CAS 2020/A/6900 Fotbal Club CFR 1907 Cluj S.A. v. Ronny da Silva & FIFA
CAS 2020/A/6902 Fotbal Club CFR 1907 Cluj S.A. v. Edimar Curitiba Fraga & FIFA

ARBITRAL AWARD

delivered by the

COURT OF ARBITRATION FOR SPORT

sitting in the following composition:

Sole Arbitrator: Prof. Ulrich **Haas**, Professor in Law in Zurich, Switzerland
Clerk: Ms Stéphanie **De Dycker**, Attorney-at-Law, Lausanne, Switzerland

in the arbitration between

Fotbal Club CFR 1907 Cluj S.A., Cluj, Romania
Represented by Mr Jorge Ibarrola, Attorney-at-law with Libra Law, Lausanne, Switzerland

Appellant in the matter CAS 2020/A/6900

and

Mr Ronny Carlos da Silva, Sao Paulo, Brazil
Represented by Prof. Juan De Dios Crespo Pérez and Mr Agustín Amorós Martínez, Attorneys-at-law with Ruiz–Huerta & Crespo, Valencia, Spain; Mr Alfonso Vargas Cuadrado, Attorney-at-law with Cuadrado Abogados, Montevideo, Uruguay; and Mr Alexandre Dias Bortolato, Attorney-at-law with Bortolato Abogados, Sao Paulo, Brazil

First Respondent in the matter CAS 2020/A/6900

Fédération Internationale de Football Fédération, Zurich, Switzerland

Second Respondent in the matter CAS 2020/A/6900

and in the arbitration between

Fotbal Club CFR 1907 Cluj S.A., Cluj, Romania
Represented by Mr Jorge Ibarrola, Attorney-at-law with Libra Law, Lausanne, Switzerland

Appellant in the matter CAS 2020/A/6902

and

Mr Edimar Curitiba Fraga, Sao Paulo, Brazil
Represented by Prof. Juan De Dios Crespo Pérez and Mr Agustín Amorós Martínez, Attorneys-at-law with Ruiz–Huerta & Crespo, Valencia, Spain; Mr Alfonso Vargas Cuadrado, Attorney-at-law with Cuadrado Abogados, Montevideo, Uruguay; and Mr Alexandre Dias Bortolato, Attorney-at-law with Bortolato Abogados, Sao Paulo, Brazil

First Respondent in the matter CAS 2020/A/6902

Fédération Internationale de Football Fédération, Zurich, Switzerland

Second Respondent in the matter CAS 2020/A/6902

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I. THE PARTIES

1. Fotbal Club CFR 1907 Cluj S.A. is a Romanian football club, affiliated to the Romanian Professional League (the "Appellant" or the "Club").

2. Mr Ronny Carlos da Silva ("Mr da Silva") and Mr Edimar Curitiba Fraga ("Mr Fraga") are both Brazilian football players (the "First Respondents" or "Players").

3. The Fédération Internationale de Football Association is the world governing body for football. Its headquarters are in Zurich, Switzerland (the "Second Respondent" or "FIFA").

II. FACTUAL BACKGROUND

4. The present appeals proceedings concern two separate disciplinary decisions rendered by the FIFA Disciplinary Committee in which the Appellant was found guilty of failing to comply in full with two separate decisions passed by the FIFA Dispute Resolution Chamber according to which the Appellant was ordered to pay specific amounts to Mr da Silva and to Mr Fraga, respectively.

5. Below is a summary of the relevant facts and allegations based on the Parties' written and oral submissions, pleadings, and evidence adduced in these proceedings. References to additional facts and allegations found in the Parties' written and oral submissions, pleadings, and evidence will be made, where relevant, in connection with the legal analysis that follows. While the Sole Arbitrator has considered all the facts, allegations, legal arguments, and evidence submitted by the Parties in the present proceedings, he refers in this Award only to the submissions and evidence he deems necessary to explain his reasoning.

A. The employment related disputes and the Proceedings before the FIFA Dispute Resolution Chamber

1.) The employment related dispute between the Club and Mr Fraga

6. On 17 May 2010, the Club and Mr Fraga concluded an employment agreement valid as from 1 July 2010 until 30 June 2014.

7. On 25 February 2014, Mr Fraga lodged a claim with the FIFA DRC in relation to the non-payment of his salary from mid-August 2013 until January 2014 and related bonus, for a total amount of EUR 126'500, plus 5 % interest per annuum.

8. On 21 January 2015, the FIFA DRC issued a decision according to which the Club was ordered to pay Mr Fraga, within thirty days from the notification of the decision, the amount of EUR 96'000 plus 5% interest per year, as follows:

> *"*
>
> *1. The claim of the Claimant/Counter-Respondent, Edimar Curitiba Fraga, is partially accepted, insofar as it is admissible.*
> *2. The Respondent/Counter-Claimant, S.C.S. Fotbal Club CFR 1907 Cluj, has to pay to the Claimant/Counter—Respondent, within 30 days as from the date of notification of this decision, the amount of EUR 96,000 plus 5% interest p.a. until the date of effective payment as follows:*
> - *5% p.a. as of 26 February 2014 on the amount of EUR 16,000;*
> - *5% p.a. as of 26 March 2014 on the amount of EUR 16,000;*
> - *5% p.a. as of 26 April 2014 on the amount of EUR 16,000;*
> - *5% p.a. as of 26 May 2014 on the amount of EUR 16,000;*
> - *5% p.a. as of 26 June 2014 on the amount of EUR 16,000;*
> - *5% p.a. as of 26 July 2014 on the amount of EUR 16,000.*
>
> *3. In the event that the aforementioned sum plus interest is not paid within the stated time limit, the present matter shall be submitted, upon request, to FIFA's Disciplinary Committee for consideration and a formal decision. […]"*

9. On 25 February 2015, the official receiver of the Club in Romania informed FIFA that the Syndic Judge of the Cluj Specialized Court of Law opened, on 4 February 2015, a general insolvency procedure against the Club and requested the suspension of the proceedings before the FIFA DRC.

10. The grounds of the decision of the DRC were duly communicated to the parties on 23 April 2015 and no appeal was filed before the Court of Arbitration for Sport (the "CAS").

2.) The employment related dispute between the Club and Mr da Silva

11. On 16 June 2011, the Club and Mr da Silva concluded an employment agreement valid as from 1 July 2011 until 30 June 2014.

12. On 25 February 2014, with a subsequent amendment on 18 July 2014, Mr da Silva lodged a claim with the FIFA Dispute Resolution Chamber ("FIFA DRC") in relation to the non-payment of his salary from January 2014 until June 2014, for an amount of EUR 99'999, plus 5 % interest per annuum.

13. On 25 February 2015, the official receiver of the Club in Romania informed FIFA that the Syndic Judge of the Cluj Specialized Court of Law opened, on 4 February 2015, a general insolvency procedure against the Club and requested the suspension of the proceedings before the FIFA DRC, which was denied.

14. On 24 April 2015, the FIFA DRC issued a decision according to which the Club was ordered to pay Mr da Silva, within thirty days from the notification of the decision, the amount of EUR 99'999 plus 5% interest per year, as follows:

> *"*
>
> *1. The claim of the Claimant, Ronny Carlos da Silva, is admissible.*
> *2. The claim of the Claimant is accepted.*
> *3. The Respondent, SCS Fotbal Club CFR 1907 CIuj, has to pay to the Claimant, within 30 days as from the date of notification of this decision, outstanding remuneration in the amount of EUR 99,999.96 plus 5% interest p.a. until the date of effective payment as follows:*
> - *5% p.a. on the amount of EUR 16,666.66 as from 26 February 2014;*
> - *5% p.a. on the amount ofEUR16,666.66 as from 26 March 2014;*
> - *5% p.a. on the amount of EUR 16,666.66 as from 26 April 2014,-*
> - *5% p.a. on the amount of EUR 16,666.66 as from 26 May 2014;*

- *5% p.a. on the amount of EUR 16,666.66 as from 26 June 2014;*
- *5% p.a. on the amount of EUR 16,666.66 as from 26 July 2014.*

4. In the event that the amount plus interest due to the Claimant is not paid by the Respondent within the stated time limit, the present matter shall be submitted, upon request, to the FIFA Disciplinary Committee for consideration and a formal decision. [..]"

15. The grounds of the decision of the FIFA DRC were duly communicated to the parties on 30 September 2015 and no appeal was filed before the Court of Arbitration for Sport (the "CAS").

B. The Insolvency Proceedings in Romania

16. On 4 February 2015, the Syndic Judge of the Cluj Specialised Court of Law issued a decision (Resolution no. 294/2015) ordering the opening of the general insolvency procedure against the Appellant. He appointed RTZ & PARTNERS SRL as "*provisional official receiver who must perform the assignments provisioned by article 58 of Law 85 / 2014*."

17. On 27 March 2015, Mr da Silva submitted before the Cluj Specialised Court of Law a "*MOTION FOR A RECEIVABLE TO BE ACKNOWLEDGED AND ENTERED INTO THE TABLE OF CREDITORS"* of the Club, with a total amount of 460.378, 41 lei consisting from the amount of 99'999, 96 Euro, equivalent of 440.809, 82 lei (at the NBR rate of exchange from the date of initiation of the insolvency procedure of 1 Euro = 4.4081 lei) representing wage entitlements pursuant to contractual reports between the parties and the amount of 19.568, 59 lei representing the interest associated to outstanding wage entitlements.

18. On the same date, Mr Fraga submitted before the Cluj Specialised Court of Law an "*APPLICATION FOR ADMISSION OF THE DEBT AND ENLISTING IN THE TABLE OF CREDITORS*" of the Club, with a total amount of EUR 99'508 euros (the equivalent of 438,641.21 lei) (at the NBR rate of exchange from the date of initiation of the insolvency procedure of 1 Euro = 4.4081 lei) representing salary rights based on the contractual relations between the parties and interest, in compliance with the order of preference established by article 161 point 3 of Law no. 85/2014.

19. Mr da Silva's financial claim was admitted to the Final table of the Club's creditors for an amount of "accepted receivable" of LEI 460,350.38, and listed in the category of "unsecured claims".

20. Similarly, Mr Fraga's financial claim was admitted to the Final table of the Club's creditors for an amount of "accepted receivable" of LEI 438,641.21 and listed in the category of "unsecured claims".

21. The Cluj Specialised Court and Appeal Court dismissed the attempts from Mr da Silva and Mr Fraga to contest the fact that his claims were listed as "unsecure claims".

22. On 29 January 2016, the Romanian Insolvency Court approved the reorganisation plan for the Club, providing for a reduction of all unsecured claims down to 10,79% of the total debts. Mr Fraga and Mr da Silva did not contest the reorganisation plan.

23. On 9 March 2017, in compliance with the reorganisation plan, the Club paid to Mr da Silva an amount of EUR 14'144,46 representing 10,79% of Mr da Silva's claim, as well as to Mr Fraga an amount of EUR 13'539 representing 10,79% of Mr Fraga's claim.

24. On 30 May 2017, the Cluj Appeal Court confirmed that the conditions and obligations imposed by the reorganisation plan had been fulfilled and therefore ordered the termination of the insolvency proceedings concerning the Club.

III. THE PROCEEDINGS BEFORE THE FIFA DISCIPLINARY COMMITTEE

25. On 28 September 2017, Mr Fraga and Mr da Silva separately informed FIFA that they had not received the amounts of the DRC Decision, despite the fact that the Club "*continues normally disputing the Romanian first league*", and requested the matter to be submitted to the FIFA Disciplinary Committee for consideration and a formal decision.

26. On 13 February and 21 March 2018, the FIFA Disciplinary Committee requested the Romanian Football Federation (the "RFF") to provide further information regarding the insolvency proceedings of the Club, and to inform whether the Club was still affiliated and participating in any of its competitions.

27. On 28 March 2018, the RFF informed FIFA that the Club was still affiliated and actively participating in the "*National Championship League 1*". Furthermore, the RFF confirmed that "[o]*n 29 May 2017 Club CFR Cluj SA officially and successfully ended their insolvency proceedings*" and communicated that it would provide FIFA with a copy of the court decision as soon as an English translation was available.

28. On 8 May 2018, the former counsel of Mr da Silva informed FIFA that the insolvency proceedings against the Club had ended in May 2017 and provided a Romanian copy of the "Insolvency Bulletin 13169" dated 4 July 2017.

29. On 11 May and 6 June 2018, FIFA invited the RFF to provide a copy of the decision of the Cluj Specialized Court duly translated into one of the official FIFA languages.

30. On 22 June 2018, the RFF provided FIFA with a translated copy of the insolvency bulletin dated 4 July 2017, by means of which the closure of the Club's "*reorganization proceedings*" was ordered, along with a copy of the preliminary list of creditors admitted to the insolvency proceedings.

31. On 29 August 2018, the former counsel of Mr da Silva informed FIFA, inter alia, that a partial payment in the amount of EUR 12'744,86 was received from the Club.

32. On 18 and 20 September 2018, the RFF provided further information related to the insolvency proceedings, attaching copies of the Insolvency Bulletins along with the reorganization plan and the final list of creditors.

1.) The decision of the FIFA Disciplinary Committee of 16 December 2019

33. On 4 June 2019, Mr Fraga informed FIFA that the Club failed to comply with the DRC Decision of 21 January 2015 and, as the Club successfully ended its insolvency

proceedings without going bankrupt, Mr Fraga requested the matter to be submitted to the Disciplinary Committee for consideration and a formal decision.

34. On 29 November 2019, the FIFA Secretariat opened disciplinary proceedings against the Club concerning an alleged failure to comply in full with the decision issued on 21 January 2015 by the FIFA DRC. It informed the parties that the case would be submitted to the Disciplinary Committee for consideration and formal decision.

35. On 4 December 2019, the Club contested the opening of disciplinary proceedings and requested the FIFA Disciplinary Committee to dismiss the case.

36. On 16 December 2019, the FIFA Disciplinary Committee issued the operative part of the following decision (the "Appealed Decision I"):

> *"1. The [Club] is found guilty of failing to comply in full with the decision passed by the Dispute Resolution Chamber on 21 January 2015, according to which it was ordered to pay to [Mr Fraga] the amount of EUR 96,000, payable within thirty (30) days from the notification of the aforementioned decision, plus 5% interest p.a. until the date of effective payment as follows:*
> *- 5% p.a. as of 26 February 2014 on the amount of EUR 16,000;*
> *- 5% p.a. as of 26 March 2014 on the amount of EUR 16,000;*
> *- 5% p.a. as of 26 April 2014 on the amount of EUR 16,000;*
> *- 5% p.a. as of 26 May 2014 on the amount of EUR 16,000;*
> *- 5% p.a. as of 26 June 2014 on the amount of EUR 16,000;*
> *- 5% p.a. as of 26 July 2014 on the amount of EUR 16,000;*
> *In particular, the [Club] only paid to [Mr Fraga] the partial amount of LEI 61,593.*
> *2. The [Club] is ordered to pay a fine to the amount of CHF 10,000. The fine is to be paid within thirty (30) days of notification of the present decision.*
> *3. The [Club] is granted a final deadline of thirty (30) days as from notification of the present decision in which to settle its debt to [Mr Fraga].*
> *4. If payment is not made to [Mr Fraga] and proof of such a payment is not provided to the secretariat to the FIFA Disciplinary Committee and to the Romanian Football Federation by this deadline, a ban from registering new players, either nationally or internationally, will be imposed on the [Club]. Once the deadline has expired, the transfer ban will be implemented automatically at national and international level by the Romanian Football Federation and FIFA respectively, without a further formal decision having to be taken nor any order to be issued by the FIFA Disciplinary Committee or its secretariat. The transfer ban shall cover all men eleven-a-side teams of the [Club] – first team and youth categories –. The [Club] shall be able to register new players, either nationally or internationally, only upon the payment to [Mr Fraga] of the total outstanding amount. In particular, the [Club] may not make use of the exception and the provisional measures stipulated in article 6 of the Regulations on the Status and Transfer of Players in order to register players at an earlier stage.*
> *5. As a member of FIFA, the Romanian Football Federation is reminded of its duty to implement this decision and provide FIFA with proof that the transfer ban has been implemented at national level. If the Romanian Football Federation does not comply with this decision, the FIFA Disciplinary Committee will decide on appropriate sanctions on the member. This can lead to an expulsion from FIFA competitions.*
> *6. The [Club] is directed to notify the secretariat to the FIFA Disciplinary Committee as well as the Romanian Football Federation of every payment made and to provide the relevant proof of payment.*
> *7. [Mr Fraga] is directed to notify the secretariat to the FIFA Disciplinary Committee as well as the Romanian Football Federation of every payment received."*

37. On 15 January 2020, the Club requested the grounds of the Appealed Decision I, which were notified to the Club on 9 March 2020. The grounds of the Appealed Decision I can be summarized as follows:

> *"The question that therefore arises is whether the club CFR 1907 Cluj is still responsible to pay the amounts imposed by the DRC after having gone successfully through the bankruptcy. […] In this context, it appears relevant for the legal assessment of this case, to analyse the diligence of the Creditor in recovering his debt in order to assess as to whether a sanction can be imposed on the Debtor, i.e. whether the Creditor also contributed to create the breach of art. 64 of the 2017 FDC as it could be that his credit would have been paid in the bankruptcy proceedings and therefore no sanction may be imposed. […] Bearing the above in mind, it appears that nothing in the case file reflects any lack of diligence by the Creditor in recovering his debt. To the contrary, the case file shows a persistent attitude of the Creditor to recover his debt from the Debtor. In fact, the Chairman notes that the Creditor (i) requested an amount of RON 38,641.21*
> *(equivalent to EUR 99,508) through the insolvency proceedings, (ii) was admitted for RON 438,641.21 (equivalent to EUR 99,508) and (iii) even recovered part of his debt,*
> *namely RON 61,593.62 (equivalent to EUR 13,539), in line with the reorganization plan. […] In particular, the Chairman of the Committee considers the fact that the Creditor's claim was reduced to 10.79% by the Romanian Insolvency Court irrelevant given that the Creditor, by participating in the bankruptcy proceedings at national level performed the expected due diligence and has not contributed to the non-compliance of the DRC decision dated 21 January 2015 and therefore to the breach of art. 64 of the 2017 FDC. […] In this context, the Chairman of the Committee would like to refer to a decision where CAS considered that "UEFA regulations cannot be overridden by the national laws as this would lead to unequal treatment among clubs from different countries". In this sense, the Chairman of the Committee points out that the same principle should apply to FIFA regulations and decisions. […] Bearing the above in mind, the Chairman of the Committee emphasises that the main objective of the FIFA regulations is to create a standard set of rules to which all the actors within the football community are subject and can rely on. This objective would not be achievable if national law could simply override the FIFA regulations. […] In light of the foregoing, the reorganization plan established by the Romanian Insolvency Court does not automatically release the Debtor from its obligation to fully comply with the DRC decision, i.e. to pay EUR 96,000 plus 5% interest p.a. as the DRC decision remains final and binding and cannot be overridden by a national decision. […] After having established that the club CFR 1907 Cluj is responsible to the pay the amount imposed by the DRC on 21 January 2015, [the Chairman] moves on to analyse whether the Debtor has complied with the decision passed by the DRC on 21 January 2015. […] In this regard, the Chairman notes that the DRC ordered the Debtor to pay EUR 96,000 plus 5% interest p.a. to the Creditor. However, the Debtor only made a payment in the amount of LEI 61,593.62 (equivalent to EUR 13,539) to the Creditor. […] As such, the Chairman concludes that the Debtor has not fully complied with the decision passed by the DRC on 21 January 2015, and is consequently withholding money from the Creditor. Therefore, it is considered guilty of non-complying with a financial decision, under the terms of art. 64 of the 2017 FDC. […] With regard to the sanction to be imposed, the Chairman of the Committee recalls that the 2017 FDC is applicable. […] The fine to be imposed under the above-referenced art. 64 par. 1 a) of the 2017 FDC, in combination with art. 15 par. 2 of the 2017 FDC shall range between CHF 300 and CHF 1,000,000. […] In view of all the circumstances pertaining to the present case and particularly taking into account the outstanding amount due, the Chairman of the Committee regards a fine amounting to CHF 10,000 as appropriate. […] In application of art. 64 par. 1 b) of the 2017 FDC, while taking into consideration the standard deadlines granted by the Committee in its recent decisions, the Chairman of the Committee decides to grant a final deadline of 30 days for the amount due to be paid to the Creditor. […] In continuation, in view of the circumstances of the case (namely the long period during which the decision rendered by the DRC had not been complied with, to the detriment of the Creditor) but also the aim of the provision at hand (i.e. to ensure that decisions passed by a body, a committee or an instance of FIFA or a subsequent CAS appeal decision are respected and complied with) while keeping in mind the content of FIFA circular no. 1628, the*

Chairman of the Committee considers a ban from registering new layers (at national and international level) as an appropriate sanction. […]"

2.) The Decision of the FIFA Disciplinary Committee dated 25 September 2019

38. On 5 June 2019, Mr da Silva informed FIFA that the Club failed to comply with the FIFA DRC Decision dated 24 April 2015 and, as the Club successfully ended its insolvency proceedings without going bankrupt, Mr da Silva requested the matter to be submitted to the Disciplinary Committee for consideration and a formal decision.

39. On 5 September 2019, the FIFA Secretariat opened disciplinary proceedings against the Club concerning an alleged failure to comply in full with the decision issued on 24 April 2015 by the FIFA DRC. It informed the parties that the case would be submitted to the Disciplinary Committee for consideration and formal decision.

40. On 11 September 2019, the Club contested the opening of disciplinary proceedings and requested the FIFA Disciplinary Committee to dismiss the case.

41. On 25 September 2019, the FIFA Disciplinary Committee issued the operative part of the following decision (the "Appealed Decision II"):

"*1. The [Club] is found guilty of failing to comply in full with the decision passed by the Dispute Resolution Chamber on 14 April 2015, according to which it was ordered to pay to [Mr da Silva] the amount of EUR 99,999, payable within thirty (30) days from the notification of the aforementioned decision, plus 5% interest p.a. until the date of effective payment as follows:*
- 5% p.a. on the amount of EUR 16,666.66 as from 26 February 2014;
- 5% p.a. on the amount of EUR 16,666.66 as from 26 March 2014;
- 5% p.a. on the amount of EUR 16,666.66 as from 26 April 2014;
- 5% p.a. on the amount of EUR 16,666.66 as from 26 May 2014;
- 5% p.a. on the amount of EUR 16,666.66 as from 26 June 2014;
- 5% p.a. on the amount of EUR 16,666.66 as from 26 July 2014;
In particular, the [Club] only paid to [Mr da Silva] the partial amount of EUR 12,744.
2. The [Club] is ordered to pay a fine to the amount of CHF 10,000. The fine is to be paid within thirty (30) days of notification of the present decision.
3. The [Club] is granted a final deadline of thirty (30) days as from notification of the present decision in which to settle its debt to [Mr da Silva].
4. If payment is not made to [Mr da Silva] and proof of such a payment is not provided to the secretariat to the FIFA Disciplinary Committee and to the Romanian Football Federation by this deadline, a ban from registering new players, either nationally or internationally, will be imposed on the [Club]. Once the deadline has expired, the transfer ban will be implemented automatically at national and international level by the Romanian Football Federation and FIFA respectively, without a further formal decision having to be taken nor any order to be issued by the FIFA Disciplinary Committee or its secretariat. The transfer ban shall cover all men eleven-a-side teams of the [the Club] – first team and youth categories –. The [Club] shall be able to register new players, either nationally or internationally, only upon the payment to [Mr da Silva] of the total outstanding amount. In particular, the [Club] may not make use of the exception and the provisional measures stipulated in article 6 of the Regulations on the Status and Transfer of Players in order to register players at an earlier stage.
5. As a member of FIFA, the Romanian Football Federation is reminded of its duty to implement this decision and provide FIFA with proof that the transfer ban has been implemented at national level. If the Romanian Football Federation does not comply with this decision, the FIFA Disciplinary Committee will decide on appropriate sanctions on the member. This can lead to an expulsion from FIFA competitions.

6. The [Club] is directed to notify the secretariat to the FIFA Disciplinary Committee as well as the Romanian Football Federation of every payment made and to provide the relevant proof of payment.
7.[Mr da Silva] is directed to notify the secretariat to the FIFA Disciplinary Committee as well as the Romanian Football Federation of every payment received."

42. On 4 April 2019, the Club requested the grounds of the Appealed Decision II, which were notified to the Club on 5 March 2020. The grounds of the Appealed Decision II can be summarized as follows:

"*The question that therefore arises is whether the club CFR 1907 Cluj is still responsible to pay the amounts imposed by the DRC after having gone successfully through the bankruptcy. […] In this context, it appears relevant for the legal assessment of this case, to analyse the diligence of the Creditor in recovering his debt in order to assess as to whether a sanction can be imposed on the Debtor, i.e. whether the Creditor also contributed to create the breach of art. 64 of the 2017 FDC as it could be that his credit would have been paid in the bankruptcy proceedings and therefore no sanction may be imposed. […]Bearing the above in mind, it appears that nothing in the case file reflects any lack of diligence by the Creditor in recovering his debt. To the contrary, the case file shows a persistent attitude of the Creditor to recover his debt from the Debtor. In fact, the Deputy Chairman notes that the Creditor (i) requested an amount of RON 460,378.41 (equivalent to EUR 100,661) through the insolvency proceedings, (ii) was admitted for RON 460,350.38 (equivalent to EUR 100,655) and (iii) even recovered part of his debt, namely EUR 12,744.86, in line with the reorganization plan. […]In particular, the Deputy Chairman of the Committee considers the fact that the Creditor's claim was reduced to 10.79% by the Romanian Insolvency Court irrelevant given that the Creditor, by participating in the bankruptcy proceedings at national level performed the expected due diligence and has not contributed to the non-compliance of the DRC decision dated 24 April 2015 and therefore to the breach of art. 64 of the 2017 FDC. […] In this context, the Deputy Chairman of the Committee would like to refer to a decision where CAS considered that "UEFA regulations cannot be overridden by the national laws as this would lead to unequal treatment among clubs from different countries". In this sense, the Deputy Chairman of the Committee points out that the same principle should apply to FIFA regulations and decisions. […] Bearing the above in mind, the Deputy Chairman of the Committee emphasises that the main objective of the FIFA regulations is to create a standard set of rules to which all the actors within the football community are subject and can rely on. This objective would not be achievable if national law could simply override the FIFA regulations. […] In light of the foregoing, the reorganization plan established by the Romanian Insolvency Court does not automatically release the Debtor from its obligation to fully comply with the DRC decision, i.e. to pay EUR 99,999.96 plus 5% interest p.a. as the DRC decision remains final and binding and cannot be overridden by a national decision. […] After having established that the club CFR 1907 Cluj is responsible to the pay the amount imposed by the DRC on 24 April 2015, he moves on to analyse whether the Debtor has complied with the decision passed by the DRC on 24 April 2015. […] In this regard, the Deputy Chairman notes that the DRC ordered the Debtor to pay EUR 99,999.96 plus 5% interest p.a. to the Creditor. However, the Creditor has only received a partial payment in the amount of EUR 12,744.86. […] As such, the Deputy Chairman concludes that the Debtor has not fully complied with the decision passed by the DRC on 24 April 2015, and is consequently withholding money from the Creditor. Therefore, it is considered guilty of non-complying with a financial decision, under the terms of art. 64 of the 2017 FDC. […] With regard to the sanction to be imposed, the Deputy Chairman of the Committee recalls that the 2017 FDC is applicable. […] The fine to be imposed under the above-referenced art. 64 par. 1 a) of the 2017 FDC, in combination with art. 15 par. 2 of the 2017 FDC shall range between CHF 300 and CHF 1,000,000. […] In view of all the circumstances pertaining to the present case and particularly taking into account the outstanding amount due, the Deputy Chairman of the Committee regards a fine amounting to CHF 10,000 as appropriate. This amount complies with the Committee's established practice. […] In application of art. 64 par. 1 b) of the 2017 FDC, while taking into consideration the standard deadlines granted by the Committee in its recent decisions, the Deputy Chairman of the Committee decides to grant a*

final deadline of 30 days for the amount due to be paid to the Creditor. […] In continuation, in view of the circumstances of the case (namely the long period during which the decision rendered by the DRC had not been complied with, to the detriment of the Creditor) but also the aim of the provision at hand (i.e. to ensure that decisions passed by a body, a committee or an instance of FIFA or a subsequent CAS appeal decision are respected and complied with) while keeping in mind the content of FIFA circular no. 1628, the Deputy Chairman of the Committee considers a ban from registering new players (at national and international level) as an appropriate sanction. […]"

IV. THE PROCEEDINGS BEFORE THE COURT OF ARBITRATION FOR SPORT

A. In the matter CAS 2020/A/6900

43. On 25 March 2020, the Club filed an appeal against the Appealed Decision II with the Court of Arbitration for Sport (the "CAS") against Mr da Silva and FIFA in accordance with Article R48 of the Code of Sports-related Arbitration (2019 edition) (the "CAS Code"). In its Statement of Appeal, the Club proposed that the present matter be submitted to sole arbitrator provided that the Respondents and the CAS Court Office consent that such arbitrator be appointed amongst those arbitrators of the CAS list who are Swiss qualified lawyers.

44. On 2 April 2020, the CAS Court Office sent a copy of the Statement of Appeal to the attention of the Respondents and invited the Appellant to file an Appeal Brief. The CAS Court Office also invited the Respondents to comment on the Appellant's proposal that this case be submitted to a sole arbitrator provided that the Respondents and the CAS Court Office consent that such arbitrator be appointed amongst those arbitrators of the CAS list who are Swiss qualified lawyers.

45. On 6 April 2020, the Appellant filed its Appeal Brief with the CAS Court Office.

46. On 7 April 2020, the counsel of Mr da Silva filed his power-of-attorney and informed the CAS Court Office that he agreed with the appointment of a sole arbitrator in the present matter, but that he disagreed with the condition that the sole arbitrator be a Swiss qualified lawyer.

47. On 8 April 2020, the CAS Court Office sent a copy of the Appeal Brief to the Respondents and informed the Parties that, in light of Mr da Silva's disagreement as to the appointment of a sole arbitrator amongst those arbitrators of the CAS list who are Swiss qualified lawyers, and in the absence of agreement between the Parties on this issue, it will be for the President of the CAS Appeals Arbitration Division, or her Deputy, to decide the issue taking into account the circumstances of the case.

48. On 8 April 2020, FIFA informed the CAS Court Office that it preferred the case to be submitted to a panel of three arbitrators taking in to account the specific circumstances of the case.

B. In the matter CAS 2020/A/6902

49. On 30 March 2020, the Club filed an appeal against the Appealed Decision I with the Court of Arbitration for Sport against Mr Fraga and FIFA in accordance with Article R48

of the CAS Code. In its Statement of Appeal, the Club accepted the appointment of a sole arbitrator to decide on this matter.

50. On 2 April 2020, the CAS Court Office sent a copy of the Statement of Appeal to the attention of the Respondents and invited the Appellant to file an Appeal Brief. The CAS Court Office also invited the Respondents to comment on the Appellant's proposal that this case be submitted to a sole arbitrator provided that the Respondents and the CAS Court Office consent that such arbitrator be appointed amongst those arbitrators of the CAS list who are Swiss qualified lawyers.

51. On 7 April 2020, the counsel of Mr Fraga filed his power-of-attorney and informed the CAS Court Office that he agreed with the appointment of a sole arbitrator in the present matter, but that he disagreed with the condition that the sole arbitrator be a Swiss qualified lawyer.

52. On 8 April 2020, the Appellant filed its Appeal Brief with the CAS Court Office.

53. On 8 April 2020, FIFA informed the CAS Court Office that it preferred the case to be submitted to a panel of three arbitrators taking in to account the specific circumstances of the case.

54. On 9 April 2020, the CAS Court Office sent a copy of the Appeal Brief to the Respondents and informed the Parties that, in light of Mr Fraga's disagreement as to the appointment of a sole arbitrator amongst those arbitrators of the CAS list who are Swiss qualified lawyers, and FIFA's disagreement with the appointment of a sole arbitrator in the present matter, it will be for the President of the CAS Appeals Arbitration Division, or her Deputy, to decide the issue taking into account the circumstances of the case.

C. In both matters CAS 2020/A/6900 & CAS 2020/A/6902

55. On 15 April 2020, the Appellant informed the CAS Court Office that it reiterated its proposal that each of the cases CAS 2020/A/6900 and CAS 2020/A/6902 be referred to one sole arbitrator provided that such arbitrator is a Swiss qualified lawyer and, if possible, has a good knowledge of Swiss insolvency laws. If the Respondents disagree with this proposal, the Appellant indicated that it would reserve its right to nominate an Arbitrator for a Panel which would thus be composed of three members.

56. On 20 April 2020, FIFA wrote to the CAS Court Office insisting that the cases be submitted to a three-member panel in light of the specific legal and factual complexity of the case. FIFA also suggested to submit the both matters CAS 2020/A/6900 and CAS 2020/A/69802 to the same panel.

57. On 20 April 2020, the First Respondents informed the CAS Court Office that they strongly disagreed with the Appellant's proposal to submit the present matters to one sole arbitrator provided that such arbitrator is a Swiss qualified lawyer and, if possible, has a good knowledge of Swiss insolvency laws.

58. On 21 April 2020, the CAS Court Office invited the Appellant and the First Respondents to advise the CAS Court Office whether they would agree to the submission of this matter

to a three-member panel and whether they would agree to submit the present proceedings to the same panel.

59. On 22 April 2020, the First Respondents agreed with the proposal to submit the present cases to a three-member panel, being the same panel in both matters.

60. On 22 April 2020, the Appellant informed the CAS Court Office as follows:

> *"[…]The Appellant is prepared to accept that this appeal be referred to a 3-member panel,* ***provided however*** *agrees to submit this appeal to a three-member panel provided however that "that not only the Panel is the same [..] in the proceedings CAS 2020/A/6902 [and CAS 2020/A/6900] , but also that all parties agree that these proceedings be actually* ***consolidated****, although they do not involve the same parties, or that the President of the Appeals Arbitration Division decides to consolidate them, in order to avoid unnecessary submissions and to reduce the arbitration costs (article R52(5) of the CAS Code).*
> ***If the parties disagree*** *on the consolidation and the President of the Appeals Arbitration Division refuses to consolidate, the Appellant reiterates its request that the appeal be referred to* ***one sole Swiss qualified arbitrator****, in view notably of the Respondents' refusal to pay their advances of costs and to the law applicable in these proceedings.[…]"*

61. On 23 April 2020, the CAS Court Office invited the Respondents to advise on whether they would agree to consolidate both cases CAS 2020/A/6900 and CAS 2020/A/6902.

62. On 27 April 2020, FIFA wrote to the CAS Court Office as follows:

> *"[…] [P]lease be informed that FIFA does not agree with the consolidation of both procedures, as it is not convinced that this is possible in the case at hand. In fact, as established by Reeb/Mavromati, "[t]he consolidation is possible if the parties are the same* ***and*** *the case relates to objects resulting from the same 'legal relationship'"1. These cumulative conditions are not met in casu, as each appealed decision concerns a different debt with different parties involved.*
> *Additionally, FIFA considers that, as the FIFA Disciplinary Committee did, each procedure should be analysed separately taking into account the specific circumstances of each case.*
> *Notwithstanding the above, FIFA insists on its suggestion to submit the present [matters] to the same panel […] and, in addition, advances that it would agree to hold a single hearing for both procedures in case the panel decides to hold one. […]."*

63. On 27 April 2020, the First Respondents confirmed to the CAS Court Office that they agreed with the proposed consolidation.

64. On 28 April 2020, the CAS Court Office invited the Appellant to advise on whether it maintains its request of consolidation or whether it would agree with FIFA's suggestion to submit both cases to the same panel and to hold a single hearing for both procedures.

65. On 28 April 2020, the Appellant wrote to the CAS Court Office as follows:

> "*[…] The Appellant respectfully requests that* ***FIFA be invited to reconsider its position*** *in view of the agreement expressed by the Respondents, Messrs Da Silva and Mr Curitiba Fraga, who clearly appear as the parties who mostly concerned, more than FIFA itself, by the issue of the identity of parties and of the identity of subject matters, for the conciliation of these two proceedings. The Players' agreement to consolidate shows, contrary to what FIFA alleges, that the subject matters in these two disputes are exactly the same. The legal issues are identical. Only the amounts of the Players' claims differ.*
> *If FIFA still objects to the conciliation, against the common will of the Appellant and the Respondents Da Silva and Curitiba Fraga, the Appellant would request the* ***President of the***

> ***CAS Appeal Arbitration Division to decide on the consolidation****, taking into account all circumstances of the case […]. […]*
> *Finally, if the President of the CAS Appeals Arbitration Division refuses the consolidation, the Appellant further reserves its right to request that these proceedings be submitted to one sole Arbitrator, the same in both proceedings, as they clearly involve similar issues (article R50(2) of the CAS Code), taking precisely into account the fact that FIFA refuses to pay its share of the advance of cost (article R50(1) of the CAS Code). The Appellant would reiterate that such arbitrator be a Swiss qualified lawyer, in view of the suppletive application of Swiss insolvency law, given the absence of any relevant rule in the FIFA regulations. […]"*

66. On 30 April 2020, the CAS Court Office informed the Parties that the President of the CAS Appeals Arbitration Division will decide on the consolidation.

67. On 15 May 2020, the CAS Court Office informed the Parties that the Appellant's request of consolidation is denied and invited the Appellant to advise on whether it maintains its request that the present matter be referred to a sole Swiss qualified arbitrator or whether it would agree to submit this matter to a panel of three arbitrators.

68. On 18 May 2020, the Appellant advised the CAS Court Office that it maintained its request that the present matter be submitted to a sole Swiss law qualified arbitrator.

69. On 18 May 2020, the CAS Court Office informed the Parties that it will be for the President of the CAS Appeals Arbitration Division, or her Deputy, to decide on the issue, taking into account the circumstances of the case.

70. On 9 July 2020, the CAS Court Office invited the Respondents to file their Answers and informed the Parties that the panel called upon to decide on the present matter, is constituted as follows:

    Sole Arbitrator: Prof. Ulrich Haas, Professor in Zurich, Switzerland.

    The CAS Court Office also advised the Parties that Ms Stéphanie De Dycker, Clerk to the CAS, would assist the Sole Arbitrator in this matter.

71. On 7 August 2020, within the prescribed time limit, the First Respondents filed their Answer with the CAS Court Office.

72. On 21 August 2020, within the agreed time limit, FIFA filed its Answer with the CAS Court Office.

73. On 24 August 2020, the CAS Court Office acknowledged receipt of the Answers and invited the Parties to indicate whether they would prefer a hearing to be held in this matter or for the Sole Arbitrator to issue an award based solely on the Parties' written submissions.

74. On 25 August 2020, FIFA informed the CAS Court Office that it considered that a hearing was not necessary in the present matter.

75. On 31 August 2020, the First Respondents informed the CAS Court Office that he preferred that no hearing be held in this matter, and on the same day, the Appellant informed the CAS Court Office that it preferred a single hearing to be held in both cases.

76. On 1 September 2020, the CAS Court Office informed the Parties that the Sole Arbitrator will decide on whether a hearing should be held in each of these matters.

77. On 15 September 2020, the CAS Court Office informed the Parties that the Sole Arbitrator had decided to hold a hearing on this matter and requested the Parties to advise the CAS Court Office whether they have any objection that a single hearing is held for the cases CAS 2020/A/6900 and CAS 2020/A/6902. The CAS Court Office also consulted the Parties as to possible hearing dates.

78. On 17 September 2020, FIFA informed the CAS Court Office that it had no objection on holding a single hearing for the cases CAS 2020/A/6900 and CAS 2020/A/6902.

79. On 18 September 2020, the Appellant requested the CAS Court Office whether it would be possible, in light of the sanitary situation, to hold the hearing by video-conference.

80. On 22 September 2020, the Appellant and the First Respondents informed the CAS Court Office that they agreed that the Sole Arbitrator holds a single hearing in the cases CAS 2020/A/6900 and CAS 2020/A/6902.

81. On 23 September 2020, the CAS Court Office confirmed to the Parties that a hearing will be held in the cases CAS 2020/A/6900 and CAS 2020/A/6902 on 27 November 2020 by videoconference and invited the Parties to provide a list of all their attendees.

82. On 23, 28 and 30 September 2020 as well as 1 October 2020, the Parties provided a list of their attendees.

83. On 2 November 2020, the CAS Court Office issued an order of procedure (the "Order of Procedure") and invited the Parties to return a signed copy of it, which the Parties did on 4 and 9 November 2020.

84. On 27 November 2020, the Appellant informed the CAS Court Office that the expert Mr Razvana-Traian Zavaleanu will attend the hearing from his own office and forwarded new contact details.

85. With letter of the same day, the CAS Court Office acknowledged receipt of the Appellant's letter and sent a webex invitation to Mr Razvana-Traian Zavaleanu for the hearing to be held later that day.

86. On 27 November 2020, a hearing was held by video-conference. In addition to the Sole Arbitrator, Ms Sophie Roud, CAS Counsel, and Ms Stéphanie De Dycker, Clerk to the CAS, the following persons attended the hearing, by video-conference:

For the Appellant:	Mr Ionut lvascu, Secretary General and Legal Adviser of the Club; Mr Jorge Ibarrola, counsel for the Club Ms Alexandra Veuthey, counsel for the Club Mr Razvana-Traian Zavalealu, expert.

For the First Respondents: Mr Edimar Curitiba Fraga, player;
Mr Ronny Carlos da Silva, player;
Mr Agustín Amorós Martínez, counsel for the Players;
Mr Alfonso Vargas Cuadrado, counsel for the Players;
Mr Alexandre Dias Bortolato, counsel for the Players;
Mr Gytis Rackauskas, counsel for the Players.

For the Second Respondent: Mr Jaime Cambreleng Contreras, Head of Litigation;
Mr Roberto Nájera Reyes, Senior Legal Counsel.

87. At the hearing, the Sole Arbitrator heard Mr Razvana-Traian Zavalealu in his capacity of expert nominated by the Appellant. The Parties then had the opportunity to examine and cross-examine the expert. The Parties were given a full opportunity to present their case, submit their arguments and submissions and answer the questions posed by the Sole Arbitrator. At the end of the hearing, the Parties confirmed that they were satisfied with the hearing and as to their right to be heard. Furthermore, all Parties consented that the Sole Arbitrator issue a single award with respect to both appeals (CAS 2020/A/6900 and CAS 2020/A/6902).

V. SUBMISSIONS OF THE PARTIES

88. This section of the award does not contain an exhaustive list of the Parties' contentions, its aim being to provide a summary of the substance of the Parties' main arguments. In considering and deciding upon the Parties' claims in this Award, the Sole Arbitrator has accounted for and carefully considered all of the submissions made and evidence adduced by the Parties, including allegations and arguments not mentioned in this section of the Award or in the discussion of the claims below.

A. The Appellant's Position

89. In its Appeal Brief filed in the matter CAS 2020/A/6900, the Appellant requested as follows:

> *"I. The decision issued by FIFA Disciplinary Committee on 25 September 2019 is annulled.*
> *II. No sanction shall be imposed on CFR 1907 Cluj S.A.*
> *III. Fotbal Club CFR 1907 Cluj S.A. shall not bear any procedural costs in the FIFA proceedings and FIFA is ordered to reimburse Fotbal Club CFR 1907 Cluj S.A. all advances of procedural costs paid by the later.*
> *IV. FIFA and Mr da Silva shall bear all the arbitration costs jointly and severally, if any, and shall be ordered to reimburse the minimum CAS Court Office fee of CHF 1,000 as well as any other advances of costs paid by CFR 1907 Cluj S.A.*
> *V. FIFA and Mr da Silva shall be ordered to pay CFR 1907 Cluj S.A., jointly and severally, a contribution towards the legal and other costs incurred in the framework of these proceedings."*

90. In its Appeal Brief filed in the matter CAS 2020/A/6902, the Appellant requested as follows:

> *"I. The decision issued by FIFA Disciplinary Committee on 16 December 2019 is annulled.*
> *II. No sanction shall be imposed on CFR 1907 Cluj S.A.*

III. Fotbal Club CFR 1907 Cluj S.A. shall not bear any procedural costs in the FIFA proceedings and FIFA is ordered to reimburse Fotbal Club CFR 1907 Cluj S.A. all advances of procedural costs paid by the later.
IV. FIFA and Mr Fraga shall bear all the arbitration costs, if any, and shall be ordered to reimburse the minimum CAS Court Office fee of CHF 1,000 as well as any other advances of costs paid by CFR 1907 Cluj S.A.
V.FIFA and Mr Fraga shall be ordered to pay CFR 1907 Cluj S.A. a contribution towards the legal and other costs incurred in the framework of these proceedings."

91. The Appellant's submissions in support of his appeals against the Appealed Decision I and the Appealed Decision II (jointly referred to as the "Appealed Decisions") may be summarised as follows:

- Pursuant to Article 5 of the FIFA Disciplinary Code, the Sole Arbitrator shall apply the FIFA regulations and subsidiarily Swiss law or any other law that it would deem applicable. The Sole Arbitrator should consider applying Romanian debt enforcement law in conjunction or alternatively to Swiss law, as it appears to be quite relevant in the present matter.

- Both under Swiss law and under Romanian law, the Players are no longer the creditors of the Club and the Club cannot be ordered to pay the Players more than the amount already paid to them pursuant to the reorganization plan, which they did not challenge.

- According to CAS case law, Article 107 (b) of the FIFA Disciplinary Code ("FIFA DC") does not forbid the opening or the continuation of disciplinary proceedings according to Article 64 of the FIFA Disciplinary Code when state insolvency proceedings have been initiated, but requires a balance of interests between the rationale of Article 107 of the FIFA DC and FIFA's need to guarantee a uniform and equal treatment between all participants in the world of football. In the present case, since (i) the Players acquired their claim prior to the opening of the Romanian Insolvency proceedings on 4 February 2015 and (ii) the Romanian insolvency proceedings were aimed at rescuing the Club and avoiding bankruptcy, FIFA should have renounced to open disciplinary proceedings.

- The Appellant cannot be ordered to pay to the Players any amount of money which was already the object of the reorganization plan in Romania as confirmed by the competent Romanian courts, without infringing the doctrine of *res judicata*.

B. The First Respondents' Position

92. In his Answer, Mr da Silva requested as follows:

"1. To dismiss the Appeal filled by the Club against the Player with respect to the decision passed by the Chairman of the Fédération Internationale de Football Association Disciplinary Committee on the 25th of September 2019 with the reference No. 160653 PST, communicated to the Parties with the grounds on the 5th of March 2020;
2. To confirm the decision passed by the Chairman of the Fédération Internationale de Football Association Disciplinary Committee on the 25th of September 2019 with the reference No. 160653 PST, communicated to the Parties with the grounds on the 5th of March 2020;

3. To condemn the Appellant to the payment of the whole CAS administration cost and the Arbitrators fees; and
4. To fix a sum of 20,000 CHF to be paid by the Appellant to the Player to help the payment of his legal fees covering the costs of its legal representation in front of the Court of Arbitration for Sport."

93. In his Answer, Mr Fraga requested as follows:

"1. To dismiss the Appeal filled by the Club against the Player with respect to the decision passed by the Chairman of the Fédération Internationale de Football Association Disciplinary Committee on the 16th of December 2019 with the reference No. 150585 PST, communicated to the Parties with the grounds on the 9th of March 2020;
2. To confirm the decision passed by the Chairman of the Fédération Internationale de Football Association Disciplinary Committee on the 16th of December 2019 with the reference No. 150585 PST, communicated to the Parties with the grounds on the 9th of March 2020;
3. To condemn the Appellant to the payment of the whole CAS administration cost and the Arbitrators fees; and
4. To fix a sum of 20,000 CHF to be paid by the Appellant to the Player to help the payment of his legal fees covering the costs of its legal representation in front of the Court of Arbitration for Sport."

94. The First Respondents' submissions in both matters may be summarised as follows:

- Pursuant to Article 57 (2) of the FIFA Statutes, the Sole Arbitrator shall primarily apply the various regulations of FIFA and subsidiarily Swiss law. Romanian enforcement law is not applicable to the present proceedings and its application shall be disregarded as it would contradict the FIFA regulations.
- Pursuant to the CAS case law, the Players lack standing to be sued in the present proceedings since they did not take part in the disciplinary proceedings before FIFA and the Appealed Decisions are only directed to the Appellant.
- The Appellant is not entitled to dispute the validity of its monetary obligations towards the Players since these were decided upon in the FIFA DRC Decisions of 21 January 2015 and 24 April 2015 which were not appealed and thus became final and binding. Hence, the object of the present proceedings is limited to the review of the sanction imposed by the FIFA Disciplinary Committee with respect to its legal basis and quantum.
- By releasing the Appellant from complying with the final and binding DRC Decisions, the national courts of Romania denied the obligatory nature of the final and binding decision of the FIFA DRC and make any previous dispute resolution procedure meaningless. In addition, it creates unequal treatment of football clubs worldwide.
- Although in accordance with the Article 107 (b) of the FIFA DC, FIFA holds the discretion to close the disciplinary proceedings if a party declares bankruptcy, in this particular case the said condition is simply not satisfied, as the *Appellant* only went through restructuration proceedings in accordance with the national Romanian law, but never declared bankruptcy.
- The CAS cases mentioned by the Appellant are not sufficiently linked to the matter at stake and the Sole Arbitrator is not bound by the findings in these cases.

- In any case, the Romanian courts disregarded the DRC decisions and their qualification of the Players' credit as salaries exclusively on the formal basis provided by national law of Romania. As a result, the balance of interest in this particular matter requires to disregard the decisions of the Specialised Court of Cluj and Cluj Court of Appeal issued within the insolvency proceedings because they illicitly qualified the outstanding salary payments of the player as "non-wage related" debts thus preventing the Players to retain their overdue payments. The FIFA Disciplinary Committee therefore rightfully disregarded the insolvency proceedings before the Romanian Insolvency courts.

- The formal application of foreign insolvency laws shall not be accepted as it would provoke undesired inequalities in the football market at international level, where clubs in insolvency enjoy the privileges of the relevant proceedings in accordance with the requirements established in their national law, while the other clubs are forced to honour their commitments towards players in full and timely manner, all of them playing in the same competitions. Such inequality of treatment and opportunities is clearly against the essential principles of the *lex sportiva*.

- The doctrine of *res judicata* would have been violated if the Appellant were released from the obligation to fully comply with the final and binding decision of the FIFA DRC. Whereas the Club never appealed the DRC Decision, at present stage it could not be released from the obligation to comply with it in full due to the findings of the Romanian insolvency courts, pursuant to the provisions of the national law of Romania, thus jeopardizing the autonomy of FIFA as a civil association and groundlessly limit its right to issue final and binding decisions towards its members in accordance with the requirements established exclusively in Swiss material law.

C. The Second Respondent's Position

95. In its Answer as filed in both cases, the Second Respondent requests as follows:

> *"*
> *(a) rejecting the requests for relief sought by the Appellant;*
> *(b) confirming the Appealed Decision; and,*
> *(c) In any case, ordering the Appellant to bear the full costs of these arbitration proceedings."*

96. The submissions of FIFA in both cases may be summarized as follows:

- Pursuant to Article 57 (2) of the FIFA Statutes, the Sole Arbitrator shall decide on the present dispute based on FIFA regulations, and subsidiarily Swiss law. Neither Swiss insolvency law nor Romanian insolvency law shall be applicable to this particular case as national insolvency law applies to insolvency proceedings which are no longer applicable to the Appellant.

- The FIFA Disciplinary Committee was not prevented from analyzing the matter as the insolvency proceedings were already closed when it decided to resume the disciplinary proceedings against the Appellant. Moreover, it has been demonstrated that after May 2017, the Appellant has full disposition of its assets

and it is not prevented from complying with the DRC Decision by paying the remainder of the amounts not yet paid to the Player.

- The Player performed diligently in recovering his credit before the relevant insolvency proceedings and therefore his conduct did not contribute to the Appellant's breach of the FIFA DRC Decisions.

- The Appealed Decisions were rendered by the FIFA Disciplinary Committee, which cannot review or modify the substance of previous decisions of FIFA's deciding bodies that are final and binding and whose scope of revision is limited to review whether or not the relevant debtor complied with the FIFA decision.

- According to Article 107 (b) of the FIFA DC, FIFA has full discretion to decide to recognize foreign insolvency proceedings, and the latter's effects 'can be' – rather than 'must be' – taken into account by the Disciplinary Committee. As a result, the reorganization plan, which reduced the Players' debt down to 10,79%, was not binding vis-à-vis FIFA.

- There was no conflict between the Romanian insolvency law and FIFA regulations since the relevant insolvency proceedings were already closed when the disciplinary proceedings were opened. Alternatively, if it could be considered that a conflict of some sort exists between Romanian insolvency law and the FIFA regulations, Romanian insolvency law does not prevail over FIFA's regulations. Indeed, FIFA's objective is to create a uniform legal system for all stakeholders in football worldwide and this could not be achievable if national law could simply override the FIFA regulations.

- The application of foreign insolvency laws create inequalities amongst stakeholders in the football market at the international level, which is clearly against the essential principles of the *lex sportiva*.

- Moreover, the FIFA Disciplinary Committee has discretion to analyse whether or not the effects of the insolvency proceedings affect its proceedings and to pass a decision based on a balance of interests. In the present matters, the balance of interests tips in favour of the prevalence of the scope of the FIFA regulations and *lex sportiva* over the no-longer-applicable Romanian insolvency law and its effects.

- There is no issue of *res judicata* in the present cases since the decision of the Court of Appeal of Cluj and the Appealed Decisions concern different parties, result from different claims based on different sets of regulations and hence, have different objects. The Appellant is not prevented from complying with the DRC Decisions as the Court of Appeal of Cluj did not decide that the debt with the Player was extinguished but that it paid the amounts foreseen in the "reorganization plan".

VI. JURISDICTION

97. This arbitral proceeding is governed by the Articles 176 et seq. of the Swiss Private International Law Act ("PILA"), since at least one of the Parties is domiciled outside

Switzerland and because the seat of the arbitration is in Switzerland (Article R27 of the CAS Code).

98. Article R47 para. 1 of the CAS Code provides as follows:

> "*An appeal against the decision of a federation, association or sports-related body may be filed with the CAS if the statutes or regulations of 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.*"

99. Article 58 (1) of the FIFA Statutes (2019 edition) states 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."*

100. Moreover, Article 49 of the 2019 FIFA Disciplinary Code, which governs procedural aspects regardless of the time when the alleged offence was committed, reads as follows:

> *"Decisions passed by the Disciplinary and Appeal Committees may be appealed against before CAS, subject to the provisions of this Code and articles 57 and 58 of the FIFA Statutes."*

101. Article 57 para. 1e.) of the 2019 FIFA Disciplinary Code reads in its relevant parts as follows:

> "*An appeal may be lodged with the Appeal Committee against any decision passed by the Disciplinary Committee, unless the disciplinary measure pronounced is: […] e) decisions passed in compliance with article 15 of this Code.*"

102. In light of the above-mentioned provisions, the Appealed Decisions qualify as final decisions passed by FIFA's legal bodies, and as such, can be appealed before CAS. The Sole Arbitrator further notes that the Parties have signed the Order of Procedure. It follows from all of the above that CAS has jurisdiction to decide on the present dispute.

VII. ADMISSIBILITY

103. Article R49 of the CAS Code provides as follows:

> "*In the absence of a time limit in the statutes or regulations of the federation, association or sports-related body concerned, or in a previous agreement, the time limit for the appeal shall be twenty-one days from the receipt of the decision appealed against. The Division President shall not initiate a procedure if the statement of appeal is, on its face, late and shall so notify the person who filed the document. When a procedure is initiated, a party may request the Division President or the President of the Panel, if a Panel has been already constituted, to terminate it if the statement of appeal is late. The Division President or the President of the Panel renders her/his decision after considering any submission made by the parties."*

104. In addition, Article 58(1) of the FIFA Statutes refers to a time limit of 21 days to file an appeal.

105. The Sole Arbitrator notes that the Appellant received the grounds of the Appealed Decision I on 9 March 2020 and filed its Statement of Appeal on 30 March 2020, and that it received the grounds of the Appealed Decision II on 5 March 2020 and filed its

Statement of Appeal on 25 March 2020. Thus, the appeals were filed within the deadline of 21 days and are, therefore, admissible.

VIII. APPLICABLE LAW

106. Article R58 of the CAS Code provides the following:

> "*The Panel shall decide the dispute according to the applicable regulations and, subsidiarily, to the rules of law chosen by the parties or, in absence of such 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.*"

107. Article 57(2) of the FIFA Statutes sets forth as follows:

> "*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.*"

108. Article 5 of the 2019 FIFA Disciplinary Code, which governs procedural aspects regardless of the time when the alleged offence was committed, reads as follows:

> *"The FIFA judicial bodies base their decisions: a) primarily, on the FIFA Statutes as well as FIFA's regulations, circulars, directives and decisions, and the Laws of the Game; and b) subsidiarily, on Swiss law and any other law that the competent judicial body deems applicable."*

109. The Sole Arbitrator is satisfied, and the Parties agree, that primarily the various regulations of FIFA apply to the merits of this appeal, in particular the FIFA Disciplinary Code 2017 ("FIFA Disciplinary Code"). In addition, the Sole Arbitrator will apply Swiss law subsidiarily insofar as the FIFA rules and regulations need to be interpreted. To the extent that the Sole Arbitrator refers to provisions from different jurisdictions he will explain such reasoning in the appropriate context.

IX. MERITS

110. The relevant questions that the Sole Arbitrator needs to answer in this appeal can be grouped into the following sets of issues:

- (i) The standing to be sued of the First Respondents;
- (ii) The scope and bearing of Article 107 lit. b FIFA Disciplinary Code on enforcement proceedings according to Article 64 FIFA Disciplinary Code.

A. The Standing to be Sued of the First Respondents

111. The First Respondents submit that the Appellant erred when it directed its appeal against the Appealed Decisions not only against FIFA, but also against them. The Respondents are of the view that the dispute relates to a disciplinary matter, i.e. a vertical dispute that only concerns the Appellant and FIFA.

1. *The Principle*

112. The Sole Arbitrator agrees with the First Respondents that – in principle – disciplinary matters only concern and involve the disciplinary authority and the addressee of the disciplinary measure. There is abundant CAS jurisprudence according to which competitors or third parties are not affected in their legal rights by disciplinary measures that are not directed at them. In CAS 2014/A/3707, e.g., the panel stated as follows:

> "*No rule of law, either in the FIFA Regulations or elsewhere, is allowing the club victim of the breach of contract to request that a sanction be pronounced. Indeed, the system of sanctions lays down rules that apply to the FIFA, on the one side, and to the player or to the club that hired the player, on the other side. A third party like the club victim of the breach of contract has no legally protected interest in this matter and has therefore no standing to require that a sanction be imposed upon the player and/or the club that hired the player*."

113. The First Respondents also rightfully referred to the case CAS 2015/A/4310, where the panel held as follows:

> *"CAS jurisprudence has established that FIFA disciplinary proceedings are primarily meant to protect an essential interest of FIFA and FIFA's (direct and indirect) members, i.e. the full compliance with the rules of the association and/or with the decisions rendered by FIFA's decision-making bodies. As a consequence, in an appeal against a decision of FIFA, by means of which disciplinary sanctions have been imposed on a party for failing to comply with a previous FIFA decision, only FIFA has standing to be sued, and not the (previously) opposing party in the original dispute before the competent FIFA bodies such as the FIFA Dispute Resolution Chamber. Consequently, it is well established that an appeal against a sporting sanction inflicted by a FIFA decision-making body must be directed against FIFA (and the decision-making body), that is, the body that has the power to impose and enforce disciplinary sanctions on clubs that have contravened, for example, Article 12bis of the FIFA RSTP or, more frequently, Article 64 of the FIFA Disciplinary Code ...*" (emphasis added)

2. *The (Mixed) Legal Nature of Article 64 FIFA Disciplinary Code*

114. Whether Article 64 FIFA Disciplinary Code is purely disciplinary in nature, appears questionable. According thereto

> "[a]*nyone who fails to pay another person (such as a player, a coach or a club) or FIFA a sum of money in full or part, even though instructed to do so by a body, a committee or an instance of FIFA or a subsequent CAS appeal decision (financial decision) …*"

may be disciplined with a monetary fine and (in addition) subsequently with additional sanctions until it complies with its monetary obligation vis-à-vis the creditor. The judgment creditor merely has to submit an appropriate request to the FIFA Disciplinary Committee and apply for enforcement of the decision.

115. Several CAS panels have dealt with the nature of Article 64 FIFA Disciplinary Code. It is beyond question that the provision serves to protect the interests of FIFA. This follows from a series of CAS decisions (e.g., CAS 2006/A/1206, 2007/A/1329&1330, CAS 2007/A/1367, CAS 2008/A/1620, CAS 2012/A/2981), in which the panels concluded that, in the event measures adopted by FIFA under (the provisions corresponding to) Article 64 FDC are challenged, the creditor of the unpaid amount has no standing to be sued, since "*the proceedings before the DC … intended to protect primarily an essential interest of FIFA, i.e. the full compliance by the affiliates of the decisions rendered by its*

bodies. In other words, the core of the DC Decision, and of the appeal brought in these proceedings against it, regards only the existence of a disciplinary infringement by … and the power of FIFA to sanction it". The above is further backed by the fact that the fine imposed by FIFA in case of non-compliance is awarded in favour of FIFA.

116. However, it is also true that the fine imposed on the judgment debtor also serves – comparable to the "astreinte" in French law (BRUNS, Zwangsgeld zugunsten des Gläubigers – ein europäisches Zukunftsmodell?, ZZP 2005, 3, 9 seq.) – as an incentive to the judgement debtor to make the corresponding payments to the judgment creditor. Thus, the CAS panel in CAS 2012/A/28171 (no. 101) explained that the

> *"imposition of disciplinary measures …* [serves] *to "compel" the debtor to comply. Indeed, the Federal Tribunal, in its decision of 5 January 2007 (referred to above), acknowledged that the imposition of a sanction has the purpose to secure the observance of the rules of the association, deterring an associate from breaching them, and therefore constitutes an element of pressure on the associate to comply with its financial obligation towards the other affiliates (in the similar way, see the decision of the Federal Tribunal of 27 March 2012, 4A_558/2011): such effect, however, does not put the power of the association to sanction in conflict with the State monopoly on enforcement procedures, provided that sufficient grounds are offered by the rules of the association for the exercise of that power (and provided that the sanction imposed does not severely infringe the personality right of a player: decision of 27 March 2012)."*

117. Evidence of the above, i.e. that Article 64 FIFA Disciplinary Code also serves the interests of the judgment creditor is that disciplinary proceedings are only initiated upon request of the judgment creditor and not by FIFA *sua sponte*.

3. *The Consequences of the Above*

118. What consequences need to be drawn from the mixed nature of Article 64 FIFA Disciplinary Code with respect to the First Respondents standing to be sued appears questionable. In CAS 2007/A/1329-1330, the panel found that the judgement creditors that initiated the disciplinary proceedings

> *"could not be considered as the legitimate respondent to the appeals brought* [by the judgment debtor against the imposition of sanctions according to Article 64 FIFA Disciplinary Code]. *In other words the …* [judgment creditors] *do not have standing to be sued (légitimation passive) and cannot be summoned as respondents in the present arbitration …*"

119. However, the Sole Arbitrator also notes that in the past CAS panels also dealt with cases, in which the FIFA Disciplinary Committee refused to enforce a decision (e.g. a CAS award or a final adjudication by FIFA bodies) by not imposing a sanction on the judgment debtor within the meaning of Article 64 FIFA Disciplinary Code. The question then arose whether or not the judgment creditor is affected in his or her substantive rights by such decision (and therefore having standing to sue). The CAS panel in the case CAS 2015/A/4162 – e.g. – dealt with this question and decided as follows (note. 74):

> *"Whether in the case at stake the Appellant can request CAS to order the FIFA DC to institute or impose sanctions against the judgment debtor appears – at first glance – to be questionable for Article 64 of the FIFA Disciplinary Code primarily provides for a disciplinary measure. However, normally one member of the FIFA family does not have a claim against FIFA to have a sanction imposed on a fellow member (CAS 2012/A/3047, para.*

> *51). In the case of Article 64 of the FIFA Disciplinary Code the prevailing opinion appears to grant the creditor a right to 'assistance with enforcement', i.e. a right to institute disciplinary proceedings against the judgment debtor. This follows (directly) from a number of CAS awards, which deal with decisions by FIFA, in which enforcement proceedings were instituted belated or not at all and which were appealed by the creditor to the CAS. In all these cases the CAS accepted the creditor's standing to sue (cff. CAS 2011/A/2343, para. 8; CAS 2012/A/2750, para. 34; CAS 2012/A/2817, para. 47). The Panel follows this jurisprudence. Even though disciplinary in nature (see below) the enforcement procedure according to Article 64 of the FIFA Disciplinary Code is a (natural) continuation of the procedure before the FIFA DRC".*

120. It follows from the above that the enforcement mechanism in Article 64 FIFA Disciplinary Code serves general sporting purposes by fostering legal certainty, legal peace and contractual stability within the football family. However, this enforcement mechanism is also intended to protect the interests of the judgment creditor. The latter is evidenced by the mere fact that the enforcement mechanism and – more particular – the issuance of the sanctions within the meaning of Article 64 FIFA Disciplinary Code is not triggered *sua sponte*, but upon filing of a respective request by the judgment creditor. Consequently, a judgement creditor is – according to the applicable rules – vested with the (substantive) right to demand from FIFA to enforce its title according to Article 64 FIFA Disciplinary Code. Thus, according to CAS jurisprudence, the judgement creditor is affected in his or her substantive rights in case the enforcement of the judgment is denied. The Sole Arbitrator finds that the finding in CAS 2015/A/4162 is difficult to reconcile with the jurisprudence in CAS 2007/A/1329-1330. Even more troubling is the fact that in a number of cases, in which the judgment creditor appealed against the decision of FIFA not to enforce the creditor's title, the CAS accepted that the appeal was directed not only against FIFA but also against the judgment debtor (cf. CAS 2012/A/2817; CAS 2012/A/2750).

121. After careful analysis of the respective decisions, the Sole Arbitrator finds that the better arguments speak in favour of granting the standing to be sued to the First Respondents in the case at hand.

B. The impact of bankruptcy on the enforcement proceedings according to Article 64 FIFA Disciplinary Code

1. *The term "bankruptcy" in Article 107 lit. b FIFA Disciplinary Code*

122. Article 107 lit. b FIFA Disciplinary Code refers to "bankruptcy". The question is what is to be understood by this term, in particular whether the term only refers to proceedings aiming at the liquidation of the estate or also to proceedings leading to the restructuring of the debtor. The Sole Arbitrator finds what the provision in Article 107 lit. b FIFA Disciplinary Code is concerned with collective enforcement proceedings, i.e. proceedings that – in principle – prevent creditors to individually pursue / enforce their individual claims against the debtor, provide for the seizure of the debtor's assets, are triggered by financial difficulties of the debtor and foresee for some kind of supervision by state authorities. From a Swiss law perspective – that applies subsidiarily to the case at hand (see supra) – these characteristics are fulfilled irrespective of whether the collective proceeding is aimed at the liquidation (Articles 221 et seq. Swiss Debt Enforcement and

Bankruptcy Law – "SDEBL") or restructuring of the debtor's estate (Articles 293 et seq. SDEBL). The view held here that the term "bankruptcy" must extend to all collective enforcement proceeding (independently of their final goal) is also backed by CAS jurisprudence (cf. CAS 2015/A/4162; CAS 2016/A/4593 & 4769; CAS 2012/A/2754). The latter does not differentiate between liquidation and restructuring proceedings.

123. In the case at hand, it is undisputed that a collective enforcement procedure designed to cover the debtor's liabilities was opened over the Appellant's estate. This procedure was supervised by the competent national Romanian courts. The purpose of the proceedings in Romania is described in Article 2 of the Romanian Insolvency Act ("IA") as follows:

> *"This law is intended to implement a collective proceeding for the recovery of debtor's liabilities while offering the debtor, whenever possible, a chance for business recovery."*

124. It follows from the above that the proceeding opened by the Syndic Judge of the Cluj Specialised Court of law is a "bankruptcy proceeding" within the meaning of Article 107 lit. b of the FIFA Disciplinary Code.

2. *No Need for Recognition according to Articles 166 et seq. PILA*

125. The Sole Arbitrator is aware that Swiss law recognizes effects of foreign insolvency proceedings only subject to certain restrictions. In particular, Switzerland does not automatically recognize foreign insolvency proceedings and their effects (Swiss Federal Tribunal, decision of 18 February 2013 – 4A_380/12, consideration 4.2; decision of 26 October 2011 – 4A_389/2011, consideration 2.3.1). Consequently, foreign insolvency proceedings only produce legal effects in Switzerland once a particular recognition procedure has been undergone in accordance with Article 166 et seq. of the Swiss Private International Law Act ("PILA").

126. The CAS panel in CAS 2015/A/4162 found that it is only bound by the FIFA regulations and not by the respective provisions in the PILA when deciding whether or not to take account of a foreign insolvency procedure. The panel in CAS 2015/A/4162 (note 78) justified its approach by stating that

> "[t]*he underlying rationale for this legal concept* [enshrined in Article 166 et seq of the PILA] *is sovereignty aspects, which prevent the automatic recognition of foreign insolvency proceedings in Switzerland. The obligation to safeguard the same is, however, directed at domestic state courts and authorities only and does not, therefore, conflict with the (automatic) recognition of foreign insolvency proceedings by FIFA according to Article 107 (b) of the FIFA Disciplinary Code. Hence, it is within the autonomy of FIFA to determine and require conditions for the recognition of foreign insolvency proceedings that are different from the ones provided for in Article 166 et seq. of the PILA. In particular, FIFA may recognize or take into account foreign insolvency proceedings independently of whether or not a special recognition procedure has been initiated before Swiss courts in respect of foreign insolvency decisions."*

127. The Sole Arbitrator in this proceeding adheres to the above view. If and under what conditions FIFA wishes to take account of or recognize the effects of a (state) insolvency proceedings is within its autonomy. FIFA may, therefore, recognize such effects subject to different conditions than (Swiss) state authorities. Thus, the Sole Arbitrator finds that

Article 107 lit. b FIFA Disciplinary Code trumps and supersedes the respective provisions in Swiss law, more particularly the PILA.

3. *The Purpose of Article 107 lit. b FIFA Disciplinary Code*

a. Coordination of Insolvency and Enforcement Proceedings

128. The purpose of Article 107 lit. b FIFA Disciplinary Code is to coordinate the FIFA enforcement system with collective enforcement / insolvency proceedings, since – at least at first sight – both types of enforcement proceedings are in conflict with each other. Thus, there is a need for coordination, which has been described by the panel in CAS 2012/A/2754 note 121) as follows:

> *"The objective of administration proceedings is to rescue a company and for this purpose governments have established two measures: the company's assets are protected and the company does not have control of payment. In this context, it would not be correct for FIFA to sanction a club if the club can, in reality and due to a decision of an ordinary court, not make any payments without the authorization of an administrator nominated by the court. There is clearly a lis pendens in favour of national courts."*

129. Equally, also the Panel in CAS 2013/A/3321 (note 8.11) expressed the need to coordinate the proceedings by finding as follows:

> *In that connection, the Panel further agrees that FIFA is obliged to take into consideration and respect the decisions of the national State Courts as well as the laws of the States regarding bankruptcy proceedings, since the said proceedings are within the exclusive jurisdiction of the State Court.*

b. The Effects that Need to be Coordinated

130. The majority of the CAS decisions related to Article 107 lit. b FIFA Disciplinary Code dealt with specific effects arising from the opening of the insolvency proceedings, i.e. the loss of power of the debtor to manage and dispose of its estate. The main question arising in the context of these proceedings (cf. CAS 2011/A/2646) was whether the FIFA enforcement proceeding may proceed against a debtor that "*is no longer capable of managing its own finances and, consequently, … will not be in position, without violating the conditions set out in the* [applicable insolvency law] *… to pay either the fine imposed by the Decision or the outstanding amount due to the Player*" (CAS 2013/A/3321, note 8.29).

131. In the view of the Sole Arbitrator there is no reason to limit the coordination of the insolvency and enforcement proceedings to this sole issue. No such restriction follows from the wording of Article 107 lit. b FIFA Disciplinary Code, which simply provides that enforcement proceedings may be closed if a party "declares bankruptcy". Instead, a need to coordinate insolvency proceedings and enforcement proceedings may even persist once the insolvency proceedings are terminated. This clearly follows also from the CAS jurisprudence. In CAS 2011/A/2646 the panel stated as follows (note 66 et seq.):

> *"… the Player apparently decided not to claim for his labour debt in the bankruptcy proceedings, in spite of (i) being aware of these proceedings and (ii) having announced his intention to do so.*

> *This, in the Panel's opinion, is to be considered as a lack of diligence of the Player in recovering his credit that shall have an impact in the present case.*
>
> *It has been proven in the present proceedings that the Appellant paid a considerable amount of money to acquire the assets of the bankrupt entity, and that this amount was used to pay the credits of such entity. The Player, who held a privileged labour credit, could thus have moved forward to recover such prioritary credit from this amount arising out of the assets' sale, but he failed to do so.*
>
> *Therefore, the Player somehow contributed not to remove the prerequisite leading to the sanction imposed on the Decision: the lack of payment of the debt ordered in the FIFA DRC decision of 18 June 2009. His inactivity did not foster the recovery of the debt and hence the elimination of the circumstances of fact which gave rise to the sanction imposed by the Decision.*
>
> *At the present stage the Panel cannot ascertain if the Player would have received the sum of his credit in case he had duly claimed for it in the bankruptcy proceedings, but it was at least a feasible theoretical possibility that could have happened (especially taking into account the privileged nature of his credit) and which would have provoked that the order of payment issued by the FIFA DRC was complied and thus, that the sanction imposed in the Decision became groundless. The Panel is of the view that the Player should have explored such possibility, should have communicated his credit in the bankruptcy proceedings as he previously announced, should have tried to get the money and not simply remain passive, additionally pretending that disciplinary sanctions are imposed irrespective of his diligence or negligence in trying to achieve a result (recovery of the debt) that would remove the ground of the sanction."*

132. Thus, the panel in CAS 2011/A/2646 found that the FIFA enforcement proceedings could not simply resume once the insolvency proceedings ended. Instead, the effects of the insolvency proceedings continued to impact the FIFA enforcement mechanism even though the insolvency proceedings had been terminated. The view expressed by the panel in 2011/A/2646 has been upheld also in other decisions (e.g. CAS 2019/A/6461, no. 59). To conclude, therefore, the Sole Arbitrator finds that – *a priori* – all effects flowing from an insolvency proceeding must be examined whether they shall be recognized in the context of a FIFA enforcement proceedings or not.

c. The Conditions under which Effects arising from Insolvency Proceedings shall be Recognized

133. Article 107 lit. b FIFA Disciplinary Code gives little guidance with respect to the conditions under which effects of an insolvency proceeding over the debtor's estate shall be taken into account / recognized in the context of FIFA enforcement proceedings. It is obvious, however, that the provision does not provide for a mandatory or automatic recognition of all effects (arising from insolvency proceedings). Whether and to what extent effects of an insolvency proceeding affect the FIFA enforcement mechanism is the result of a balancing of interests. In CAS 2015/A/ 4162 the panel rightly pointed out (note 80) as follows:

> *"Article 107 lit. b of the FIFA Disciplinary Code does not totally forbid enforcement proceedings according to Article 64 of the FIFA Disciplinary Code in case insolvency proceedings have been initiated. Instead, Article 107 (b) of the FIFA Disciplinary Code provides that the closing of the disciplinary proceedings is at the discretion of the FIFA DC. The question thus is under what conditions the FIFA DC may continue the enforcement proceedings despite the opening of insolvency proceedings. Ultimately, Article 107 (b) of the*

> *FIFA Disciplinary Code demands that a balance of interest takes place between the rationale of Article 107 (b) of the Disciplinary Code and the scope of the FIFA Regulations on training compensation (i.e. to "[improve] the game of football constantly and [to promote] it globally" – Article 2 lit. (a) of the FIFA Statutes; to establish the "basic principles that guarantee a uniform and equal treatment of all participants in the football world" – cf. paragraph 1.2 of the Commentary to Article 1 of the Regulations for the Status and Transfer of Players and to establish a level play field among all stakeholders)."*

134. It follows from the above that whether or not recognition is granted depends on a balancing of the interests involved and, therefore, must be decided on a case by case basis. This is also in line with the practice of FIFA. In CAS 2013/A/3321 (note 8.8 et seq.) the panel found as follows:

> *"However, the Panel finds, in accordance with the jurisprudence of the CAS (2012/A/2750) that the word "may" in Article 107(b) of the FIFA Disciplinary Code implies that the FIFA DC has a discretion to close the proceedings, but no obligation to do so.*
>
> *The mere fact that a party has been declared subject to insolvency proceedings by a national State Court does therefore not necessarily imply that proceedings must be closed. Accordingly, other factors must also be taken into account in deciding whether or not to close the proceedings.*
>
> *The Panel notes in this connection that the Respondent has apparently altered its practice after the decision in the case CAS 2012/A/2750 with the effect that there is no automatic termination of disciplinary proceedings, but that the FIFA DC apparently makes a case-by-case evaluation, which is a practice the Panel endorses."*

4. *The Application of the above Principles to the Case at Hand*

135. In the case at hand, it is uncontested that a debt restructuring agreement was entered into in the insolvency proceedings opened over the Appellant's estate. The plan was not only approved by the creditors, but also confirmed by the (competent Romanian) insolvency judge according to Articles 137 and 139 IA. Once the plan becomes effective, Article 140 IA provides that "*the claims and rights of creditors and of the other concerned parties shall be adjusted as specified in the plan*." It is equally uncontested that the plan provided for a reduction of all unsecured claims down to 10,79%. Consequently, the effects of the approval of the plan are – according to the IA – that the claims of the First Respondents exceeding 10,79% of the original claims have been extinguished.

136. The question in the case at hand is whether or not the above effect of the Romanian insolvency proceeding shall be recognized in the context of the FIFA enforcement. The applicable yardstick is the balance of the interests involved (see supra).

a. The negative impact on the creditor

137. It is a common feature of insolvency proceedings that the latter impact on a creditor's substantive and procedural position. Thus, the panel in CAS 2015/A/4162 (note 84) found that "[t]*hat ordinary creditors are affected by an insolvency proceeding and suffer considerable discounts on their unsecured debts is … a common feature of most insolvency laws around the globe. The same is true for the collective nature if these proceedings, i.e. that effects may be imposed on the creditors in the course of insolvency proceedings without or even against their will*" and that the "*reason why insolvency laws interfere with the creditors' substantive and procedural rights is to ensure distributive justice in cases where a debtor is no longer in a position to autonomously manage his*

estate. In doing so the insolvency laws allow for an economically sound reallocation of resources in order for them to be productive again for the benefit of all stakeholders involved." The mere fact that a creditor suffers a loss in insolvency proceedings is no reason in the Sole Arbitrator's view not to acknowledge or accept the effects of an insolvency proceeding in the context of Article 107 lit. b FIFA Disciplinary Code.

b. The reorganization plan

138. The Sole Arbitrator further finds that a restructuring plan as such is in no way reprehensible and cannot be qualified as a circumvention of a debtor's obligations *per se*. The Sole Arbitrator notes that a restructuring plan under Romanian law tries to ensure economically sound decisions, protects the interests of the individual creditors and seeks to protect the minority from abusive majority decisions. In particular, the competent judge will only confirm a restructuring plan according to Article 139 IA under the following conditions:

> *"1) … The plan will be confirmed if the following conditions are met:*
>
> *A. Where there are five (5) categories, the plan shall be deemed accepted if at least three (3) of the categories of claims mentioned in the payment schedule, out of the ones referred to in article 138, par. (3), accept the plan, provided that at least one of the underprivileged categories accept it and at least 30% of the total amount of claims (in terms of value) accept it;*
>
> *…*
>
> *C. Each underprivileged category of claims that rejected the plan shall be given a fair and equitable treatment through the plan;*
>
> *…*
>
> *2) Fair and equitable treatment exists when the following conditions are met simultaneously:*
>
> *a) None of the categories rejecting the plan and no claim rejecting the plan receives less than they would have received in case of bankruptcy;*
>
> *b) No category and no claim in a category receives more than the total amount of its claim;*
>
> *c) Where an underprivileged category rejects the plan, no category of claims with a ranking lower than the ranking of the rejecting underprivileged category as results from the hierarchy set out in article 138, par (3), receives more than it would receive in case of bankruptcy;*
>
> *d) The plan provides the same treatment for each claim within a distinct category, except for the different ranking of those who benefit of a cause of privilege, as well as in the event the holder of a claim consents to a less favorable treatment for its claim. …"*

139. It follows from the above that the restructuring plan is first and foremost in the interests of the creditors. Under no circumstance can a plan be imposed on creditors against their will if they receive less (under the plan) than they would collect in case of a liquidation of the debtor's estate. Thus, a restructuring does not constitute a circumvention of any obligations, but represents an instrument for the recovery of the debtor's liability (cf. Article 2 IA) that is no way inferior to liquidation and which takes due consideration of the interests of the creditors.

c. The interests of competitors

140. The Respondents also submit that when performing the balance of interest test, due regards should also be given to interests of the competitors of Cluj. In this respect Respondents refer to the decision CAS 2011/A/2646 (note 19), in which the panel stated as follows:

> *"In fact, in the last times it is not unusual to see in the market of football that clubs which are declared bankrupt become, in accordance with the national laws ruling the bankruptcy proceedings, prevented from paying their debts in an immediate and entire manner. This situation is logically provoking undesired inequities in the referred market at international level, where clubs in bankruptcy enjoy the privileges of the bankruptcy proceedings while the other clubs are forced to honour their commitments in full and timely manner, all of them playing in the same competitions. Such inequity of treatment and opportunities is clearly against the essential principles of the so-called 'lex sportiva'."*

141. The Sole Arbitrator has difficulties in following this. Insolvency proceedings usually do not accord privileges to a debtor, but rather substantially interfere with the debtor's rights. Furthermore, the continuation of the operations will – in most cases – be under close supervision of the authority of administrators and the courts. The autonomy of the debtor is, thus, severely restricted in insolvency proceedings. Furthermore, the continuation of the operations – e.g. via a restructuring plan – requires that the latter is in the interest of the creditors and, thus, provides for an economically viable and sound reallocation of the debtor's resources. Insolvency proceedings consequently incentivize good governance which is also in the interest of the sporting community. In addition, it should not be forgotten that also the alternative to a continuation of the operations, i.e. the liquidation of a club has serious repercussions on the competitors. Furthermore, the above quote from the CAS decision (as well as some of the arguments submitted by the Respondents)[1] appears to insinuate that debtors filing for bankruptcy are somewhat at fault or acted reprehensible and, therefore, shall not continue to operate in the market. It is true that such thinking in the past was widely prevalent. In fact, in some languages there still is this connotation. The French word for bankruptcy "faillite", e.g., has its origins in the word "faute" ("breach"). However, such understanding – at least in the insolvency community – has been rightly overcome in the meantime. The reasons for a lack of economic success are far too complex to be simply qualified as and ascribed to "faute". Furthermore, economic failure and entrepreneurship are two sides of the same coin.

142. Of course, the Sole Arbitrator is aware that in certain settings an insolvency proceeding may be misused. The Sole Arbitrator concurs in this regard with the view held in CAS 2015/A/4162 (note 84), where the panel stated that

> *"*[i]*t is a common feature of all insolvency laws that creditors must be protected from a misuse of insolvency proceedings (and the encroachment of creditors' rights that follow such proceedings) by the debtor. This is all the more true in light of the importance for claims relating to training compensation. Thus, the Panel notes that it would perform the balance of interest test differently, if there were indications on file that the Respondent had acted in bad faith when initiating insolvency proceedings in Spain. However, no such evidence can be found on file. To conclude, therefore, the Panel finds that in this case and given the specific*

[1] Cf. „*In this case in particular, the Club would end up benefitting from entering into insolvency proceedings compared to* [others] *… that did not resort to those type of desperate measures as a result of their correct and diligent management of the clubs*", or "*The Appellant intends to benefit from the insolvency proceedings by hiding behind them in order to continue participating in professional football competitions while only complying with risibleamount fo the financial obligations recognized by the DRC*".

> *circumstances surrounding it, FIFA was correct in closing the procedure, i.e. to discontinue the enforcement of the First Decision according to Article 64 of the FIFA Disciplinary Code. Consequently, the Panel dismisses the Appellant's appeal."*

143. However, also in the case at hand, there is no evidence on file that there was any misuse of the Appellant when filing for restructuring. Furthermore, the Sole Arbitrator notes that Article 69 IA provides as follows:

> *"The debtors – legal entities – which, over the last five (5) years before the opening of the insolvency proceeding have already been subject to a judicial reorganization proceeding, are not entitled to file for a petition for judicial reorganization."*

d. The protection of the Players

144. It is true that in many insolvency laws the salaries of employees enjoy particular protections. The panel in CAS 2011/A/2646 stated in this respect as follows (no. 65):

> *"It is also clear that in accordance with Chilean Law (and in particular with article 148 of the 'Ley de Quiebras' and article 2472 of the Chilean Civil Code), the salary credits, as it happens in other bankruptcy legal systems like the Swiss one, are considered privileged credits in the bankruptcy proceedings, that is to say, with priority of recovery before the ordinary ones, and are claimable within the bankruptcy proceedings."*

145. One may contemplate whether the effects of insolvency proceedings shall be recognized by FIFA only if the claims arising from or in connection with the FIFA rules and regulations are treated in a privileged manner. However, the Sole Arbitrator notes that such principle – in this absoluteness – is not advocated by the CAS panels. In CAS 2015/A/4162 the panel found that a claim for solidarity contribution is not "*worthy* [of] *a better protection than those of other unsecured creditors. This being said, the Panel does not underestimate the importance and the need of training compensation in the context of international transfers in general*" (no. 84). The question is, whether – at the very least – the salary claims of players shall be treated in a privileged manner. Be it as it may, the Sole Arbitrator finds that – in any case – the balance shall not tip in favour of not recognizing the effects of the insolvency proceedings where the players have contributed to their salaries being qualified as unsecured claims. Indeed, it follows from the submissions of the Parties and the testimony of the expert that the First Respondents and the Appellant when executing their employment relationship deliberately chose to sign a civil convention rather than a labour law convention. In doing so, the First Respondents accepted that in case of insolvency proceedings, their contractual claims would be classified as unsecured claims. The evidence on file and the testimony of the expert indeed confirm that the First Respondents' attempts to contest the classification of their claim as 'unsecured' were dismissed by the Cluj Specialised Court and Appeal Court for the reason that the conventions, on which such claims are based, are civil conventions. Thus, the consequences that the Players suffer in the Romanian insolvency proceeding is not due to a policy of Romanian law that is in conflict with the ideas and purposes of the FIFA regulations, but a mere consequence of their autonomous decision how to structure their legal relationship with the Club. The Sole Arbitrator finds that, consequently, the balance of interest cannot tip in favour of non-recognition in the case at hand.

e. The scope of the Disciplinary Proceedings

146. Finally, the Respondents submitted that the balance of interest must tip in favour of non-recognition because of the Disciplinary Committee's limited scope of review. The Sole Arbitrator accepts that the Disciplinary Committee is prevented from reviewing the decision that forms the basis of the enforcement proceedings according to Article 64 FIFA Disciplinary Code. The latter has been acknowledged frequently by the CAS. In CAS 2018/A/5779 (no. 51) – e.g. – the panel stated that

> *"… The FIFA Disciplinary Committee cannot review or modify the substance of a previous FIFA or CAS decision that is final and binding and therefore enforceable."*

147. However, the Disciplinary Committee must take account of "new" facts (nova) that occurred after the issuing of the decision that impact on the adjudicated claim. Thus, the Disciplinary Committee cannot issue sanctions against the judgment debtor if the latter has paid the requested amounts (after the issuance of the decision). It is for this reason that CAS panels have stated (e.g. 2018/A/5779 no. 51) that:

> *"The sole task of the FIFA Disciplinary Committee is to determine whether the debtor complied with the final and binding decision of the relevant body … Therefore, in order to impose any possible disciplinary sanction, the main question for the FIFA Disciplinary Committee is simply whether or not the financial amounts as defined in the decision were paid by the debtor to the creditor."*

148. In the view of the Sole Arbitrator there are also other reasons than payment that may lead to the expiry of the entitlement, such as – under certain condition – a set-off or a or the occurrence - after issuance of the FIFA decision – of a cause of 'force majeure' which renders performance of the debtor's obligations under the FIFA decision impossible. The Sole Arbitrator finds that the effects of the restructuring plan, which came into force only after the issuance of the "judgment" forming the basis of the FIFA enforcement mechanism, i.e. the reduction of all unsecured claims down to 10,79%, is a matter leading to the expiry of the claim that has to be taken into account by the Disciplinary Committee. This conclusion is supported by the fact that pursuant to Article 5 of the FIFA DC (2019), the FIFA DC was supposed to subsidiarily apply Swiss law or any other national law it deemed applicable. It is therefore clear that nothing prevented the FIFA DC from at least examining the effects of the restructuring plan under Romanian law. In fact, in a matter involving national insolvency proceedings, reference to national insolvency law appears rather essential.

149. In conclusion, the Sole Arbitrator finds that since the effects of the restructuring plan must be recognized in the context of the FIFA enforcement proceedings and considering that the Appellant has paid all amounts due under the restructuring plan, the appeal must be granted and the Appealed Decisions need to be set aside.

X. COSTS

150. Article R64.5 of the CAS Code provides 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 and without any specific request from the parties, 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."

151. The Sole Arbitrator decides on the issue of costs ex officio and is not bound by the requests of the Parties. Having considered the outcome of the arbitration, in particular the fact that the appeal was upheld, the Sole Arbitrator determines that the costs of the arbitration (as notified by the CAS Court Office) shall be borne in both appeal proceedings by FIFA. The Sole Arbitrator does not ignore that also the First Respondents did not succeed with their requests. However, it does not appear just to "penalize" the First Respondents who only initiated the FIFA enforcement mechanism.

152. Furthermore, pursuant to Article R64.5 of the CAS Code, and in consideration of the complexity and outcome of the proceedings, the fact that a hearing was held, that the hearing was solely requested by the Appellant, and in view of the financial resources of the Parties, in particular of the Players, the Panel rules that FIFA shall pay to the Appellant an amount of CHF 3,000 as contribution towards the latter's legal fees and other expenses incurred in the proceedings CAS 2020/A/6900, as well as an amount of CHF 3,000 as contribution towards the Appellant's legal fees and other expenses incurred in the proceedings CAS 2020/A/6902.

153. The Appellant also requests to be reimbursed of all advances of the procedural costs it paid in the FIFA proceedings. The Sole Arbitrator sees no legal basis for such a claim in the CAS Code and – absent any further substantiation by the Appellant – dismisses such request.

ON THESE GROUNDS

The Court of Arbitration for Sport rules that:

1. In the matter CAS 2020/A/6900:

    1. The appeal filed on 25 March 2020 by Fotbal Club CFR 1907 Cluj S.A. against the decision of the FIFA Disciplinary Committee dated 25 September 2019 is upheld.

    2. The decision of the FIFA Disciplinary Committee dated 25 September 2019 is set aside and left without effect.

    3. The arbitration costs, to be determined and served to the Parties separately by the CAS Court Office, shall be borne entirely by FIFA.

    4. FIFA shall pay an amount of CHF 3,000 (three thousand Swiss francs) to Fotbal Club CFR 1907 Cluj S.A. as contribution to its legal costs and other expenses incurred in the present proceedings.

    5. All other motion and/or prayers for relief are dismissed.

2. In the matter CAS 2020/A/6902:

    1. The appeal filed on 25 March 2020 by Fotbal Club CFR 1907 Cluj S.A. against the decision of the FIFA Disciplinary Committee dated 16 December 2019 is upheld.

    2. The decision of the FIFA Disciplinary Committee dated 16 December 2019 is set aside and left without effect.

    3. The arbitration costs, to be determined and served to the Parties separately by the CAS Court Office, shall be borne entirely by FIFA.

    4. FIFA shall pay an amount of CHF 3,000 (three thousand Swiss francs) to Fotbal Club CFR 1907 Cluj S.A. as contribution to its legal costs and other expenses incurred in the present proceedings.

    5. All other motion and/or prayers for relief are dismissed.

Date: 5 May 2021
Seat of the arbitration: Lausanne (Switzerland)

THE COURT OF ARBITRATION FOR SPORT

Ulrich Haas
Sole Arbitrator

Stéphanie De Dycker
Clerk