



Tribunal Arbitral du Sport  
Court of Arbitration for Sport

**CAS 2019/A/6233 Al Shorta Sports Club v. FIFA & Dalian Yifang FC**

## **ARBITRAL AWARD**

**delivered by the**

## **COURT OF ARBITRATION FOR SPORT**

**sitting in the following composition:**

President: Mr. Rui Botica Santos, Attorney-at-Law, Lisbon, Portugal

Arbitrators: Mr. Massimo Coccia, Attorney-at-Law, Rome, Italy  
Mr. Alexis Schoeb, Attorney-at-Law, Geneva, Switzerland

Ad hoc clerk: Ms. Stephanie De Dycker, Attorney-at-law, Signy, Switzerland

between

**Al Shorta Sports Club**, Baghdad, Iraq

Represented by Mr. Nezar Ahmed, Attorney-at-Law, Chesterfield, USA

**as Appellant**

and

**Fédération Internationale de Football Association**, Zurich, Switzerland

Represented by Mr. Jaime Cambreleng Contreras and Mr. Baptiste Buntschu, FIFA legal department

**as First Respondent**

and

**Dalian Yifang FC**, Liaoning Province, China

Represented by Ms. Liz Ellen and Ms. Stefania Genesis, Attorneys-at-Law at Mishcon de Reya LLP, London, United Kingdom

**as Second Respondent**

## **I. PARTIES**

1. Al Shorta Sports Club (the “Appellant” or “Al Shorta”) is an Iraqi football club and a member of the Iraqi Football Association.
2. The Fédération Internationale de Football Association (the “First Respondent” or “FIFA”) is the governing body of football worldwide. FIFA exercises regulatory, supervisory and disciplinary functions over national associations, clubs, officials and players belonging to its affiliates. Its seat is in Zurich, Switzerland and has legal personality under Swiss law.
3. Dalian Yifang Football Club (formerly known as Dalian Aerbin Football Club and hereinafter referred to as the “Second Respondent” or “Dalian”) is a Chinese football club and a member of the Football Association of the People’s Republic of China.

## **II. FACTUAL BACKGROUND**

4. Below is a summary of the main relevant facts and allegations based on the parties’ written submissions. Additional facts and allegations may be set out, where relevant, in connection with the legal discussion that follows. Although the Panel has considered all the facts, allegations, legal arguments and evidence submitted by the parties in the present proceedings, it refers in this Award only to the submissions and evidence it considers necessary to explain its reasoning.
- A. The origin of Dalian’s credit from Al Shorta and the Player Nashat Akram – the FIFA Dispute Resolution Chamber decision dated 27 November 2014**
5. On 10 February 2014, Dalian concluded two contracts with the Iraqi football player Nashat Akram (the “Player”). The first contract was titled “Employment Contract for Players” (the “Employment Contract”) and was entered into between the Player and Dalian. The second contract was titled “*Personal Portrait Right Agreement*” (the “Image Rights Agreement”) and was entered into between the Player, Dalian, and Aerbin (Hong Kong) Investment Limited (“Aerbin HK”). The Employment Contract and the Image Rights Agreement (collectively, the “Contracts”) had a duration of two seasons, starting on 2 February 2014 and expiring on 31 December 2015.
  6. Dalian undertook to pay the Player a monthly salary of USD 40,000 under the Employment Contract with Aerbin HK undertaking to pay the Player an image rights fee of USD 1,200,000 under the Image Rights Agreement, out of which USD 400,000 was to be paid a sign-on fee within 15 days following the conclusion of the agreement and the remaining USD 800,000 paid in monthly instalments of USD 40,000 “*from February to December each year*”.
  7. Dalian allegedly breached its contractual obligations towards the Player, forcing him to terminate his contractual relationship with Dalian on 25 May 2014, after which he joined Al Shorta.

**B. The FIFA Dispute Resolution Chamber Proceedings**

8. On 28 May 2014, the Player lodged a claim before FIFA against Dalian requesting FIFA to hold that he had a “*right to cancel his contract as the Respondent hasn’t paid his salary for last 3 months*”. He later amended his claim and sought the following:
  - a) USD 40,000 corresponding to the salary for May 2014 due in accordance with the Employment Contract;
  - b) USD 120,000 corresponding to the instalments for March, April and May 2014 due in accordance with the Image Rights Agreement;
  - c) USD 400,000 corresponding to the sign-on fee due in accordance with the Image Rights Agreement; and
  - d) USD 2,000,000 as compensation for losing the chance to play and earn money and damage to his reputation.
9. Dalian refuted the Player’s assertions and submitted that it had paid the Player’s February, March and April 2014 wages. It consequently lodged a counterclaim against the Player seeking USD 5,000,000 as “*loss compensation*” for breach of contract on grounds that the Player had among other things failed to attend the club’s training sessions for almost 7 weeks.
10. On 27 November 2014, the FIFA Dispute Resolution Chamber rendered its decision (“FIFA DRC Decision”) and dismissed the Player’s claim and partially granted Dalian’s counterclaim. It consequently ordered the Player to pay Dalian USD 690,000 in compensation for breach of contract with Al Shorta being held jointly and severally liable in accordance with Article 17.2 of the FIFA Regulations on the Status and Transfer of Players (“FIFA RSTP”). The FIFA DRC essentially held that:
  - a) It lacked jurisdiction to entertain matters regarding the Image Rights Agreement in light of Article 22 (b) of the FIFA RSTP;
  - b) The Player terminated the Employment Contract when he was only owed his March and April 2014 salaries. Non-payment of two months salaries is not a just cause for termination;
  - c) The value remaining under the Player’s contract with Dalian as at the date of termination was USD 680,000. On the other hand, the Player would have earned USD 700,000 had he stayed with Al Shorta until 31 December 2015 (the date his Employment Contract with Dalian would have expired). Consequently, the Player was to compensate Dalian with the average remuneration between the values due or remaining under his old and new contracts respectively, i.e. USD 690,000.
11. The operative part of the FIFA DRC Decision read as follows:

- “1. The claim of the Claimant / Counter-Respondent, Nashat Akram, is rejected.*
- 2. The counterclaim of the Respondent / Counter-Claimant, Dalian Aerbin FC, is partially accepted.*
- 3. The Claimant / Counter-Respondent is ordered to pay to the Respondent / Counter-Claimant within 30 days as from the date of notification of this decision, compensation for breach of contract in the amount of USD 690,000.*
- 4. The intervening party, Al Shorta, is jointly and severally liable for the payment of the aforementioned compensation.*
- 5. In the event that the amount due to the Respondent / Counter-Claimant in accordance with the above-mentioned point 3 is not paid by the Claimant / Counter-Respondent within the stated time limit, interest at the rate of 5% p.a. will fall due as of expiry of the aforementioned time limit and the present matter shall be submitted, upon request, to the FIFA Disciplinary Committee for consideration and a formal decision.*
- 6. The Respondent / Counter-Claimant is directed to inform the Claimant / Counter-Respondent and the intervening party immediately and directly of the account number to which the remittance is to be made and to notify the Dispute Resolution Chamber of every payment received.*
- 7. Any further claim lodged by the Respondent / Counter-Claimant is rejected.”*

**C. The Player’s CAS Appeal (CAS 2015/A/4039 Nashat Akram v. Dalian Aerbin Football Club)**

12. On 14 April 2015, the Player appealed the FIFA DRC decision before the Court of Arbitration for Sport (the “CAS”). Al Shorta did not appeal but was invited by the CAS Court Office to take part in the proceedings in view of its joint and several liability. Al Shorta however declined and/or ignored the CAS Court Office’s invitation, leaving the Player to pursue the appeal on his own.
13. The Player essentially submitted that he terminated the employment relationship with just cause. He argued that the Employment Contract and the Image Rights Agreement were linked and Dalian’s delay in paying his salary ought to have been considered as a justifiable reason for termination of both Contracts with just cause.
14. On 3 February 2016, the CAS rendered its award *CAS 2015/A/4039 Nashat Akram v. Dalian Aerbin Football Club* in which it held that the Player lacked just cause to terminate his contractual relationship with Dalian. The panel went on to find that both the Employment Contract and the Image Rights Agreement were linked and that at the time of termination, Dalian owed the Player USD 560,000 in monies due under both contracts broken down as follows:
  - a) USD 400,000 signing-on fee due under the Image Rights Agreement;
  - b) USD 120,000 as instalments due under the Image Rights Agreement (March, April and May); and
  - c) USD 40,000 being the Player’s May salary due under the Employment Contract

Total: USD 560,000

15. The Panel consequently took into account these overdue payables by reviewing and offsetting the compensation due from the Player to Dalian from USD 690,000 to USD 130,000 (i.e. USD 690,000 – USD 560,000).

16. In doing so, the panel made the following orders:

*“1. The appeal filed by Nashat Akram against the FIFA Dispute Resolution Chamber decision dated 27 November 2014 is partially upheld.*

*2. The FIFA Dispute Resolution Chamber decision dated 27 November 2014 is partially modified and Nashat Akram is ordered to pay Dalian Aerbin Football Club USD 130,000 (one hundred and thirty thousand US Dollars), together with interest at 5% p.a. with effect from 26 April 2015 until the date it is effectively paid.*

*3. (...)*

*4. (...)*

*5. All other motions or prayers for relief are dismissed.”*

17. On 13 May 2016, Dalian wrote to Al Shorta asking it to pay USD 136,803.42 (inclusive of interest) on account of its joint and several liability as ordered in CAS 2015/A/4039. The letter read in part as follows:

*“We write further to the enclosed [CAS Award], as set out at paragraph 2 of page 30 of the [CAS Award], the [DRC Decision] has been partially modified and payment of US\$130,000 together with interest at 5% pa with effect from 26 April 2015 is to be made to (...) Dalian (...). Al Shorta is jointly and severally liable for payment of compensation we now request that Al Shorta make the payment as set out under the Arbitral Award. The total amount to be paid to date, inclusive of interest is US\$136,803.42.”*

18. On 10 August 2016, Dalian wrote to Al Shorta stating as follows:

*“We have now had the opportunity to consider the points you raise in your letter dated 28 May 2016 and in response make the following points:*

*(...) Whilst the CAS Award modifies the FIFA Decision as to the quantum to be paid, the FIFA Decision remains binding. Part III, Paragraph 4 of the FIFA Decision therefore is unchanged and Al Shorta is considered jointly and severally liable to pay the (modified) compensation.*

*[Dalian] still holds [Al Shorta] jointly and severally liable to pay compensation under the CAS Award and FIFA Decision.*

*(...).”*

**D. The FIFA Disciplinary Committee proceedings**

19. On 10 and 15 August 2016, Dalian petitioned the FIFA DRC to refer the matter to the FIFA Disciplinary Committee for disciplinary proceedings against the Player for having failed to pay the amounts ordered in the case CAS 2015/A/4039.
20. On 5 September 2016, the FIFA DRC informed the Parties that the matter had been referred to the FIFA Disciplinary Committee.
21. On 8 November 2017, the FIFA Disciplinary Committee opened disciplinary proceedings against the Player and the Appellant for failing to comply with the award CAS 2015/A/4039 and urged them to pay the outstanding amount of USD 130,000 plus interest in accordance with the said award.
22. In a letter addressed to Al Shorta via the Iraqi Football association on 17 November 2017, the Deputy Secretary to the FIFA Disciplinary Committee urged the Player and Al Shorta again to “(...) immediately pay (...) Dalian Yifang FC, the outstanding amount of USD 130,000 plus 5% interest p.a. to be calculated in accordance with the arbitral award dated 3 February 2016, and to send us a copy of proof of payment. Should the player (...) and/or the club Al Shorta pay all outstanding amounts by 1 December 2017 (...) the disciplinary proceedings will be closed.”
23. On 29 and 31 January 2018, the Iraqi Football Association informed FIFA that the Player was no longer active as a professional or amateur player and was neither involved in any football related activities.
24. On 2 February 2018, Dalian referred to the amounts due as ordered in the award CAS 2015/A/4039 and informed the FIFA Disciplinary Committee as follows:  
  
*“We calculate that an additional 645 days’ of interest will have accrued if Al Shorta make payment within 14 days of the date of this letter. that means that the total Al Shorta must now pay is US\$148,290.87 (...). We look forward to receiving confirmation that Al Shorta have made payment in full, or, failing that, that FIFA will take immediate steps to sanction Al Shorta for its failure to comply with a CAS award which was made on 3 February 2016.”*
25. On 16 March 2018, the secretariat to the FIFA Disciplinary Committee informed the Parties that the committee was not in a position to conduct further disciplinary proceedings against the Player in respect of Article 64 of the FIFA Disciplinary Code following the information provided by the Iraqi Football Association that the Player was no longer active as a professional or amateur player and was neither involved in any football related activities. The secretariat further informed the Parties that since Al Shorta had not challenged the FIFA DRC Decision, the same had become final and binding on Al Shorta. The secretariat went on to inform Dalian that the FIFA Disciplinary Committee was not in a position to enforce the award CAS 2015/A/4039 but nevertheless invited Dalian to file submissions substantiating the grounds on which it sought to open disciplinary proceedings against Al Shorta. The relevant parts of the said FIFA Disciplinary Committee letter read as follows:

*“(...) we find it worth to recall the content of the decision passed by the Dispute Resolution Chamber on 27 November 2014 by means of which the player Nashat*

*Akram was ordered to pay to the club Dalian Aerbin FC the amount of USD 690,000 as compensation for breach of contract (point III/3). In addition and in respect of art. 17 para. 2 of the Regulation on the Status and Transfer of Players, the club Al Shorta has been found “jointly and severability liable for the payment of the aforementioned compensation (...)”*

*The CAS issued an award on 3 February 2016 whereby the decision of the FIFA Dispute Resolution Chamber dated 27 November 2014 was partially modified. According to said award, “Nashat Akram [was] ordered to pay Dalian Aerbin Football Club USD 130,000 together with interest at 5% p.a. with effect from 26 April 2015 until the date it is effectively paid”. It can be mentioned that the club Al Shorta did not appeal against the decision of the Dispute Resolution Chamber and did not participate in the procedure before CAS (...)*

*Having stated the above, we would like to clarify the following points:*

*I. Liability of the club Al Shorta*

*(...) according to the Swiss Federal Tribunal (4A\_6/2014), “the presence of joint defendants does not affect the plurality of the cases and the parties” and that “joint defendants remain independent from each other” (free translation from French to English). Therefore, “the behaviour of one of them, and in particular his withdrawal, failure to appear or appeal, is without influence upon the legal position of the others” and “this independence of joint defendants will continue before the appeal body: a joint defendant may independently appeal the decision affecting him regardless of another’s renouncing his right to appeal the same decision” (emphasis added).*

*In addition, the Swiss Federal Tribunal clarified that “the res judicata effect of the judgement concerning joint defendants must be examined separately for each joint defendant in connection with the opponent of the joint defendant because there are as many res judicata effects as couples of claimant/defendant” (emphasis added).*

*In this respect and in line with the CAS jurisprudence, we would like to emphasise that, since the club Al Shorta has not explicitly challenged its joint and several liability imposed by the Dispute Resolution Chamber in its decision passed on 27 November 2014 and did not participate to the proceedings before the CAS, the decision of the Dispute Resolution Chamber dated 27 November 2014 has become final and binding upon the club Al Shorta.*

*Based on these considerations, we would like to inform the club Dalian Aerbin FC that the FIFA Disciplinary Committee is not in a position to enforce the CAS award dated 3 February 2016 against the club Al Shorta (...)*

*As a consequence, the club Aerbin Dalian FC is kindly invited to clarify by return the outstanding amounts due by the club Al Shorta in this matter and to specify the legal basis on which it is basing its request on.*

*II. Liability of the player Mr Nashat Akram*

*With regard to the liability of the player Mr Nashat Akram, our services have been informed that Mr Nashat Akram is currently not active as a professional or amateur player, neither involved in any football-related activities (...). In view of the above (...)*

*the FIFA Disciplinary Committee is not in a position to further conduct disciplinary proceedings against him in respect of a violation of art. 64 of the FIFA Disciplinary Code (FDC). Therefore, the present disciplinary proceedings opened on 17 November 2017 against the player Nashat Akram are hereby closed.*

*(...).*”

26. On 20 March 2018, Dalian informed the FIFA Disciplinary Committee that “(...) *the amount sought from Club Al Shorta (as distinct from Mr. Nashat Akram), is the amount as set out in the decision of the FIFA Dispute Resolution Chamber dated 27 November 2014 (...)* ” pursuant to which “(...) *Al Shorta became liable to [the creditor] in the sum of \$690,000 plus interest at 5% per annum.*”
27. On 8 August 2018, the secretariat to the FIFA Disciplinary Committee opened disciplinary proceedings against Al Shorta for having failed to pay the USD 690,000 plus interest at 5% per annum as ordered in the FIFA DRC Decision.
28. On 9 August 2018, Al Shorta sought to suspend the disciplinary proceedings by informing the FIFA Disciplinary Committee that Dalian had not provided the full bank account details (IBAN or swift code) for purposes of facilitating the payment. Al Shorta also argued that the amount actually due from it as a joint and several debtor is USD 130,000 by submitting that it ought to benefit from the award in CAS 2015/A/4039. It also argued that only point III.4 of the FIFA DRC decision had become final and binding.
29. On 9 and 13 August 2018, Dalian provided Al Shorta with its full bank account details.
30. By way of letter dated 16 August 2018, the legal representative of Al Shorta and the Player informed FIFA that they had paid Dalian USD 151,345 in satisfaction of the compensation due to Dalian. The letter read in part as follows:

*“(...) kindly find herewith proof of payment of the amount of USD 151,388.00 successfully remitted into the bank account of Dalian Yifang FC [the “Creditor” [see Exhibit...], keeping in mind that this payment was made on behalf of both the Player and Al Shorta Sports Club.*

*(...)*

*Therefore, in light of the confirmation of the abovementioned payment (...) this disciplinary procedure (...) must be immediately closed (...).*”
31. On 12 October 2018, Dalian acknowledged receipt of the above amount (USD 151,345) but requested Al Shorta to pay the full amount as ordered by the FIFA DRC.
32. On 23 October 2018, the Secretariat to the FIFA Disciplinary Committee urged Al Shorta to pay the full amount as ordered by the FIFA DRC by 30 October 2018.
33. On 28 October 2018, Al Shorta and the Player requested the FIFA Disciplinary Committee to close the proceedings on grounds that the full amount due from the Player (USD 151,345) had already been paid.



34. On 16 November 2018, the FIFA Disciplinary Committee rendered the Appealed Decision and held as follows:

*“1. The club Al Shorta (hereinafter, the Debtor) is found to have infringed art. 64 of the FIFA Disciplinary Code as it is guilty of failing to comply in full with the decision passed by the Dispute Resolution Chamber on 27 November 2014, according to which it was ordered to pay to the Club Dalian (...) the amount of USD 690,000 as compensation for breach of contract plus 5% interest p.a.(...). In particular, the Debtor has only paid a partial amount to the Creditor (USD 151,345).*

*2. The Debtor is ordered to pay a fine to the amount of CHF 25,000. The fine is to be paid within 60 days of notification of the present decision (...).*

*3. The Debtor is granted a final deadline of 60 days as from notification of the present decision in which to settle its debt to the Creditor.*

*4. If payment is not made to the Creditor (...) by this deadline, six (6) points will be deducted automatically by the Iraqi football Association from the Debtor’s first team in the domestic league championship (...).*

*5. If the Debtor still fails to pay the amount due to the Creditor even after the deduction of points in accordance with point III.4 above, the FIFA Disciplinary Committee, upon request of the Creditor, will decide on a possible relegation of the Debtor’s first team to the next lower division.*

*(...).”*

35. The Appealed Decision was based on the following grounds:

- a) According to the principle of necessary joint defendants on the merits (*“consortité matérielle simple passive”* governed by Article 71 of the Swiss Procedure Code) addressed by the Swiss Federal Tribunal (*“SFT”*) in its decision 4A\_6/2014 dated 28 August 2014, the presence of joint defendants does not affect the plurality of cases and the parties remain independent from each other. A joint defendant may independently appeal a decision affecting it regardless of another renouncing its right to appeal the same decision. As a result, the *res judicata* effect of the judgment concerning the joint defendants must be examined separately for each joint defendant.
- b) Whereas the FIFA DRC decision found the Player and Al Shorta jointly and severally liable and ordered them to pay Dalian USD 690,000, only the Player appealed the said decision to CAS. As a result, the FIFA DRC decision became final and binding on the couple, i.e. Al Shorta and the Player, with the CAS award (CAS 2015/A/4039) exclusively relating to the Player. Therefore, the task of the FIFA Disciplinary Committee is to check whether Al Shorta has complied with the final and binding FIFA DRC decision.
- c) By only paying USD 151,345 as opposed to USD 690,000 plus 5% *p.a.* interest, Al Shorta had failed to fully comply with the FIFA DRC decision. Al Shorta is therefore guilty under the terms of Article 64 of the FIFA Disciplinary Code.

- d) A fine of CHF 25,000 was deemed appropriate in lieu of Al Shorta's behaviour of unlawfully withholding the amount from Dalian despite FIFA's attempts to urge them to pay and also considering the outstanding amount due to Dalian.

### III. PROCEEDINGS BEFORE THE COURT OF ARBITRATION FOR SPORT (CAS)

36. On 1 April 2019, in accordance with Article R47 of the Code of Sports-related Arbitration (the "CAS Code"), the Appellant filed its Statement of Appeal with the CAS challenging the Appealed Decision. In its Statement of Appeal, the Appellant requested the appointment of Mr. Massimo Coccia, Attorney-at-law, Rome, Italy as arbitrator. Further, the Appellant requested for provisional measures being a stay of the Appealed Decision.
37. On 9 April 2019, in reply to the Appellant's request for provisional measures, FIFA informed Dalian, Al Shorta and the Iraqi football Association that it had suspended the execution of the Appealed Decision, "(...) and in particular the implementation of the pertinent sanctions (cf. point III.2 ff of the decision) (...) for the duration of the proceedings before CAS."
38. On 12 April 2019, FIFA forwarded a copy of its letter dated 9 April 2019 to the CAS Court Office and also informed CAS that the Appellant's request for provisional measures was moot given that it was a decision of a financial nature issued by a private Swiss association and was thus not enforceable while under appeal (CAS 2004/A/780, CAS 2017/A/5274 and CAS 2017/A/5496). In the said letter, FIFA also nominated Mr. Alexis Schoeb, Attorney-at-law, Geneva, Switzerland, as arbitrator.
39. On 26 April 2019, the Second Respondent informed the CAS Court Office that in order to avoid incurring further costs in these proceedings, it would not be actively participating in the proceedings on grounds that it lacked standing to be sued. The Second Respondent cited CAS jurisprudence such as CAS 2007/A/1329 and CAS 2007/A/1330 in support of its position and added that given that the Appellant was only seeking relief against FIFA, only FIFA and not Dalian had standing to be sued. The Second Respondent nevertheless asked the CAS Court Office to copy it in all correspondence related to these proceedings up to its conclusion.
40. On 25 April 2019, in accordance with Article R51 of the CAS Code, the Appellant filed its Appeal Brief with the CAS.
41. On 15 May 2019, in accordance with Article R54 of the CAS Code, and on behalf of the President of the CAS Appeals Arbitration Division, the CAS Court Office informed the parties that the Panel appointed to this case was constituted as follows:
- President: Mr. Rui Botica Santos, Attorney-at-Law, Lisbon, Portugal
- Arbitrators: Mr. Massimo Coccia, Law Professor and Attorney-at-Law, Rome, Italy
- Mr. Alexis Schoeb, Attorney-at-Law, Geneva, Switzerland
42. On 11 June 2019, in accordance with Article R55 of the Code, the First Respondent filed its Answer with CAS.

43. The Parties were also informed Ms Stephanie De Dycker had been appointed as an *ad-hoc* clerk in this matter.
44. The Second Respondent failed to submit its Answer despite having been invited to do so by CAS on 29 April 2019.
45. On 13 June 2019, the CAS Court Office requested the Parties to state whether they wanted a hearing or preferred to have the matter decided on the basis of the Parties' written submissions.
46. In letters respectively dated 18 and 20 June 2019, the Appellant and the First Respondent informed the CAS Court Office of their wish to have this matter decided on the basis of the Parties' written submissions. The Second Respondent failed to state its position in this regard.
47. On 7 December 2018, the CAS Court Office wrote to the parties confirming that the Panel had decided that the Appeal shall be deemed admissible, and that its reasons would be included in the present Award.
48. On 28 June 2019, the CAS Court Office sent a copy of the Order of Procedure to the Parties, which the parties duly signed and returned to the CAS Court Office on 4, respectively, 9 and 15 July 2019. In doing so, the Parties confirmed that their right to be heard had been fully respected and agreed to the fact that, pursuant to article R57 of the Code, the Panel considered itself to be sufficiently well informed to decide the present matter without the need to hold a hearing.
49. On 2 August 2019, the CAS Court Office informed the Parties that pursuant to Article R57 (2) of the CAS Code, the Panel deemed himself to be sufficiently well informed of the matter and, in accordance with the position expressed by the Parties, would render an award based on the Parties' written submissions.

#### **IV. THE PARTIES' SUBMISSIONS**

50. The following summary of the parties' positions is illustrative only and does not necessarily comprise each and every contention put forward by the parties. The Panel, however, has carefully considered all the submissions made by the parties, even if no explicit reference is made in what immediately follows.

##### **A. Al Shorta's submissions**

51. In its Statement of Appeal and Appeal Brief, Al Shorta requested the following prayers for relief:
  - "1. Review the facts and law of the Challenged Decision *de novo*, and issue new decision which replaces the decision challenged;
  2. Set aside the Challenged Decision in its entirety.
  3. Alternatively, annul the Challenged Decision and refer the matter to previous instance.

4. *For the effect of the above, condemn the Respondents to bear any and all the costs of the present arbitrations, including the CAS Court Fee which was paid by the Appellant as well as to pay to the Appellant any and all costs and expenses incurred in connection of this procedure, including – without limitation – legal fee, expenses and any eventual further costs.”*

52. In summary, Al Shorta submitted the following arguments in support of its Appeal:

**i. Dalian’s standing to be sued**

53. Dalian has standing to be sued because the cornerstone of this appeal relates to the amount of debt for which Al Shorta is jointly and severally liable. Any CAS decision on the merits of this case will have a direct legal impact on Dalian.
54. According to CAS jurisprudence (CAS 2011/A/2654 & CAS 2011/A/2551), an appellant’s failure to summon a third party as a co-respondent to the appeal may have serious ramifications on the panel’s scope of review to the extent that the panel lacks power to award the reliefs sought by the appellant.

**ii. Violation of right to be heard**

55. The FIFA Disciplinary Committee violated Al Shorta’s right to be heard by ignoring numerous correspondence, evidence and legal considerations filed by Al Shorta demonstrating its full compliance with point III.4 of the FIFA DRC decision, an example being Al Shorta’s letter dated 28 October 2018 to FIFA (see paragraph 33 above).
56. This contravened Article 94 of the FIFA Disciplinary Code pursuant to which Al Shorta had the right to be heard before any decision was passed by the FIFA Disciplinary Committee.

**iii. Extinction by way of a debt set-off**

57. Pursuant to the terms of points III.3 and III.5 of the FIFA DRC decision would be satisfied once Dalian collected USD 690,000 plus the accrued interest by payment, and/or set off and/or novating from any of the debtors.
58. According to Article 147 (2) of the Swiss Code of Obligations (“SCO”), where one joint and several debtor satisfies the creditor by payment or set off, the others are discharged to that extent.
59. The Player satisfied Dalian by way of debt set off the amount of USD 560,000. In doing so, the Player also discharged Al Shorta to the same extent. In view of Article 147 of the SCO, the remaining balance of the amount of compensation as originally set out in point III.3 of the FIFA DRC decision was USD 130,000 plus accrued interest, an amount which Al Shorta and the Player jointly paid on 15 August 2018. CAS 2015/A/4039 did not amend point III.3 of the FIFA DRC decision. On the contrary, it upheld this point of the decision ordering the Player and Al Shorta to pay Dalian compensation for breach of contract. Whether or not Al Shorta appealed the FIFA DRC decision is therefore irrelevant.

60. Dalian has therefore fully collected the amount of USD 690,000 plus the corresponding accrued interest which the FIFA DRC ordered the Player to pay.

**iv. The status of point III.3 of the FIFA DRC decision in light of CAS 2015/A/4039**

61. Point III.3 of the FIFA DRC decision relates to the dispute between the Player and Dalian. The FIFA DRC did not order Al Shorta to pay compensation to Dalian.
62. The liability stemming from point III.3 of the FIFA DRC decision, i.e. the liability to pay compensation cannot be imposed on the Player's new club because (i) it was not a party to the contract between the Player and his former club and (ii) according to Article 41 (1) of the SCO, only the party who unlawfully causes loss or damage to another is obligated to provide compensation.
63. Al Shorta's liability under Article 17 (2) of the FIFA RSTP (as read together with point III.4 of the FIFA DRC decision) is dependent on the contingency that the Player is required to pay compensation. If point III.3 of the FIFA DRC decision ceased to exist, then point III.4 also ceased to exist.
64. The annulment of point III.3 of the FIFA DRC decision by the award in *CAS 2015/A/4039* meant that Al Shorta was not liable to pay the compensation set out in point III.3 of the FIFA DRC decision but was rather liable to pay the compensation specified at point 2 of the operative part of *CAS 2015/A/4039*, i.e. USD 130,000 plus interest.

**v. The status of point III.4 of the FIFA DRC Decision**

65. Point III.4 of the FIFA DRC decision, i.e. Al Shorta's joint and several liability because final and binding and acquired *res judicata* effect following Al Shorta's failure to appeal the FIFA DRC decision. Point III.3 of the FIFA DRC decision, i.e. the compensation due from the Player however did not acquire any *res judicata* effect following the Player's appeal.
66. Under swiss law, the *res judicata* effects extend to all facts existing at the time of first judgment (ATF 139 III 126 at 3.1, p. 129) but does not extend to a change in circumstance or in the object of the matter since the first judgment (ATF 140 III 278 at 3.3; judgment 4A\_603/2011 at 3.1; ATF 139 III 126 at 3.2.1., p.130). Since point III.3 of the FIFA DRC decision was modified by *CAS 2015/A/4039*, the change in the object of Al Shorta's liability means that the *res judicata* effect does not extend to Al Shorta's liability.
67. Dalian's claim against Al Shorta is inseparably tied to its claim against the Player. If the Player is released from his obligation towards Dalian, then Al Shorta's claim against Dalian should also not survive.

**vi. Judicial estoppel**

68. At point III.5 of the FIFA DRC decision, FIFA underscored the principle that if the Player has not paid the compensation, the matter shall be submitted, upon request, to the FIFA Disciplinary Committee for consideration and enforcement.
69. In view of the above, the position of FIFA and Dalian all along was that Al Shorta was jointly and severally liable to pay USD 130,000 plus interest and not USD 690,000 plus interest.
70. This is corroborated by:
- a) Dalian's letter dated 13 May 2016 to Al Shorta in which they requested the latter to pay USD 136,803.42 for being jointly and severally liable;
  - b) Dalian's letter dated 10 August 2016 to Al Shorta stating that *"(...) whilst the CAS award [CAS 2015/A/4039] modifies the FIFA Decision as to the quantum to be paid (...) Al Shorta is considered jointly and severally liable to pay the (modified) compensation."*;
  - c) FIFA's letters dated 8 and 17 November 2017 urging the Player and Al Shorta to pay the outstanding amount of USD 130,000 plus interest in accordance with CAS 2015/A/4039; and
  - d) Dalian's letter dated 2 February 2018 to FIFA wherein they calculated the amount due from Al Shorta at USD 148,290.87
71. The principle of judicial estoppel therefore precludes FIFA and Dalian from taking inconsistent positions by now claiming that the amount due is USD 690,000.

**vii. SFT judgment 4A\_6/2014**

72. The findings of SFT judgment 4A\_6/2014 are not applicable to the matter at hand because it rightly found a decision rendered by the FIFA DRC ordering the player and his new club to pay compensation to the player's former club to be final and binding following the player's failure to appeal the said decision to CAS.
73. That is not the case before hand where the Player, as the principal obligor, appealed the FIFA DRC decision and reduced the compensation from USD 690,000 plus interest to USD 130,000 plus interest.

**viii. Conclusion**

74. The Appealed Decision was rendered on the assumption that Al Shorta did not comply with the FIFA DRC decision. Al Shorta has however proved that it fully complied with the FIFA DRC decision. The Appealed Decision should thus be set aside.

**B. FIFA's submissions**

75. In its Answer, FIFA requested the following prayers for relief:

- "a. To reject the Appellant's appeal in its entirety.*
- b. To confirm the decision (...) rendered by the FIFA Disciplinary Committee on 16 November 2018.*
- c. To order the Appellant to bear all costs incurred with the present procedure and to cover all the expenses of FIFA related to the present procedure."*

76. In summary, FIFA submitted the following arguments:

**i. The alleged violation of the right to be heard**

77. Al Shorta's right to be heard was fully granted and respected.

78. This is evidenced from the Appealed Decision, which summarises all the submissions and considerations filed by Dalian. The mere fact that the FIFA Disciplinary Committee rendered a different decision does not mean Al Shorta's right to be heard was violated.

**ii. The *res judicata* effect of the FIFA DRC decision on Al Shorta**

79. Pursuant to the SFT judgment 4A\_6/2014 of 28 August 2014, in cases where a club and a player are declared jointly and severally liable by the FIFA DRC, the principle of "*consortité matérielle simple passive*" otherwise known as "simple joint debtors" arises. Under this principle, SFT in the said case held that "*the presence of joint defendants does not affect the plurality of the cases and the parties. The joint defendants remain independent from each other.*"

80. This binding position as set out in the SFT judgment 4A\_6/2014 is derived from Article 71 of the Swiss Civil Procedure Code which states as follows:

*" Art. 71 Voluntary joinder*

*1. Two or more persons whose rights and duties result from similar circumstances or legal grounds may jointly appear as plaintiffs or be sued as joint defendants.*

*2. Voluntary joinder is excluded if the individual cases are subject to different types of procedure.*

*3. Each of the joint parties may proceed independently from the others."*

81. The Player's decision to appeal the FIFA DRC decision does not have any influence or legal impact on Al Shorta. Consequently, each party (the Player and Al Shorta) should benefit – or suffer the outcome of the decision it settles for; *in casu*, the FIFA DRC decision for Al Shorta and the CAS award CAS 2015/A/4039 for the Player.

82. As explained by a federal judge, “(...) *when the plaintiff brings an action against joint and several debtors (...) they form a simple consortia and the judge renders a single judgment. If one of the defendants is released and the plaintiff does not appeal his release, the decision comes into force (...). Similarly, if the two co-defendants are jointly and severally convicted, if only one of them appeals and is released by the appeal authority, the other is the only one convicted. These consequences are unfortunate, and the joint appeal cannot prevent them.*”
83. The FIFA Disciplinary Committee had no other choice but to abide by such precedent and therefore to consider that the FIFA DRC was final and binding upon the Appellant.
84. The *res judicata* effect of the FIFA DRC decision therefore extended to Al Shorta following its failure to appeal to CAS. Al Shorta was liable to pay Dalian the amounts ordered in the FIFA DRC decision.

**iii. Al Shorta cannot benefit from the Player’s CAS appeal**

85. The FIFA DRC decision became final and binding on Al Shorta following its failure to appeal.
86. Al Shorta’s submission that only point IV of the operative part of the FIFA DRC decision became final and binding cannot be accepted as it contravenes the SFT’s position on the application of Article 71 of the Swiss Civil Procedure Code.
87. The FIFA DRC decision binds both several and joint defendants and only each of their individual appeals may modify their legal status.
88. In the case *CAS 2016/A/4408* FIFA found the player and his new club to be jointly and severally liable. Only the new club (and not the player) appealed to CAS. The appeal was dismissed, thereby maintaining the status of the new club as a joint and severally liable party. However, the panel followed the approach in the SFT judgment 4A\_6/2014 by insinuating that had the new club succeeded in overturning the FIFA DRC finding that the player had terminated his employment contract with his former club without just cause, only the new club would have benefitted from the CAS award, with the player remaining liable to pay his former club as ordered by the FIFA DRC.
89. Al Shorta cannot enjoy the set off because it was only recognised by CAS in proceedings, to which Al Shorta was not a party, 10 months after the FIFA DRC decision had become *res judicata*. The Appellant could have only benefited of the award *CAS 2015/A/4039* if it had appealed the DRC decision as the Player did.

**iv. Judicial estoppel**

90. This principle does not prevent FIFA from applying SFT jurisprudence even if FIFA initially opened disciplinary proceedings against Al Shorta for the payment of USD 130,000.



91. FIFA acted in good faith and always informed Al Shorta of the consequences of its failure to appeal the FIFA DRC decision to CAS. Al Shorta cannot therefore claim to be misguided.
92. In addition, Dalian is not estopped from either requesting the correct amount due, as such petition falls within the applicable 10-year limitation period established under Article 42 (1) of the FIFA Disciplinary Code.

**v. Violation of Article 64 of the FIFA Disciplinary Code**

93. Following the *res judicata* effect of the FIFA DRC decision on Al Shorta and their failure to pay Dalian as joint and several obligors, FIFA was left with no option but to impose disciplinary sanctions on Al Shorta pursuant to Article 64 of the FIFA Disciplinary Code.
94. The spirit behind Article 64 of the FIFA Disciplinary Code is to enforce decisions rendered by a body, a committee or an instance of FIFA or CAS in a subsequent appeal decision, which are final and binding.
95. It is undisputed that Al Shorta had failed to comply with the FIFA DRC decision. It had only made a partial payment of USD 151,354 in September 2018, after the disciplinary proceedings had been opened. This amount short by USD 538,655 in view of the principle of “*consortité matérielle simple passive*”.
96. As a result, the FIFA Disciplinary Committee correctly imposed disciplinary sanctions on Al Shorta for having failed to fulfil its financial obligations towards Dalian.

**vi. The proportionality of the sanctions**

97. The CAS Panel may only amend a disciplinary decision in cases in which it finds that the relevant judicial body exceeded the margin of discretion accorded to it by the principle of association autonomy (i.e. if the sanction is evidently and grossly disproportionate to the offence).
98. The sanctions imposed on Al Shorta are proportionate. The fine fell within the parameters established under Article 15 of the FIFA Disciplinary Code which fixes the minimum fine at CHF 300 and the maximum at CHF 1,000,000.
99. The FIFA Disciplinary Committee took into account the debt due from Al Shorta, which was USD 538,655 (USD 690,000 – USD 151,354), which was equal to CHF 512,193. It therefore considered a fine of CHF 25,000 to be appropriate to serve as a deterrent.
100. The 6 points deduction and Al Shorta’s possible relegation are not definitive. They are dependent on Al Shorta’s conduct and will not be enforced if Al Shorta fulfils its financial obligations towards Dalian within the 60-day grace period fixed in the Appealed Decision.

### **C. Dalian's Submissions**

101. In its letter to the CAS Court Office of 26 April 2019, Dalian referred to CAS jurisprudence (CAS 2007/A/1329), according to which *“a party has standing to be sued and may thus be summoned before the CAS only if it has some stake in the dispute because something is sought against it. The FIFA disciplinary proceedings are primarily meant to protect an essential interest of FIFA, i.e. full compliance with the decisions rendered by its bodies. Indeed, the appeals against the decisions of the disciplinary bodies regard only the existence of a disciplinary infringement under FIFA rules, the power of FIFA to impose sanctions and the appropriateness and proportionality of such FIFA sanctions.”* Based on this CAS jurisprudence, Dalian advocates that *“[...] in the present matter, the Appellant is seeking relief only against FIFA and accordingly, only FIFA has standing to be sued. [...] In light of the above, and in order to avoid incurring further fees on behalf of our client, please be advised that unless CAS requires our participation (or the Tribunal wishes to hear from our client on any particular point) our client will not be actively participating in these proceedings. (...). We would be happy to remain copied in on all correspondence, and to receive a copy of the decision on conclusion of this matter.”*

### **V. JURISDICTION OF THE CAS**

102. Article R47 of the CAS Code provides as follows:

*“An appeal against the decision of a federation, association or sports-related body may be filed with CAS if the statutes or regulations of the said body so provide or if the parties have concluded a specific arbitration agreement and if the Appellant has exhausted the legal remedies available to it prior to the appeal, in accordance with the statutes or regulations of that body.*

*An appeal may be filed with CAS against an award rendered by CAS acting as a first instance tribunal if such appeal has been expressly provided by the rules of the federation or sports-body concerned.”*

103. Moreover, the Appellant relied on Article 58.1 of the FIFA Statutes and Article 64.5 of the FIFA Disciplinary Code. The jurisdiction of CAS was not disputed by the Parties. The jurisdiction of the CAS was further confirmed by the Order of Procedure duly signed by the parties.
104. It follows that the CAS has jurisdiction to hear this dispute.

### **VI. ADMISSIBILITY**

105. Article R49 of the Code provides as follows:

*“In the absence of a time limit set in the statutes or regulations of the federation, association or sports-related body concerned, or of a previous agreement, the time limit for appeal shall be twenty-one days from the receipt of the decision appealed against. After having consulted the parties, the Division President may refuse to entertain an appeal if it is manifestly late.”*

106. Article 58 of the FIFA Statutes read as follows:

*“Appeals against final decisions passed by FIFA’s legal bodies and against decisions passed by confederations, member associations or leagues shall be lodged with CAS within 21 days of receipt of the decision in question.”*

107. The grounds of the Appealed Decision were notified to the parties on 25 March 2019. The Statement of Appeal was filed on 1 April 2019, within the 21-day deadline fixed under Article 58 of the FIFA Statutes.

108. It follows that the Appeal is admissible.

## **VII. APPLICABLE LAW**

109. Pursuant to Article R58 of the CAS Code, in an appeal arbitration procedure before the CAS:

*“The Panel shall decide the dispute according to the applicable regulations and, subsidiarily, to the rules of law chosen by the parties or, in the absence of such a choice, according to the law of the country in which the federation, association or sports-related body which has issued the challenged decision is domiciled or according to the rules of law that the Panel deems appropriate. In the latter case, the Panel shall give reasons for its decision.”*

110. In addition, Article 57 (2) of the FIFA Statutes stipulates the following:

*“The provisions of the CAS Code of Sports-Related Arbitration shall apply to the proceedings. CAS shall primarily apply the various regulations of FIFA and, additionally, Swiss law.”*

111. As such, the Panel is satisfied to primarily apply the various regulations of FIFA and, subsidiarily, Swiss law should the need arise to fill a possible gap or *lacuna* in the various regulations of FIFA.

## **VIII. MERITS OF THE APPEAL**

112. The Parties have raised a few procedural and substantive issues for the Panel’s determination. As a matter of procedure, Dalian states that it lacks standing to be sued. The Appellant also raises a procedural issue by submitting that the FIFA Disciplinary Committee violated its right to be heard.

113. In substance, the Appellant primarily contends that the FIFA Disciplinary Committee was wrong in imposing disciplinary sanctions. It claims that the Player and Al Shorta had fully paid the amounts due to Dalian as ordered in the FIFA DRC decision and the FIFA Disciplinary Committee should therefore not have rendered the Appealed Decision.

114. The issues for determination therefore are:

- a) **Does Dalian lack standing to be sued?**
- b) **Did the FIFA Disciplinary Committee violate Al Shorta's right to be heard?**
- c) **Is there any legal basis for disciplinary sanctions against Al Shorta? Does Al Shorta – as a joint and several liable party – has to pay any additional amount in excess of Dalian's credit over the Player?**

115. The Panel shall address these issues below.

**Procedural Issues**

**a) Does Dalian lack standing to be sued?**

- 116. Dalian submits that it lacks standing to be sued. It says that pursuant to CAS jurisprudence (in particular: (CAS 2007/A/1329), a party only has standing to be sued if it has some stake in the dispute because something is sought against it.
- 117. Given that Al Shorta is seeking relief only against FIFA, Dalian submits that only FIFA has standing to be sued.
- 118. Al Shorta submits that Dalian has standing to be sued because the cornerstone of this appeal relates to the amount of debt for which Al Shorta is jointly and severally liable.
- 119. Al Shorta states that according to CAS jurisprudence (CAS 2011/A/2654 & CAS 2011/A/2551), an appellant's failure to summon a third party as a co-respondent to the appeal may have serious ramifications on the panel's scope of review to the extent that the panel lacks power to award the reliefs sought by the appellant.
- 120. Pursuant to CAS jurisprudence, a party has standing to sue (and be sued) if it can be demonstrated that it is sufficiently affected by the appealed decision and has a tangible interest, of financial or sporting nature, at stake (CAS 2013/A/3140).
- 121. In CAS 2017/A/5359, the panel stated as follows:

*"62. Pursuant to CAS jurisprudence, a party has standing to be sued if it is personally obliged by the "disputed right" at stake or has a de facto interest in the outcome of an appeal. For instance, the panel in CAS 2006/A/1206 stated as follows: "4. Under Swiss law, applicable pursuant to Article R58 of the Code, the defending party has standing to be sued (légitimation passive) if it is personally obliged by the "disputed right" at stake."*
- 122. Turning to the case at hand, the question is whether Dalian has a stake or *de facto* interest in the outcome of these appeal proceedings.
- 123. The Panel's finding on this question is in the affirmative.

124. Dalian showed its legal interest by moving the FIFA Disciplinary Committee to render the Appealed Decision and successfully caused disciplinary sanctions to be imposed on Al Shorta for failing to pay USD 690,000.
125. It follows that Dalian should also have the same legal interest in supporting FIFA's position, and ultimately ensuring that the CAS upholds the Appealed Decision which would see Dalian being paid USD 690,000 by Al Shorta. Inevitably, any decision rendered by CAS will have a legal impact on Dalian.
126. To that extent, the Panel agrees with CAS jurisprudence as invoked by Dalian that a party only has standing to be sued if something is sought against it (CAS 2007/AA/1329). In these proceedings, Al Shorta seeks something from Dalian, in the form of a relief from the duty to pay the latter the full USD 690,000 plus accrued interest it sought to enforce before the FIFA Disciplinary Committee.
127. It therefore follows that Dalian has standing to be sued.

**b) Did the FIFA Disciplinary Committee violate Al Shorta's right to be heard?**

128. Al Shorta claims that the FIFA Disciplinary Committee violated its right to be heard by ignoring numerous correspondence, evidence and legal considerations it filed with a view to demonstrating its full compliance with point III.4 of the FIFA DRC decision. FIFA submits to the contrary that Al Shorta's right to be heard was fully respected at all times in the course of the proceedings before the FIFA Disciplinary Committee.
129. The evidence however adduced in these proceedings points to the contrary. To begin with, Al Shorta does not deny having received notice of the FIFA Disciplinary committee proceedings and all correspondence leading to the Appealed Decision. Al Shorta duly replied to this correspondence, meaning that the FIFA Disciplinary Committee granted and considered all the submissions filed by Al Shorta. In particular:
  - a) On 9 August 2018, Al Shorta sought to suspend the disciplinary proceedings by informing the FIFA Disciplinary Committee that Dalian had not provided the full bank account details; and
  - b) On 16 August 2018, the legal representative of Al Shorta and the Player informed FIFA that they had paid Dalian USD 151,300 in satisfaction of the compensation due to Dalian.
130. The mere fact that FIFA deemed these letters to be irrelevant in reaching at the Appealed Decision does not necessarily mean that Al Shorta's right to be heard was violated.
131. Indeed, FIFA's decision was based on its understanding that Al Shorta was to pay USD 690,000 irrespective of the effect of the Player's appeal in CAS 2015/A/4039 and the USD 151,388 subsequently paid by Al Shorta and the Player.
132. It follows that Al Shorta's right to be heard was not violated.

133. In any case, the Panel wishes to stress that pursuant to Article R57 of the Code, CAS panels have full power to review the facts and the law of the matter, which enables them to go beyond the establishment of the legality of the previous decision and to issue an independent and free standing decision (MAVROMATI/REEB, *The Code of the Court of Arbitration for Sport: Commentary, cases and materials*, 2015, p. 508, paras 14; see also: CAS 2010/2235, para. 73; CAS 2006/A/1153, para 53ff.; CAS 2004/A/607, para. 4.3).
134. In addition, CAS panels have consistently held that “(...) *the virtue of an appeal system which allows for a full rehearing before an appellate body is that issues relating to the fairness of the proceedings before the authority of first instance fade to the periphery*”. (MAVROMATI/REEB, *The Code of the Court of Arbitration for Sport: Commentary, cases and materials*, 2015, p. 513, paras. 29-30; see *inter alia*: CAS 2006/A/1153, para. 54; CAS 2005/A/1001, para. 16.4.2; TAS 2004/A/549, para. 31; CAS 2008/A/1574; CAS 2009/A/1840 & CAS 2009/A/1851; CAS 2008/A/1545 *para. 15*).
135. As a result, any procedural prejudice suffered by Al Shorta before the FIFA Disciplinary Committee may and has been cured through this appeal.

#### **Substantive issues**

- c) Is there any legal basis for disciplinary sanctions against Al Shorta? Does Al Shorta – as a joint and several liable party – has to pay any additional amount in excess of Dalian’s credit over the Player?**
136. This appeal relates to the Player’s appeal against the FIFA DRC Decision dated 27 November 2014.
137. The FIFA DRC Decision had ordered the Player to pay Dalian USD 690,000 plus interest with Al Shorta being jointly and severally liable.
138. The Player – as the main obligor – appealed the FIFA DRC decision (CAS 2015/A/4039) and succeeded in reducing the outstanding debt from USD 690,000 to USD 130,000 plus interest. The CAS panel off set USD 560,000 from the USD 690,000 and for this reason the total remaining amount due to Dalian was about USD 130,000 (USD 130,000 + interest). This amount was finally paid by the “*legal representative of the player*” (see page 5, paragraph 15 of the FIFA decision).
139. In light of the abovementioned facts, it seems that the Player – via off set and through his legal representative – paid Dalian its credit in full (USD 690,000 – USD 560,000 = USD 130,000 + interest).
140. In respect of Article 17 (2) FIFA RSTP and from a procedural perspective, it is clear that a player and his new club are “*necessary joint defendants on the merits*” and that the joint defendants remain independent from each other, meaning that the *res judicata* effect of the decision concerned must be examined separately for each of them (see SFT 4A\_6/2014, 28 August 2014, ATF 140 III 520, 33 ASA Bull. 85 (2015) (the “Boca” case); see also for instance: CAS 2016/A/4408).

141. It is also clear under Article 17 (2) FIFA RSTP that the the new club's pecuniary liability has a subsidiary character and its extent necessarily depends on the amount to be owed (or not owed) by the player to his former club. This is especially the case for the settlement of the compensation – if one of the joint debtors pays the creditor, the other joint debtor does not have to pay anymore.
142. In the case at hand, point III.4 of the FIFA DRC decision did not directly order Al Shorta to pay USD 690,000 but only declared Al Shorta as being “*jointly and severally liable for the payment*” of the compensation owed by the Player. Due to Al Shorta's failure to appeal, such decision did become final and binding *vis-à-vis* Al Shorta and it could not challenge anymore the fact that it was jointly and severally liable with the Player.
143. It follows that Al Shorta is not the principal obligor but rather a subsidiary obligor, with Al Shorta merely being jointly and severally liable. Al Shorta's duty to perform its payment obligation partially or wholly depends on the Player's execution of his payment obligation towards Dalian. Therefore, if the Player entirely satisfies the debt jointly owed with Al Shorta to Dalian, Al Shorta would thus be discharged from any payment obligation towards Dalian.
144. The Panel also notes that the award CAS 2015/A/4039 did not modify the FIFA DRC decision regarding the breach nor the *quantum* of the compensation. Rather, the CAS panel confirmed the amount of compensation awarded by the FIFA DRC but also took into account an amount due by Dalian to the Player and proceeded to a set-off. The entire compensation due to Dalian by the Player and Al Shorta was still USD 690,000 but the CAS panel acknowledged that the Player already settled - via a set-off - an amount of USD 560,000 and therefore that only the remaining amount of USD 130,000 was due to be paid to Dalian.
145. In other words, Dalian was entitled to receive USD 690,000 and it actually did. Demanding any additional payment from Al Shorta as claimed by Dalian and upheld by the FIFA Disciplinary Committee in the Appealed Decision – when Dalian has already received full payment – would amount to excessive payment or unjustified enrichment.
146. In the Panel's opinion, the decision rendered by the Swiss Federal Tribunal on 28 August 2014 in the Boca case is not relevant to the present matter. Besides what is mentioned above, the Panel notes that the Federal Tribunal did not analyse the merits of the case, namely expressing an opinion on the legal nature and extent of the parties' liabilities under Article 17 RSTP, but only on jurisdictional aspects of the case. Second, the SFT judgement was rendered in critically different circumstances than the present matter since, in the Boca case, the Player, *i.e.* the principal obligor, had initiated then withdrawn his CAS appeal against the decision rendered by the DRC, whereas in the present matter it is the subsidiary obligor, the Appellant, who did not appeal the DRC decision before CAS. The SFT decision 4A\_6/2014 is therefore irrelevant in the present dispute.
147. In light of the foregoing, the Panel concludes that there was no legal basis for disciplinary sanctions against the Appellant, essentially because the Second

Respondent has been fully compensated in compliance with both the FIFA DRC decision of 27 November 2014 and the subsequent award CAS 2015/A/4039.

### **Conclusion**

- 148. The Appealed Decision should be set aside.
- 149. Any further claims or requests for relief are dismissed.

### **IX. COSTS**

- 150. Article R64.4 of the CAS Code provides the following:

*“At the end of the proceedings, the CAS Court Office shall determine the final amount of the cost of the arbitration, which shall include: the CAS Court Office fee, the administrative costs of the CAS calculated in accordance with the CAS scale, the costs and fees of the arbitrators, the fees of the ad hoc clerk, if any, calculated in accordance with the CAS fee scale, a contribution towards the expenses of the CAS, and the costs of witnesses, experts and interpreters. The final account of the arbitration costs may either be included in the award or communicated separately to the parties.”*

- 151. Article R64.5 of the CAS Code reads as follows:

*“In the arbitral award, the Panel shall determine which party shall bear the arbitration costs or in which proportion the parties shall share them. As a general rule, the Panel has discretion to grant the prevailing party a contribution towards its legal fees and other expenses incurred in connection with the proceedings and, in particular, the costs of witnesses and interpreters. When granting such contribution, the Panel shall take into account the complexity and outcome of the proceedings, as well as the conduct and the financial resources of the parties.”*

- 152. Having taken into account the outcome of the arbitration, in particular the fact that the Appeal was upheld and the Appealed Decision set aside, and also considering that the Second Respondent contributed to these CAS proceedings by moving the FIFA Disciplinary Committee, the Panel determines that the parties shall share the costs of the arbitration (as notified by the CAS Court Office) in the following proportion: 20% of the costs of the arbitration shall be borne by the Second Respondent and the remaining 80% by the First Respondent.
- 153. Furthermore, pursuant to Article R64.5 of the CAS Code, and in consideration of the complexity and outcome of the proceedings, the Panel rules that the First and Second Respondents shall contribute to the Appellant’s legal costs and expenses incurred in connection with these proceedings in the amounts of CHF 2,000 (two thousand Swiss Francs) and, respectively, CHF 1,000 (one thousand Swiss Francs).



## **ON THESE GROUNDS**

### **The Court of Arbitration for Sport rules that:**

1. The appeal filed on 1 April 2019 by Al Shorta Sports Club against the decision rendered by the FIFA Disciplinary Committee on 16 November 2018 is upheld.
2. The decision rendered by the FIFA Disciplinary Committee on 16 November 2018 is set aside.
3. The costs of the arbitration, to be determined and served to the parties by the CAS Court Office, shall be shared in the following proportion: 80% of the costs of the arbitration shall be borne by FIFA and the remaining 20% of the costs of the arbitration shall be borne by Dalian Yifang FC.
4. FIFA shall pay to Al Shorta Sports Club the amount of CHF 2,000 (two thousand Swiss Francs) and Dalian Yifang FC shall pay to Al Shorta Sports Club the amount of CHF 1,000 (one thousand Swiss Francs) as contributions toward the costs Al Shorta Sports Club has sustained in connection with these arbitration proceedings.
5. All other motions or prayers for relief are dismissed.

Seat of arbitration: Lausanne, Switzerland  
Date: 25 September 2019

## **THE COURT OF ARBITRATION FOR SPORT**

<sup>4</sup>Rui Botica Santos  
President of the Panel