purchaser shall nominate one, the Seller and the Guarantor shall jointly nominate the other, and the two arbiters nominated by the Parties shall then nominate the third arbiter. The venue of arbitration shall be Stockholm or Tallinn. The language of arbitration shall be English."

According to Section 12.1 (a) of the SPA, the SPA and the relations between the parties in connection with the SPA (including matters related to the conclusion, validity, invalidity, implementation and termination of the SPA), as well as the construction of the SPA, shall be governed in accordance with Estonian law.

In its request for arbitration, Claimant appointed Mr. Sven Papp to act as an arbitrator in these proceedings.

1.3 Following preliminary statements, *inter alia*, on November 24, 2008, Respondent submitted its first preliminary response in these proceedings in the beginning of December 2008 (filed at the SCC Institute on December 8, 2008), in which Respondent denied Claimant's claim and contested the jurisdiction of any tribunal under the arbitration clause of the SPA. Nevertheless, Respondent appointed Professor Paul Varul as arbitrator in these proceedings.

1.4 On December 19, 2008, the SCC Institute determined that the SCC Institute does not manifestly lack jurisdiction over the arbitration dispute and that the seat of arbitration is Tallinn. The SCC Institute also determined that the Advance on Costs in accordance with the SCC Institute Rules (the "**SCC Rules**") should be EUR 216 600 to be paid by the parties in equal shares.

1.5 Subsequent to the appointment by Mr. Sven Papp and Professor Paul Varul of Professor Erik Nerep as the chairman of the Arbitral Tribunal (the "**Tribunal**") in these proceedings, and following the payment by Claimant of the entire Advance on Costs, due to the omission by Respondent to pay its part of the Advance, the SCC Institute referred the arbitration dispute to the Tribunal.

1.6 In a message dated February 11, 2009, to Claimant and Respondent, as well as their legal counsels, the Tribunal, *inter alia*, laid down a provisional timetable for these proceedings.

1.7 In principle, the parties have adhered to the provisional timetable when submitting their statements. Accordingly, Claimant submitted its first Statement of Claim (C 1) on March 6, 2009, and Respondent its first Statement of Defence (R 1) on March 30, 2009. Further statements (C 2 and R 2) were submitted on April 22, 2009, and May 15, 2009, respectively.

1.8 A preparatory hearing was held in Tallinn on May 15, 2009.

1.9 A separate award was rendered on May 15, 2009, as to Claimant's claim on reimbursement by Respondent on the Advance on Costs to be paid by Respondent in accordance with Article 45 (4) of the SCC Rules, in which the Tribunal ordered Respondent to pay to Claimant EUR 108 300 plus statutory default payment interest in accordance with Article 113 (1) of the Law on Obligation Act ("**LOA**") accrued on this from February 3, 2009, until full payment has been made by Respondent of the sum in question.

1.10 Further statements were submitted by Claimant and Respondent on May 29, 2009 (R 3, including the Counterclaim) and June 2, 2009 (C 3). An expert opinion was introduced by Claimant on June 3-4, 2009. In addition, both parties have argued their cases extensively in e-mail correspondence throughout the proceedings, but especially during May and the beginning of June, 2009. In R 3, section 7, Respondent requested that the final hearing originally planned to take place on June 10-12, 2009, be postponed for at least two to three months, pending the submission by Respondent of further evidence as expressed by Respondent, one of "the most important evidence in these proceedings" (an auditor's opinion) regarding the calculation of damages as outlined in the Counterclaim, as well as further statements by the parties "at least in two rounds". In response to Respondent's request (see C 3, section IX), Claimant objected to any postponement of the final hearing. In the alternative, Claimant requested that the Tribunal should determine that a separate hearing should be held, and a separate award rendered, on Claimant's claim in accordance with the SCC Rules, Article 38.

1.11 On June 3, 2009, the Tribunal decided to have a separate hearing and a separate award on the subject matter defined in the separate award. The Tribunal's decision was initially delivered by e-mail, supplemented by further clarifications in an e-mail dated June 5, 2009, and subsequently in an original and signed form. As a consequence, the bulk of the Counterclaim was excluded from the separate hearing and award, and was made subject only to a final hearing and award, depending on the outcome of the separate proceedings.

1.12 The separate hearing in these proceedings was held in Tallinn on June 10—12, 2009. Subsequent to closing arguments in oral and written form – during and following the hearing - the arbitration proceedings for the purposes of the separate award were closed on June 18, 2009.

1.13 The separate award was rendered on July 13, 2009, in which the Tribunal found as follows:

1. Claimant's withdrawal from the SPA, the Withdrawal, was in accordance with the SPA and the MDC therein, and did not constitute a breach of the SPA (or the Tere SPA).

2. Claimant did not commit any other breach of the SPA (or the Tere SPA) unrelated to the Withdrawal which would entitle Respondent to contractual penalties under section 5.3 (a) (or the corresponding provision of the Tere SPA) or damages, other than the failure (the unqualified breach, *i.e.*, neither intentional nor grossly negligent) to pay the Final Purchase Price on May 30, 2008, at the latest, as agreed and defined in the Closing Memorandum, subject to the SPA, rendering Claimant liable to pay statutory penalty interest in accordance with Articles 113 (1) and 94 (1) of the LOA on said price for the period of June 1 to June 6, 2008.

3. Claimant is principally entitled to the Refund of the Advanced Payment of EUR 6 000 000.

4. Claimant is entitled to default interest on the Refund amount from August 29, 2008 until full payment by Respondent of the Refund has been made.

1.14 Considering that the remainder of the Counterclaim, *i.e.*, the part of the Counterclaim which was not an element of the separate award, was entirely contingent on Respondent's position that the Withdrawal constituted a breach of the SPA (and the Tere SPA), and considering the outcome of the

separate proceedings and the separate award, and based also on the Tribunal's findings in sections 21.21 and 21.24 of the separate award, especially with regard to the elements of the Counterclaim which are relevant to the separate award and which are wholly contingent upon a finding that the Withdrawal is *in*consistent with the SPA and the MDC, a further examination and hearing with regard to the remainder of the Counterclaim is unwarranted (also see section V of the separate award, item 4). Consequently, since there are no further issues to be determined in this case except those pertaining to this final award, the Tribunal hereby renders the following award. In its statement of costs for legal representation, etc., Claimant has required 10 % of the total amount awarded to Claimant as compensation. However, the Tribunal finds that EUR 150 000 corresponds to what the Tribunal finds to be a *reasonable* compensation in accordance with the SCC Rules, Article 44.

THE AWARD

The Tribunal *orders Respondent*

i) to pay to Claimant EUR 6 000 000,

ii) to pay to Claimant the default interest accrued on the Advance Payment commencing August 29, 2008, until the date on which the Advance Payment has been fully refunded by Respondent to Claimant, in accordance with Articles 113 (1) and 94(1) of the LOA,

iii) to pay to Claimant EUR 157 000 (including VAT), including the costs for legal representation and the cost for the expert opinion by Gild Bankers (EUR 7 000, including VAT) *and*

iv) to pay the arbitration costs in accordance with the following:

Professor Erik Nerep:

Fee: EUR 61 400 and VAT (25%) EUR 15 350

Expenses: 1. EUR 2 894 and VAT (25%) EUR 723,50;

2. SEK 30 460 and VAT (25%) SEK 7 615;

3. EEK 888 and VAT (25%) EEK 222, and

4. DK 78 and VAT (25%) DK 19,50

Per diem allowance: EUR 3 000 (no VAT)

Professor Paul Varul:

Fee: EUR 36 840 and VAT (20%) EUR 7 368

Mr. Sven Papp:

Fee: EUR 36 840 and VAT (20%) EUR 7 368

Expenses: EUR 670 and VAT (20%) EUR 134

SCC:

Administrative fee: EUR 23 300 (no VAT)

The parties are jointly and severally liable to pay the arbitration costs. As between the parties, the arbitration costs shall be borne by Respondent. The arbitration costs will be drawn from the advances paid to the SCC.

Respondent is ordered to compensate Claimant for what Claimant has paid as advance, EUR 108 300, to the SCC (whereby the separate award of May 15, 2009, concerning the remainder of Claimant's advance of EUR 108 300 - see *supra* 1.9 – by this Tribunal in these proceedings has been taken into consideration).

The Tribunal *orders Claimant* to pay to Respondent the statutory penalty interest on the Final Purchase Price (as defined in the Closing Memorandum) for the period of June 1 to June 6, 2008, in accordance with Articles 113 (1) and 94 (1) of the LOA.

The Tribunal orders Claimant to pay to Respondent the statutory penalty interest on the Final Purchase Price (as defined in the Closing Memorandum) for the period of June 1 to June 6, 2008, in the amount of EUR in accordance with Articles 113 (1) and 94 (1) of the LOA.

To the extent that the Swedish Arbitration Act (SFS 1999:116) is applicable, reference is made to Sections 33, 34, 41 and 43 of the Act, according to which the parties to arbitration proceedings are entitled to direct an appeal against the award at the Svea Court of Appeals (*Sw*: Svea hovrätt) within three months from the day the award was received by the party in question (Sections 33, 34 and 43), and as far as the decision on fees and costs to the arbitrators and the SCC Institute is concerned at the District Court of Stockholm, within three months from said date (Sections 41 and 43).

Erik Nerep

Paul Varul

Sven Papp

Dissenting Opinion

Regarding the

Final Award

In

Arbitration V (146/2008): AS ALTA FOODS V. AS LUTERMA

At the Arbitration Institute of the Stockholm Chamber of Commerce

Rendered on July 20, 2009, in Tallinn (the seat of the arbitration) and Stockholm

Composed on the 20th of July, 2009

1. This dissenting opinion has been given concerning the clauses i), ii) and iii) of the Final Award.

2. I do not agree with the conclusions drawn in the clauses i) and ii) of the Final Award because of the arguments presented by me in my dissenting opinion of July the 13th on the Separate Award. I do not believe it necessary to repeat these arguments in this dissenting opinion.

3. I also do not agree with the conclusion in point iii) of the Final Award according to what the Respondent was ordered to pay to the Claimant EUR 157 000 (including VAT), including the costs for legal representation and the cost for the expert opinion by Gild Bankers (EUR 7 000, including VAT).

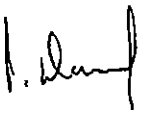
4. In the clause 1.14 of the Final Award it is stated that the Tribunal finds that EUR 150 000 corresponds to what the Tribunal finds to be reasonable compensation in accordance with the SCC Rules, Article 44. The Final Award does not consider the statement of the Respondent according to what the legal counsels of the Claimant in this case Anton Sigal and Kristi Tikan are at the same time the employees of a company belonging to the Alta Capital Partners group that is therefore closely related to the Claimant and the counsels perform work for the Claimant as well and most likely receive payment for it. Paying ones employees' additional bonus or compensation in the sum of EUR 150 000 is not reasonable even if there were an additional agreement between the Claimant and it's counsels. Respondent must not compensate to the Claimant the bonuses that the Claimant pays employees of the company belonging to the same group with Claimant and who also work for the Claimant as well.

5. The Final Award does not consider the statement of the Respondent according to what the Claimant has not presented any data and calculations on the amount of work done in this case. Considering the amount of work done and the usual time spent for it and also the usual payment for such work in Estonia, the compensation in the sum of EUR 150 000 is not reasonable.

6. Considering my opinion presented in the clauses 4 and 5 of this dissenting opinion, I have reached the conclusion that the compensation for the costs of legal representation of the Claimant in the sum of EUR 150 000 is not reasonable. Reasonable sum in my opinion in this case can not be over EUR 30 000.

7. It is not justified to compensate the cost for the expert opinion by Gild Bankers (EUR 7 000 including VAT). Gild Bankers can not be considered an independent expert in this case as it is also stated in the Separate Award. Presenting the expert opinion by Gild Bankers, the Claimant did not fulfil the obligation deriving from SPA clause 5.3(e) to prove the occurrence of the market disruption via expert opinion of independent experts.

Paul Varul
arbiter



20th of July, 2009