CAS 2020/A/7280 Viktor Viktorov Genev v. FC Petrolul Ploiesti (ACS Petrolul 52 Ploiesti) & FIFA

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ARBITRAL AWARD

delivered by the

COURT OF ARBITRATION FOR SPORT

sitting in the following composition

Sole Arbitrator: Mr Frans M. **de Weger**, Attorney-at-Law, Haarlem, the Netherlands

in the arbitration between

Viktor Viktorov Genev, Bulgaria
Represented by Mr Georgi Gradev, SILA International Lawyers, Sofia, Bulgaria

Appellant

And

2/ ACS Petrolul 52 Ploiesti, Sofia, Bulgaria
Represented by Mr Josep Vandellós Alamilla, Attorney-at-Law, València, Spain

First Respondent

1/ Fédération Internationale de Football Association (FIFA), Zurich, Switzerland
Represented by Ms Marta Ruiz-Ayucar, and Mr Roberto Nájera Reyes, Litigation Department

Second Respondent

I. INTRODUCTION

1. The appeals are brought by Mr Viktor Viktorov Genev (the "Appellant") against the decisions rendered by the Disciplinary Committee (the "FIFA DC") of the Fédération Internationale de Football Association ("FIFA" or the "Second Respondent") on 9 June 2020 (together referred to as the "Appealed Decisions"), regarding the Appellant's requests for disciplinary measures against the club ACS Petrolul 52 Ploiesti (the "Club" or the "First Respondent").

II. PARTIES

2. The Appellant is a player of Bulgarian nationality.

3. The First Respondent is a professional football club based in Ploiesti, Romania. The Club is affiliated to the Romanian Football Association (the "FRF"), which in turn is affiliated to FIFA.

4. The Second Respondent is the global governing body of football with its registered office in Zurich, Switzerland. FIFA exercises regulatory, supervisory and disciplinary functions over national associations, clubs, officials and players worldwide.

5. Where applicable, the First and Second Respondent (the "Respondents") and the Appellant are hereinafter jointly referred to as the "Parties".

III. FACTUAL BACKGROUND

6. Below is a summary of the main relevant facts, as established on the basis of the Parties' written submissions on the file and relevant documentation produced in this appeal. Additional facts and allegations found in the Parties' submissions may be set out, where relevant, in connection with the further legal discussion that follows. While the Sole Arbitrator has considered all the facts, allegations, legal arguments and evidence submitted by the Parties in the present proceedings, the Award only refers to the submissions and evidence it considers necessary to explain its reasoning.

A. Background facts

7. On 1 September 2015, the Appellant and SC Fotbal Club Petrolul SA (the "Original Debtor") concluded a contract valid from the date of signature until 30 June 2017 (the "Contract"). The Contract was signed by the Appellant and Ms Clarisa Varceoroveanu, in her capacity as Special Administrator. The Contract was stamped by VIA INSOLV SPRL with an unspecified signature on it.

8. On 27 January 2016, the Appellant and the Original Debtor concluded a termination agreement (the "Termination Agreement"), which was signed by the Appellant and Ms Clarisa Varceoroveanu, in her capacity as Special Administrator. The Termination Agreement was marked with a stamp of the Original Debtor. Following the Termination Agreement the Original Debtor was obliged to pay the Appellant net EUR 23,000 in

two equal instalments of each net EUR 11,500 to be paid on or before 22 February and 23 March 2016 respectively.

9. On 11 April 2016, by absence of payment of the first instalment, the Appellant lodged a claim against the Original Debtor in front of FIFA asking the Original Debtor to be ordered to pay him the outstanding amount of net EUR 11,500 plus interest.

10. On 18 May 2016, the FIFA Dispute Resolution Chamber (the "FIFA DRC") decided that the Original Debtor had to pay the first instalment in the amount of EUR 11,500 plus interest to the Appellant, which grounds were issued on 6 June 2016 (the "First DRC Decision").

11. On 25 May 2016, by absence of payment of the second instalment, the Appellant lodged a second claim against the Original Debtor in front of FIFA asking the Original Debtor to be ordered to pay him the outstanding amount of net EUR 11,500 plus interest.

12. On 10 June 2016, the First Respondent was established by fans of the Original Debtor.

13. On 22 June 2016, the Original Debtor was declared bankrupt by the County Court of Prahova (the "Prahova Court Decision").

14. On 1 July 2016 (and ratified on 7 July 2016), the First Respondent was incorporated as a new club under the name "ACS Petrolul 52".

15. On 13 October 2016, the FIFA DRC decided that the Original Debtor had to pay the second instalment in the amount of EUR 11,500 plus interest to the Appellant, which grounds were issued on 25 October 2016 (the "Second DRC Decision").

16. On 19 June 2017, the First Respondent acquired from the Municipality of Ploiesti the exclusive right to use the "FC Petrolul Ploiesti" trademark for a period of four years.

17. On 29 August 2017, the FRF informed the FIFA Secretariat that the Original Debtor was "*facing bankruptcy proceedings and is not affiliated anymore to the* [FRF] *and also is not participating in any of the* [FRF] *competitions*".

18. On 19 April 2018, the FRF provided the FIFA Secretariat with a copy of the decision passed by the Executive Committee of the FRF on 1 August 2017, from which it followed that the Original Debtor was disaffiliated as it was undergoing bankruptcy proceedings.

19. On 5 June 2018, the FIFA Secretariat requested the FRF to inform its services whether the Original Debtor was currently affiliated to the FRF and whether it participated in any of the competitions organised under the auspices of the FRF.

20. On 14 August 2018, the FRF provided the FIFA Secretariat with a translation of the Prahova Court Decision as well as a decision of the Court of Appeal in Ploiesti, dated 10 November 2016 (and notified on 29 November 2016), rejecting the appeal lodged by the Original Debtor in which it disputed the bankruptcy.

21. On 20 June 2019, upon request of the FIFA Secretariat, the FRF provided the FIFA Secretariat, *inter alia*, with information regarding the seasons the Original Debtor and the First Respondent participated in the competitions under the auspices of the FRF.

22. On 16 March 2020, the First Respondent requested the registration in the bankruptcy proceedings of the Original Debtor of the total amount of EUR 23,000.

23. On 16 April 2020, the judicial liquidator of the Original Debtor informed the First Respondent that his request was rejected as it was not filed within the time limit as prescribed under the Romanian Insolvency Law (Law 85/2014). No appeal was filed against such decision by the First Respondent.

24. On 26 April 2020, as the Appellant never received the amounts awarded to him by means of the First and Second DRC Decision, the Appellant requested the FIFA Disciplinary Committee (the "FIFA DC") to open disciplinary proceedings against the First Respondent. By means of this request, the Appellant asked the FIFA DC to determine that the First Respondent is the sporting successor of the Original Debtor, that the First Respondent had to be found guilty of failing to comply with the First and the Second DRC Decision, and that sanctions had to be imposed on it.

B. Proceedings before the FIFA Disciplinary Committee

25. On 4 May 2020, the FIFA Secretariat opened disciplinary proceedings against the First Respondent for a potential failure to respect the First DRC Decision (with reference number 200638) as well as the Second DRC Decision (with reference number 200639).

26. On 9 May 2020, the First Respondent provided its position and argued that the FIFA DC was not competent under Article 15 par. 4 of the 2019 FIFA Disciplinary Code (the "FDC Edition 2019") to determine that the First Respondent is the sporting successor of the Original Debtor. Further to this, the First Respondent argued that it is not and cannot be considered the sporting successor of the Original Debt, that the Appellant negligently failed to register his alleged receivables in accordance with the Romanian Insolvency Law and well-established CAS jurisprudence, and that the FIFA DC cannot enforce any decision of the FIFA DRC which was adopted against a differently legal entity.

27. On 9 June 2020, the FIFA DC passed two decisions, which decisions were notified to the Appellant and the First Respondent on 9 July 2020. Both decisions determining, *inter alia*, the following:

- As to the applicable law, the FIFA DC underlined "*that the* [FDC Edition 2019] *entered into force on 15 July 2019 (art. 72 par. 1 of the* [FDC Edition 2019]*) and applies to all disciplinary offenses committed following said date (art. 4 par. of the* [FDC Edition 2019]*)*". More specifically, the FIFA DC highlighted "*that the disciplinary offense, i.e. the potential failure to comply with the* [First and Second DRC Decision] *was committed before the* [FDC Edition 2019] *entered into force*". Consequently, the FIFA DC "*deemed that the merits of the present case fall under the 2017 edition of the FDC (the "FDC Edition 2017"),*

in accordance with art. 4 of the [FDC Edition 2017] and further held that "*the procedural aspects of the present matter are governed by the* [FDC Edition 2019]".

- As to its jurisdiction, the FIFA DC emphasised that "*in line with art. 54 par. 1 lit. h of the* [FDC Edition 2019], *cases involving matters under art. 15 of the* [FDC Edition 2019] *(former art. 64 of the* [FDC Edition 2017]*) may be decided by one member of the FIFA DC alone, i.e. the member of the* [FIFA DC] *in the case at hand*". In this context, the FIFA DC emphasised that it was "*uncontested that the* [Original Debtor] had been "*disaffiliated from the* [FRF]". As such, "[s]*ince the* [FRF] *has confirmed that the* [Original Debtor] *is no longer affiliated to the* [FRF], *it has lost its indirect membership to FIFA and therefore, the* [FIFA DC] *could not impose sanctions against the* [Original Debtor]". However, the [Appellant] subsequently requested the enforcement of the First and the Second DRC Decision against the First Respondent, which in view of the Appellant was to be considered "*the successor and/or the same entity as the disaffiliated club,* [Original Debtor]*"*. In this regard, the FIFA DC decided that "*he is not prevented from reviewing and/or making a legal assessment and deciding if the* [First Respondent] *is the same as – and/or the successor of – the* [Original Debtor], *especially considering that the former is still duly affiliated to the* [FRF], *and as such, under the jurisdiction of the* [FIFA DC]*"*.

- As to the question whether the First Respondent can be held liable for the debts incurred by the Original Debtor, the FIFA DC referred "*to the decisions that had dealt with the question of the succession of a sporting club in front of the CAS and in front of FIFA's decision-making bodies which have established that, on the one side, a club is a sporting entity identifiable by itself that, as a general rule, transcends the legal entities which operate it. Thus, the obligations acquired by any of the entities in charge of its administration in relation with its activity must be respected. On the other side, it has been ruled that the identity of a club is constituted by elements such as its name, colours, fans, history, sporting achievements, shield, trophies, stadium, roster of players, historic figures, etc. that allow it to distinguish from all the other clubs. Hence, the prevalence of the continuity and permanence in time of the sporting institution in front of the entity that manages it has been recognized, even when dealing with the change of management completely different from themselves"*.

- Further to this, the FIFA DC decided that "[i]*n these circumstances, CAS already considered that a "new" club had to be considered as the "sporting successor" of another one in a situation where a) the "new" club created the impression that it wanted to be legally bound by obligations of its predecessor, i.e. the "old" club, b) the "new" club took over the license or federative rights from the "old" club and c) the competent federation treated the two clubs as successors of one another. By the same token a "sporting succession" is the result of the fact that 1) a new entity was set up with the specific purpose of continuing the exact same activities as the old entity, 2) the "new" club accepted certain liabilities of the "old" club, 3) after the acquisition of the*

assets of the "old" club, the "new" club remained in the same city and 4) the "new" club took over the license or federative rights from the "old" club".

- The FIFA DC underlined that "*the issue of the succession of two sporting clubs might be different than if one were to apply civil law, regarding the succession of two separate legal entities. Consequently, elements to consider are amongst others the name, the logo and colours, the registration address and/or the managing board of the club*". In this regard, the FIFA DC pointed out "*that this established jurisprudence from CAS has now been reflected in the 2019 FDC, under art. 15 par. 4 which states that "The sporting successor of a non-compliant party shall also be considered a non-compliant party and thus subject to the obligations under this provision. Criteria to assess whether an entity is to be considered as the sporting successor of another entity are, among others, its headquarters, name, legal form, team colours, players, shareholders or stakeholders or ownership and the category of competition concerned*"".

- Furthermore, the FIFA DC noted that "*decisions on the issue relating to the sporting successor of the original Debtor were recently rendered by the Deputy Chairman of the Disciplinary Committee. In particular, it has already been determined that* [the First Respondent] *is to be considered the sporting successor of the* [Original Debtor], *on the basis of the following elements:*

  - *Both clubs share the same logo and colours;*
  - *The* [First Respondent] *plays at the same stadium as the* [Original Debtor]*;*
  - *The website refers to the same founding year, same history and sporting achievements.*"

- The FIFA DC recalled that, "*in line with the jurisprudence of CAS and art. 15 par. 4 of the 2019 FDC, the identity of a club is constituted by elements such as its name, colours, logo, fans, history, players, stadium, etc., regardless of the legal entity operating it. As a result, the member of the Committee decided, on the basis of the information and documentation at his disposal, to endorse the conclusions of the Deputy Chairman of the Committee. In other words, on the basis of the information and documentation at his disposal, the member of the Committee has no other alternative but to conclude that the* [First Respondent] *is the sporting successor of the* [Original Debtor]".

- The FIFA DC decided that "*following the jurisprudence of the FIFA Disciplinary Committee, the member of the Committee concludes that, in principle, the sporting successor, i.e.* [the First Respondent], *of a non-compliant party, i.e. the* [Original Debtor], *shall also be considered a non-compliant party and is thus subject to the obligations under art. 64 of the* [FDC Edition 2017]".

- As to the question whether the First Respondent was responsible to pay the amounts imposed by means of the First and Second DRC Decision, the FIFA DC recalled

"*that the original Debtor went bankrupt. 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 new Club, i.e. whether the Creditor also contributed to create the breach of art. 64 of the* [FDC Edition 2017] *as it could be that his credit would have been paid in the bankruptcy proceedings and therefore no sanction may be imposed*".

- The FIFA DC underlined that "*CAS already discussed the possibility for the Disciplinary Committee to impose sanctions in accordance with art. 64 of the* [FDC Edition 2017] *on a new club that was considered as the successor of the bankrupt club11. In particular, CAS decided that no disciplinary sanctions could be imposed on the new club, should the Creditor fail to claim his credit in the bankruptcy proceedings of the former/bankrupt club*".

- In this context, the FIFA DC observed "*that the* [Appellant] *did not duly register his claim during the bankruptcy proceedings as he is not listed on the list of creditors dated 14 March 2018. In this regard, the* [FIFA DC] *notes that the Creditor only tried to register his claim on 16 March 2020, i.e. almost 4 years later, and notes that the judicial liquidator informed the* [Appellant] *on 16 April 2020 that his claim was not accepted as it was filed late. In this sense, the* [FIFA DC] *notes that the* [Appellant]*'s legal representative claimed that it should not be relevant whether the* [Appellant] *registered his debt within the frame of the bankruptcy proceedings as it would not be reasonable to expect from a Creditor from a different country to investigate first the legal possibilities in the Debtor's country to collect his credit from the administrating company of a club through insolvency or bankruptcy proceedings, conducted under a complex national legal framework*".

- Furthermore, the [FIFA DC] noted "*that the legal representative of the* [Appellant] *claimed that the latter was never informed of the opening of the bankruptcy proceedings and therefore, was not aware of the bankruptcy proceedings. In this sense, the* [FIFA DC] *observes that the* [Appellant] *was duly informed of the opening of the bankruptcy proceedings by email on 7 July 2016 and 8 July 2016 and had the opportunity to file a claim within those proceedings. Consequently, the* [FIFA DC] *considers that the* [Appellant], *by remaining silent for almost 4 years, was negligent as he failed to properly register his credit*".

- In this regard, the [FIFA DC] observes "*that the* [Appellant], *by attempting to register his claim almost 4 years later, and only 1 month prior to requesting the opening of disciplinary proceedings against* [the First Respondent], *ostensibly appeared to attempt to recompense his negligence in registering the credits during the bankruptcy proceedings. Bearing the above in mind, it appears that the* [Appellant] *decided not to participate in the bankruptcy proceedings – or at least remained passive for almost 4 years –, therefore waiving his right to collect his debt within the frame of the bankruptcy proceedings. Moreover, the* [FIFA DC] *notes that the legal representative of the* [Appellant] *claimed that no funds whatsoever had been distributed to the creditors that participated in the bankruptcy proceedings of the* [Original Debtor]. *Consequently, the registration of the* [Appellant]*'s credit with the list of creditors would have been moot*".

- Further to this, the FIFA DC emphasised "*that in order to consider whether the* [Appellant] *was diligent in recovering his debt it is not relevant whether funds were actually distributed to the creditors that participated in the bankruptcy proceedings. The* [FIFA DC] *shares CAS' conclusion that there is no certainty that a creditor would receive the outstanding amounts in the bankruptcy proceedings but there is at least a theoretical possibility that he could recover his credit in the bankruptcy proceedings instead of remaining passive and pretending that disciplinary sanctions should be imposed on the new club, irrespective of his diligence or negligence in attempting to recover his credit*".

- As a result, the FIFA DC concluded "*that the* [Appellant] *failed to perform the expected due diligence that the circumstances demanded, and hence, contributed to the non-compliance of the* [First and Second DRC Decision] *(by the original Debtor and subsequently by the new Club). Therefore, although the* [First Respondent] *is to be considered the sporting successor of the* [Original Debtor], *the* [FIFA DC] *resolves that no disciplinary sanctions shall be imposed on the* [First Respondent] *and all charges against the latter shall be dismissed, as a result of the lack of diligence of the* [Appellant] *in collecting his debt in the insolvency proceedings*".

- The FIFA DC issued the Appealed Decisions with the following operative part:

  "*1. All charges against the* [First Respondent] *are dismissed.*

  2. The disciplinary proceedings initiated against the club [First Respondent] *are hereby declared closed.*"

IV. PROCEEDINGS BEFORE THE COURT OF ARBITRATION FOR SPORT

28. On 21 July 2020, the Appellant filed a Statement of Appeal with the CAS against the Respondents with respect the Appealed Decisions in accordance with Article 58 of the FIFA Statutes and Articles R47 and R48 of the Code of Sports-related Arbitration (2019 edition) (the "CAS Code").

29. On 26 July 2020, the Appellant asked the CAS Court Office "*not to split the present procedure into two, given that the Appellant already indicated that both FIFA and* [the First Respondent] *are to be considered as co-respondents to the Appealed Decisions (i.e. 200628 and 200639)*".

30. On 26 July 2020, the Appellant requested that the CAS orders FIFA to produce a copy of all submissions and evidence submitted by the First Respondent to FIFA during the first instance proceedings in cases no. 200638 and 200639, in particular the submissions and evidence that were filed to FIFA on 9, 13, 15 and 18 May 2020. Furthermore, the Appellant asked CAS to order that the Appellant's deadline to file his Appeal Brief be fixed after he gained access to the requested files and a decision on his application for legal aid was issued.

31. On 27 July 2020, the CAS Court Office, *inter alia*, invited the Respondents in CAS 2020/A/7280 to submit their positions on the request for production of evidence by 29 July 2020, and that on receipt of their positions, it would be for the Panel (or Sole Arbitrator) once constituted, to decide this issue, pursuant to Article R44.3 of the CAS Code.

32. On that same day, 27 July 2020, the CAS Court Office informed the Appellant in CAS 2020/A/7280 that the decision to open two procedures was final and binding and not subject to any reconsideration as in this case two different decisions were subject to appeal and therefore two procedures would be initiated, in accordance with Article R48 of the CAS Code.

33. Also on 27 July 2020, as to the Appellant's request for production of evidence, the First Respondent informed the CAS Court Office in CAS 2020/A/7280 that it objected to such request as it deemed that "*such demand ought to be formulated instead in accordance with Rules 44.3 (mutatis mutandis) and 51 of the CAS Code and hence, formulated in the Appeal Brief*".

34. Per letters of 29 July 2020, as to the Appellant's request for production of evidence, FIFA informed the CAS Court Office in both proceedings that it would agree that the Panel (or Sole Arbitrator) decided about this issue once constituted and that the Appellant's deadline for filing his Appeal Brief remained suspended in the meantime.

35. On 29 July 2020, the CAS Court Office acknowledged receipt of the Statement of Appeal for case 200639 (registered under CAS 2020/A/7298) and noted the Appellant's request to suspend the time limit to file the Appeal Brief "*(i) "pending the outcome of the Appellant's Application for Legal Aid" and until (ii) "the CAS orders FIFA to produce a copy of all submissions and evidence submitted by* [the First Respondent] *to FIFA during the previous-instance proceedings in cases No. 200638 and 200639, and that the Appellant's deadline to file his Appeal Brief be fixed after (i) he gains access to the requested files [....]*" and invited the Respondents "*to inform the CAS Court Office by **31 July 2020** whether they agree to such request*".

36. On 31 July 2020, the CAS Court Office informed the Parties in both proceedings, *inter alia*, that the Appellant's time limit to file the Appeal Brief would remain suspended until the Sole Arbitrator had decided on his request for production of documents.

37. On the same day, 31 July 2020, as regards the Appellant's request for production of evidence, FIFA informed the CAS Court Office in both proceedings that "*the Appellant's request for production of documents in case 7298, and in line with our position in case 7280, FIFA agrees that the Sole Arbitrator decides about this issue once appointed and that the Appellant's suspension request for filing his Appeal Brief remains suspended in the meantime*".

38. On 12 October 2020, the CAS Court Office, pursuant to Article R54 of the CAS Code, and on behalf of the Deputy President of the CAS Appeals Arbitration Division, informed the Parties that the Panel appointed to decide the cases as follows:

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39. On 19 October 2020, as to the Appellant's request for production of evidence, the CAS Court Office invited the First Respondent to produce the evidence submitted at the FIFA first instance proceedings, more specifically the submissions filed on 9, 13, 15 and 18 May 2020.

40. On 20 October 2020, the CAS Court Office informed the Parties that the Appellant was invited "*to submit the Appeal Brief within **ten (10) days** of receipt of this letter, failing which the appeal shall be deemed to have been withdrawn*".

41. On 20 October 2020, the Appellant requested the Sole Arbitrator "*to issue one award, encompassing both appeals*" and if such request was accepted, the Appellant "*also asks for the Sole Arbitrator's permission to file a joint Appeal Brief in both proceedings*".

42. On 21 October 2020, the CAS Court Office informed the Parties that the Sole Arbitrator would decide to issue one award encompassing both procedures at a later stage. In the same letter, the Appellant was allowed to file a joint Appeal Brief for both procedures and the Respondents would also be allowed to file one Answer for both procedures.

43. On 5 November 2020, the First Respondent completed the submission of the production of the documents that were requested by the Appellant and complied with such request.

44. On 6 November 2020, the Appellant, after a granted extension, filed joint Appeal Briefs.

45. On 27 November 2020 the First Respondent filed its Answer.

46. On 9 December 2020, FIFA, after a granted extension, filed its Answer.

47. On 16 December 2020, after being provided with the positions of the Parties, the CAS Court Office informed the Parties that the Sole Arbitrator had decided that it did not consider it necessary to hold a hearing and instead, as was requested by the First Respondent since an issue with *res judicata* was raised by FIFA, granted the Parties the possibility to file a second round of written submissions.

48. On 8 January 2021, the Appellant filed his Reply.

49. On 28 and 29 January 2021, the Second Respondent and the First Respondent respectively filed their Rejoinders.

50. On 8 February 2021, the CAS Court Office informed the Parties that by absence of an objections from one of the Parties by 15 February 2021, the Sole Arbitrator would render one award encompassing both procedures. In this regard, no further objections were raised by any of the Parties.

V. SUBMISSIONS OF THE PARTIES

51. The following summary of the Parties' positions is illustrative only and does not necessarily comprise each and every contention put forward by the Parties. The Sole Arbitrator, however, has, for the purposes of the legal analysis which follows, carefully considered all the submissions made by the Parties, even if there is no specific reference to those submissions in the following summary.

THE APPELLANT

52. The Appellant's submissions, in essence, may be summarised as follows:

- As to the question of sporting succession, there is overwhelming evidence in this case suggesting that there is a situation of succession at a sporting level. In this regard, the First Respondent was incorporated only eight days after the Original Debtor was formally declared bankrupt. Furthermore, the new club's name ("ASSOCIATIA CLUBUL SPORTIV PETROLUL 52") was reserved by the First Respondent before the Original Debtor was declared bankrupt. Also, the two club's name is confusingly similar, the new club refers to the same founding year and slogan on its website and many players of the Original Debtor moved to the new club. The First Respondent is taking advantage of and continues the activity formerly developed by the Original Debtor with the same supporters, associating itself with and publicly relying on the sporting history and achievements of the Original Debtor, colors, logo, website, email address and playing on the same stadium. Moreover, in June 2017, the First Respondent acquired from the Municipality of Ploiesti the exclusive right to use the "FC Petrolul Ploiesti" trademark for four years.

- As to the First Respondent's claim that the shareholders/owners of the Original Debtor were unknown "private investors", while the First Respondent is owned by "Supporters Association and Former Players", the Appellant argues that the First Respondent did not provide evidence of who the "private investors" behind the Original Debtor were or who the "Supporters Association" members are. The fact that the First Respondent is owned by a "Supporters Association and Former Players" is an important element in favor of sporting succession.

- Whether the intent of the extinct club's successor is fraudulent or genuine is immaterial for deciding on sporting succession between two football clubs.

- As to the Appellant's diligence, the FIFA DC failed to clearly and unequivocally set the legal criteria applicable to the legal analysis of the diligence of the Appellant in recovering his debt. According to the most recent jurisprudence in CAS 2019/A/6461, there is no merit in the allegation that the Appellant did not show the required degree of diligence just because he did not register his claim in the bankruptcy proceedings of the Original Debtor.

- The elements "Shareholder/stakeholders/ownership/management" and the First Respondent's registration are particularly important, tipping the balance in the direction that there was a set-up to avoid liabilities. Pursuant to Article 3.3 Swiss Civil Code ("SCC"), the First Respondent (and FIFA) is estopped from invoking the Appellant's conduct as an argument to escape from its liability.

- As was decided in the *Tammeka-case*, there is no blanket rule, and the assessment of the Appellant's diligence to recover the amounts he is owed, should have been made based on the specific circumstances of each particular case. Yet, there is nothing to suggest that he remained passive or uninterested in pursuing his claims. The FIFA DC completely failed to assess the Appellant's argument that he has acquired his claims after the opening of the insolvency proceedings and was thus not obliged to register his claims. In this regard, the Appellant's credit is a priority debt vis-à-vis the verified and admitted credits and cannot be classified alongside the pending list of creditors. As a result, the preferential debts have to be paid without registration to the creditor's mass being required.

- The FIFA DC has evidently failed to consider the context CAS 2011/A/2646 (the "*Rangers de Talca case*"). If the creditor is not notified of the opening of the bankrupt entity's bankruptcy proceedings, the successor has not paid a considerable sum to acquire the bankrupt entity's assets and the creditor does not hold a privileged credit, there could be no "feasible theoretical possibility" for the creditor to recover his credit.

- Further to this, it can be derived from the *Tammeka-case* that where there are no liquidated assets or payments made by the successor to its predecessor to acquire (some of) the latter's assets, there is no "feasible theoretical possibility" for the creditor to recover his credit via the bankrupt entity's bankruptcy procedure, regardless of whether the creditor has registered his credit in the said procedure. Comparing the distribution plan in the Original Debtor's bankruptcy proceedings dated 10 April 2019 adduced with the Appeal Brief with the last publicly available distribution plan dated 3 June 2020, the Sole Arbitrator will inevitably notice that the amount to be distributed is RON 0.00 and that the same (foreign) players (in cells 73 to 75) – having preferential credits – which have duly registered on time, have not received a dime as of the latter date. Therefore, the First Respondent's argument that had the Appellant registered his credit there was a feasible theoretical possibility that the Appellant would have recovered his credit, dramatically fails due to the lack of evidence whatsoever (Article 8 SCC).

- Like in *Tammeka*, the Respondents failed to submit any information about the Original Debtor's liquidated assets' value. The First Respondent did not suggest, let alone prove with tangible evidence (Article 8 SCC) that the Original Debtor's liquidated assets resulted in sufficient surplus in a way that the recovery of the Appellant's credit was feasible via the Original Debtor's

bankruptcy procedure. Consequently, the Appellant concludes that his conduct did not contribute to the First Respondent's failure to comply with the First and Second DRC Decision.

- Even if the outstanding amounts had to be claimed by the Appellant during the Original Debtor's bankruptcy proceedings, still no lack of diligence could be imputed to the Appellant as he was a "known creditor" and, as such, he had to be served with an "individual notice" of the opening of the bankruptcy proceedings, containing the specific requisites required by Article 40 and 42 of the Council Regulation (EC) No. 1346.2000 of 29 May 2000 (in force in 2016), but never received such notice.

- It is completely incomprehensible for the Appellant how the FIFA DC concluded that the Appellant was duly informed of the opening of the bankruptcy proceedings by email on 7 July 2016 and 8 July 2016 and had the opportunity to file a claim within those proceedings. In case of a dispute, the onus is on the sender of the email to prove receipt and so the burden of proof lies with the First Respondent (Article 36.2 of the FDC Edition 2019). The Appellant has never received the alleged emails. The appointed liquidator could have sent an "individual notice" to the counsel of the Appellant, which contact details were known.

- Further to this, the Sole Arbitrator must consider the temporal or chronological sequence of events in assessing the Appellant's diligence. In particular, given that the Appellant's claims for unpaid credits were born after the opening of the Original Debtor's insolvency procedure, the Appellant could not have known that he had to register his credits in the relevant list of creditors by 10 August 2016. Moreover, similar to the situation in the *Tammeka-case*, the Second DRC Decision was notified to the Parties on 25 October 2016, long after the expiration of the preclusive time limit on 10 August 2016 for the Appellant to register his credit based on the Second DRC Decision.

- Further, while it is disputed between the Parties whether the Appellant knew or should have known about the opening of the relevant bankruptcy proceedings and his alleged duty to register his credit, it remains uncontested that the First Respondent did not submit to FIFA any information about the value of the Original Debtor's liquidated assets. It did not even suggest, let alone prove, that the liquidated assets resulted in sufficient surplus in a way that the recovery of the debt would have been feasible via this procedure.

- Consequently, the Sole Arbitrator should uphold both appeals and set aside the Appealed Decisions, which are legally flawed.

53. On this basis, the Appellant submits the following requests for relief:

> *"**VIII. REQUESTS FOR RELIEF IN CASE 2020/A/7280***
>
> *On these grounds, the Appellant, Mr. Viktor Genev, hereby respectfully requests that the CAS:*

1. *Set aside and annul the decision issued on 9 June 2020 by a FIFA Disciplinary Committee member in case No. 200638.*

2. *Determine that the new Club, FC Petrolul Ploiesti (ACS Petrolul 52 Ploiesti), is the sporting successor of or the same club as the original Debtor, FC Petrolul Ploiesti (SC Fotbal Club Petrolul SA).*

3. *Determine that that the new Club, FC Petrolul Ploiesti (ACS Petrolul 52 Ploiesti), is guilty of failing to comply with the decision passed on 18 May 2016 by the FIFA Dispute Resolution Chamber judge in case No. 16-00646.*

4. *Refer the present case back to the FIFA Disciplinary Committee and order the latter to issue a new decision against and impose disciplinary sanctions on the new Club, FC Petrolul Ploiesti (ACS Petrolul 52 Ploiesti), according to the applicable edition of the FIFA Disciplinary Code.*

5. *Order the Respondents, FC Petrolul Ploiesti (ACS Petrolul 52 Ploiesti) and FIFA, to pay the Appellant, Mr. Viktor Viktorov Genev, a contribution towards his legal and other costs in an amount to be determined at the discretion of the Sole Arbitrator.*

6. *Order the Respondents, FC Petrolul Ploiesti (ACS Petrolul 52 Ploiesti) and FIFA, to pay the Appellant, Mr. Viktor Viktorov Genev, a contribution towards his legal and other costs in an amount to be determined at the discretion of the Sole Arbitrator.*

IX. REQUESTS FOR RELIEF IN CASE 2020/A/7298

On these grounds, the Appellant, Mr. Viktor Genev, hereby respectfully requests that the CAS:

1. *Set aside and annul the decision issued on 9 June 2020 by a FIFA Disciplinary Committee member in case No. 200639.*

2. *Determine that the new Club, FC Petrolul Ploiesti (ACS Petrolul 52 Ploiesti), is the sporting successor of or the same club as the original Debtor, FC Petrolul Ploiesti (SC Fotbal Club Petrolul SA).*
3. *Determine that that the new Club, FC Petrolul Ploiesti (ACS Petrolul 52 Ploiesti), is guilty of failing to comply with the decision passed on 13 October 2016 by the FIFA Dispute Resolution Chamber judge in case No. 16-00841.*

4. *Refer the present case back to the FIFA Disciplinary Committee and order the latter to issue a new decision against and impose disciplinary sanctions on the new Club, FC Petrolul Ploiesti (ACS Petrolul 52 Ploiesti), according to the applicable edition of the FIFA Disciplinary Code.*

5. *Order the Respondents, FC Petrolul Ploiesti (ACS Petrolul 52 Ploiesti) and FIFA, to pay the Appellant, Mr. Viktor Viktorov Genev, a contribution towards his legal and other costs in an amount to be determined at the discretion of the Sole Arbitrator.*

6. *Order the Respondents, FC Petrolul Ploiesti (ACS Petrolul 52 Ploiesti) and FIFA, to pay the Appellant, Mr. Viktor Viktorov Genev, a contribution towards his legal and other costs in an amount to be determined at the discretion of the Sole Arbitrator.*"

FIRST RESPONDENT

54. The submissions of the First Respondent, in essence, may be summarised as follows:

- As to the issue of sporting succession, the First Respondent argues that it is not the sporting successor of the Original Debtor. The FIFA DC failed to analyse certain criteria such as legal form, shareholders, ownership and category of competition when making its analysis on sporting succession which form part of Article 15.4 of the FDC.

- The First Respondent started its footballing activities in the 2016/2017 season from the lowest regional category in Romanian organized football as a purely amateur club, i.e. the 4th regional league and with a different legal form, name, management and players than the Original Debtor. The First Respondent only acquired the status of a professional entity after it promoted (on sporting merit) to the third league, which is organized under the auspices of the FRF.

- The First Respondent acquired the right to use the brand "FC Petrolul" for a temporary period of only four years and bought these rights from the Municipality of Ploiesti, which is still the owner.

- Sporting succession can only take place when the new club acquires the federative rights of the old club and takes over the position of the old club in the same league circumventing the principle of promotion and relegation leading to a fraud on other competitor clubs and the competition itself. The *ratio legis* behind the institution of sporting succession is none other than to avoid fraud. The First Respondent has not acquired the federative and sporting rights of the Original Debtor as it started by incorporating a new entity, having a different legal form and did not continue the footballing activities of the Original Debtor, i.e. it did not compete in the same category of the competition. Both the First Respondent and the Original Debtor were affiliated to the FRF at the same time which indicates that they had distinct federative rights i.e. the federative rights of the Original Debtor were not transferred to the First Respondent.

- In the context of disciplinary proceedings, two elements must necessarily concur in order to determine the existence of a sporting succession between clubs and thus, protect creditor from fraud: 1) an objective element which consists of the "continuation of the activity of the former club" "for all practical purposes"; and 2) a subjective element, consisting of the intention to fraud the competition and in particular the principle of sporting merit; and by extension of that, to competitor clubs and other creditors. In other words, without the

transfer of federative rights and intent to fraud at a sporting level, there is no legal basis for sporting succession of clubs.

- It is clearly evident that the First Respondent and the Original Debtor have many dissimilarities such as name, legal form, registered address, ownership, shareholders, category of competition, sports identification and date of incorporation, amongst others.

- As far as the logo, the same is being used by the First Respondent as the result of the exclusive license contract concluded for a period of four years with the Municipality. As to the stadium, the First Respondent argues that being a different entity and club from the Original Debtor does not benefit from a free of charge use of the stadium. The stadium belongs to the Municipality and the First Respondent pays a rent to the Municipality based on specific contracts concluded between the First Respondent and the Municipality. The website that the Original Debtor was using, was only transferred to the First Respondent on 27 February 2018 and can be used based on the exclusive licensing agreement that is in force with the Municipality.

- In the unforeseen event that it is concluded that the First Respondent is the sporting successor of the Original Debtor, the First Respondent is not responsible to pay any amounts as set forth by the First and Second DRC Decision. In this regard, the First Respondent refers to Article 145 of the Swiss Code of Obligation ("SCO").

- As to the Appellant's diligence, the Panel, in Rangers de Talca, has explicitly stated that it is of immense importance that the creditor makes an attempt to recover his credit in the bankruptcy estate of the debtor. This lack of diligence is solely attributable to the Appellant. It is settled jurisprudence of CAS and FIFA DC that the creditor has to take a proactive stance in trying to recover his credit in the insolvency or bankruptcy proceedings of the original debtors once their credits are recognized by the FIFA legal bodies.

- It is evident that when the Appellant signed a contract with the Original Debtor, he was already aware of the insolvency and the precarious financial situation surrounding the Original Debtor since he entered into the Contract knowing that the Original Debtor was undergoing insolvency and the Contract was signed by the judicial administrator.

- On 7 July 2016 and 8 July 2016, the Appellant was served with two individual notices by the Original Debtor that were sent to his email address designated in the Contract. Though these notices the Appellant was specifically notified of the opening of the bankruptcy proceedings against the Original Debtor and was given a deadline to register his credit. Other players marked in the same emails registered their credit within the deadline. The Appellant only tried to register his credit in March 2020 knowing it to be time-barred.

- The relevant provisions of the Swiss Private International Law Act ("PILA") (Article 1, 154 and 155) lead to the conclusion that Romanian Insolvency Law (85/2014) shall be the applicable law for governing the debts of the company, in casu the Original Debtor. Since the credit of the Appellant had arisen after the opening of the insolvency towards the Original Debtor, it is the obligation of all creditors to register their receivables in the bankruptcy estate as enshrined in Article 102(7) of the Romanian Insolvency Law no. 85/2014 on Insolvency. Further to this, the First Respondent indicates that the credit of the Appellant was not a preferential credit and due to bankruptcy of the Original Debtor, registration of credit as specified under Article 102(7) of the Romanian Insolvency Law no. 85/2014 was mandatory. As a result of his negligent stance, the credit of the Appellant is extinguished/ceased (in other words, such a credit does not exist) under Romanian law, as follows from Article 114(1) of the Romanian Insolvency Law 85/2014.

- The Appellant fails to understand that he has provided the latest update on distribution of credits only until 3 June 2020 whereas the First Respondent has provided a latest update until 28 October 2020, wherein the amount distributed as on that date is more than (sufficiently surplus) what the Appellant is claiming through this appeal. Further to this, more revenues will be generated to be distributed to the creditors if the ongoing dispute, which is information between the Original Debtor and the townhall of Ploiesti is finalized.

- It is the duty of the Appellant or his legal counsel to communicate the change in details to the judicial liquidator which, as evidently established, he has failed to do. Thus, when a claim was filed before FIFA there is no way the judicial liquidator sitting in Romania would have automatically been aware of such claims filed before FIFA, as wrongfully claimed by the Appellant, as the judicial liquidator was not copied in such claims.

- With reference to Article 44 of the SCO, the First Respondent argues that by not being diligent enough to register his credit in the ongoing bankruptcy proceedings of the Original Debtor, a contributory fault and negligence is attributable to the Appellant for which it should not be entitled to receive any amount as rightfully decided by FIFA DC.

- The specific circumstance of this case is that the Appellant knew about the insolvency from the date of signing the Contract and subsequently, he was notified twice about the ongoing bankruptcy proceedings being invited to register his credit. Hence, in this case there is plenty to suggest that the Appellant remained passive, uninterested and negligent in pursuing his claims. Had the Appellant registered his credit, there was a feasible theoretical possibility (as held by the Panel in Rangers de Talca) that the Appellant would have recovered his credit.

55. On this basis, the First Respondent submits the following prayers for relief:

" *F)* ***REQUESTS FOR RELIEF for CAS 7280 & CAS 7298:***

158. In view of the factual background and legal arguments encapsulated above the First Respondent respectfully requests the CAS:

In principle:

➢ *To dismiss the joint appeal filed by the Appellant finding that the Appellant has a lack of standing to appeal the decisions (200638 and 200639) rendered by the FIFA Disciplinary Committee on 9 June 2020;*

In subsidiary:

➢ *To dismiss in full the joint appeal filed by the Appellant;*

➢ *To uphold and confirm the operative part of the decisions rendered by FIFA Disciplinary Committee on 09 June 2020, in full, Ref. nr. 200638 and 200639;*

➢ *To find and conclude that the entity ACS Petrolul 52 is not the sporting successor of the entity SC Fotbal Club Petrolul SA;*

➢ *Only in the event that the First Respondent is found to be the sporting successor of the Original Debtor, to conclude and determine that the First Respondent is not liable to pay the amounts to the Appellant as the Appellant's lack of diligence has resulted in his failure to comply with the First and the Second FIFA DRC decision;*

➢ *To condemn the APPELLANT to the payment of all costs related to the present arbitration proceedings;*

➢ *To condemn the APPELLANT to the payment of 6.000 Euro, in order to pay the defense fees incurred by the First Respondent as a consequence of the present procedure.*

ADDITIONAL REQUESTS FOR RELIEF for CAS 7280 & CAS 7298

➢ *To rule that principle of res judicata is inapplicable in the present proceedings."*

SECOND RESPONDENT

56. FIFA's submissions, in essence, may be summarised as follows:

- As to the matter of sporting succession, in line with the criteria followed by the CAS in such cases, and in light of the evidence on file, the FIFA DC rightfully concluded that the First Respondent is to be considered the Original Debtor.

- In this regard, FIFA argues that any debate on this matter is moot as these conclusions have (for obvious reasons) not been challenged in casu by the Appellant nor can they be disputed at this stage by the First Respondent. Consequently, as the First Respondent is affected by a finding that it is the Original Debtor's sporting successor, the part of the Appealed Decisions concerning this issue has become *res judicata* and, in FIFA's view, there is no

room for any further analysis on it, which also follows from CAS jurisprudence.

- As to the Appellant's request to declare FIFA's Answer inadmissible, FIFA not only underlines that there is no limitation to the number of pages, but it is not making *ex post facto* arguments that did not form part of the Appealed Decisions.

- Should the Sole Arbitrator consider that its *de novo* power of review allows it to re-examine the issue of sporting succession, FIFA argues that the Original Debtor and the First Respondent share elements that reveal a sporting succession between the clubs, such as the same name, history, titles and sporting achievements, colors, registered address, stadium and internet domain. The First Respondent has sought to be identified by the Original Debtor's fan base as the same Romanian club as incorporated in 1924. As part of this specific regime based on the lex sportiva, CAS has confirmed that in football, a club is a sporting entity identifiable by itself that transcends the legal entities which operate it.

- As to the Appellant's expected diligence, in *Rangers de Talca*, the Panel assessed the creditor's behaviour regarding the bankruptcy proceedings and noted that his decision not to claim his credit was *"[...] to be considered a lack of diligence of the [creditor] in recovering his credit that shall have an impact in the present case [...]"*. It was held that the creditor could have had a chance to recover his credit but inexcusably failed to do so. The FIFA DC proceeded in accordance with the relevant jurisprudence by analyzing the creditor's diligence prior to deciding whether to sanction the First Respondent. Its reasoning is supported by CAS jurisprudence and by Swiss law, such as Article 3(2) SCC.

- The Appellant had been duly informed on 7 and 8 July 2016 of the opening of bankruptcy proceedings to the e-mail address (viktor_genev22@abv.bg), designated by the Appellant in the Contract and in the Termination Agreement for notifications, and yet he failed to react for almost 4 years during which he did not even attempt to register his receivables in the bankruptcy estate. In its Rejoinder, FIFA contends that the Appellant has not explicitly denied that he received the notifications and, to rebut the elements of the Respondents, the Appellant simply maintains that they have not discharged their burden of proof.

- As to the position of the Appellant with regard to Article 40 EU Insolvency Regulations, FIFA argues that this did not prevent the Appellant from making his best efforts to participate in the bankruptcy proceedings and – at least try to – register his credit. Secondly, the Appellant was perfectly aware of the existence of insolvency proceedings since the very beginning. The Appellant's reliance on Article 40 EU Insolvency Regulations is moot as the whole purpose of such provision is to ensure that creditors are informed about the existence of insolvency proceedings that may commence in other EU member states, which

appears to constitute an overly formalistic argument that would not have had any impact whatsoever on its knowledge of the existence of proceedings in Romania.

- According to the Swiss Federal Court ("SFT"), in Swiss procedural and civil law, there are certain spheres of control when it comes to the notification of decisions ("Sphärenteorie") which is *mutatis mutandis* applicable to the present case. In particular, once a message leaves the sender's sphere of control, it enters the recipient's sphere of control and every error which might occur as from then is the latter's responsibility. Receipt of a declaration between absentees implies that the declaration enters into the sphere of influence of the addressee, which assumption is also confirmed by CAS (CAS 2004/A/574). It is very unlikely that the Appellant had not received the relevant communications because (i) his e-mail address was duly entered and (ii) the other creditors that were recipients of similar emails received them and participated in the bankruptcy proceedings.

- Even if the Sole Arbitrator were to consider that the Appellant did not receive the relevant emails (quod non), the Appellant is actually substantiating that he "remained passive" and "failed to perform the expected due diligence that the circumstances demanded". The Appellant should have not simply and passively sat on his lack of information. The Appellant entirely fails to demonstrate that the Appellant himself (or through his lawyer or even through the professional player's union) made any sincere efforts to recover the amounts owed to him.

- Furthermore, the Appellant has not proven that his credit from the Second DRC Decision could not be registered in the bankruptcy proceedings. In light of the timeline of relevant events, contrary to what the Appellant defends, he could have registered his credit of the First DRC Decision without any problem but he refrained from doing so in a total passive manner. Moreover, if the Appellant truly considered that he had a preferential credit also within the bankruptcy, he could have gone directly to the bankruptcy proceedings and claim the second instalment of the Termination Agreement. The Appellant's allegation that his credit provided in the Second DRC Decision could not be registered has not been proven and, in any case, is of no avail as there is evidence that some credits belonging to other creditors were registered in the bankruptcy proceedings even after the relevant deadline for filing claims in the supplementary table of claims.

- The Appellant is implying that he did not have to do anything to try to recover his credits in the bankruptcy proceedings because he had a preferential debt in the preceding insolvency proceedings and, therefore, in his view, holding this kind of credit (magically) exempts him from participating in the bankruptcy process. As the Appellant asked on 16 March 2020 (i.e. 4 years later after the opening of the bankruptcy proceedings and one month before requesting the opening of the FIFA disciplinary proceedings) to be included in the "additional

table of claims", the Appellant's allegation must be understood against the principle "venire contra factum proprium" and, thus, he is estopped from making that argument and changing his course of action to the Respondent's detriment.

- The Appellant is not distinguishing between the "insolvency" stage and the "bankruptcy" stage that the Original Debtor faced. FIFA does not contest that the Appellant had a preferential debt during the insolvency proceedings, but it did not have a preferential credit within the bankruptcy proceedings. In his Reply, the Appellant has surprisingly changes his course of action by alleging that he does not hold a preferential credit (as opposed to that he argued in the Appeal Brief) and, therefore, the (biased interpretation that he brings of the) Rangers de Talca award is not applicable to him. These new allegations go against the principle of "venire contra factum prorium", and therefore, the Appellant is estopped from changing its arguments he made in his Appeal Brief.

- In any case, FIFA considers that a debate as to the "preferential" or "ordinary" credits is irrelevant because the Appellant has not proven that he (somehow) timely pursued his credits, either as "ordinary" or "preferential" credits.

- FIFA considers that it is irrelevant whether the Old Club has received payments from the successor or if no funds have been distributed to other creditors. This does not cure the fact that the Appellant behaved with negligence in recovering his credits. By not ensuring that his credits were included in the list of bankruptcy creditors of the Original Debtor, the theoretical possibility to offset the complete amounts within the bankruptcy proceedings disappeared, as was decided in the Appealed Decisions, with the exact same reasoning in the *Tammeka-case*. The "feasible theoretical possibility" to recover the credit is intrinsically connected to the conduct of the creditor (seeking to have its credit included in the list of creditors) and not with the conduct of the successor.

- On a subsidiary basis, and if the issues related to the payments from the successor club or the distribution of funds to other creditors are relevant to solve this case, FIFA considers that both issues are met in casu as the Original Debtor has received money from the First Respondent (and other entities) and funds have been distributed to some creditors. Moreover, from the translation provided by the Appellant of the distribution plan of 10 April 2019, it appears that some amounts have been distributed to preferential creditors. Therefore, it is clear that the Original Debtor is receiving payments from the successor. Moreover, it is proven that some creditors have been paid within the bankruptcy procedure.

- It shall be concluded that the arguments raised by the Appellant to justify his lack of diligence are irrelevant and, in any case, the Original Debtor is receiving considerable amounts for its assets which are being distributed to comply with the payment obligations towards its creditors. The Appellant has not rebutted

the hard facts that he was not vigilant, he did not take prompt and appropriate legal action, he failed to claim his credit on a timely manner in the bankruptcy proceedings and he remained passive and uninterested in recovering his claims.

57. On this basis, FIFA submits the following prayers for relief:

"Based on the foregoing, FIFA respectfully requests the Panel to issue an award on the merits:

a) rejecting the requests for relief sought by the Appellant;
b) confirming the Appealed Decisions dated 9 June 2020 (200638 and 200639);
c) ordering the Appellant to bear the full costs of these arbitration proceedings."

VI. JURISDICTION

58. Article R47 of CAS Code provides as follows:

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

59. The jurisdiction of CAS derives from Article 49 of the FIFA Disciplinary Code 2019:

"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."

60. It follows that CAS has jurisdiction to decide on the present disputes.

VII. ADMISSIBILITY

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

"In the absence of a time limit set in the statutes or regulations of the federation, association or sports-related body concerned, or in a previous agreement, the time limit for 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 already been 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 other parties."

62. The Sole Arbitrator notes that pursuant to Article 58(1) of the FIFA Statutes, the time limit to file an appeal is 21 days of receipt of the Appealed Decisions.

63. The grounds of the Appealed Decisions were communicated to the Parties on 9 July 2020. The Appellant filed the Statements of Appeal with CAS on 21 July 2020 and filed its joint Appeal Brief on 6 November 2020, i.e. within the granted extension of the time limit. The Statements of Appeal further complied with the other conditions set out in Article R48 of the CAS Code.

64. Therefore, the appeals are timely submitted and are admissible.

VIII. APPLICABLE LAW

65. 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 the absence of such a choice, according to the law of the country in which the federation, association or sports-related body which has issued the challenged decision is domiciled or according to the rules of law the Panel deems appropriate. In the latter case, the Panel shall give reasons for its decision."*

66. Article 57(2) of the FIFA Statutes reads as follows:

> *"The arbitral tribunal shall decide the dispute according to the rules of law chosen by the parties or, in the absence of such a choice, according to the rules of law with which the dispute has the closest connection."*

67. Against the above background and as a point of departure, the Sole Arbitrator is satisfied that the applicable regulations in the present case are the rules and regulations of FIFA, in particular the FDC, and, additionally, Swiss law should the need arise to fill a possible gap or *lacuna* within the various FIFA regulations, since the appeal is directed against decisions issued by the FIFA DC applying the rules and regulations of the FIFA DC.

68. The Sole Arbitrator, however, observes that the Parties are in dispute as to which edition of the FDC should be applicable to the present case. As such, the Appellant takes the view that the FDC Edition 2019 is applicable, whilst the Respondents argue that the FDC Edition 2017 applies. In particular, the First Respondent finds, in essence, that this distinction is of specific relevance as the FDC Edition 2017 does not provide for a legal basis to decide on sporting succession. More specifically, no such provision as Article 15(4) of the FDC Edition 2019, from which it follows that sporting successors can also fall under the disciplinary sanction regime, exist under the FDC Edition 2017. In this respect, the First Respondent refers to the fact that for a sanction to be imposed, sports regulations must prescribe the misconduct with which the subject is charged, i.e. *nulla poena sine lege* (principle of legality), and the rule must be clear and precise, i.e. *nulla poena sine lege clara* (principle of predictability). Therefore, Sole Arbitrator will now first deal with the question of which specific edition of the FIFA DC is applicable here in his discussion on the merits below.

69. As to the applicable edition, the FIFA DC decided that the disciplinary offense, i.e. the potential failure by the Original Debtor to comply with the First and Second DRC

Decision, was committed before the FDC Edition 2019 entered into force. Therefore, the FIFA DC decided in the Appealed Decisions that the merits of the present cases fall under the FDC Edition 2017 in accordance with Article 4 of the FDC Edition 2017.

70. In this context, the Sole Arbitrator remarks that in accordance with the principle of *tempus regit actum*, an offence is to be judged on the basis of the substantive rules in force at the moment the alleged offence was committed, subject to the principle of *lex mitior*. However, the procedural aspects of the proceedings are governed by the regulations in force at the time the appeal was lodged. This also clearly follows from the jurisprudence of CAS (see, *inter alia*, CAS 2020/A/7092 and CAS 2018/A/6072).

71. In view of the above, the Sole Arbitrator notes that the disciplinary offense in the present dispute, being the potential failure by the Original Debtor to comply with the First and Second DRC Decision, which is relevant to establish the applicable edition of the FIFA DC, was, indeed, committed before the FDC Edition 2019 entered into force. In fact, the First Respondent's obligation to pay the outstanding amounts under the First and Second DRC Decision were due on 5 July and 24 November 2016, respectively, and, accordingly, before the FDC Edition 2019. However, as the disciplinary offenses even took place before the entry into force of the FDC Edition 2017, which was 9 May 2017 (cf. Article 147 of the FDC Edition 2017), with regard to the material provisions, in principle, the edition 2011 of the FIFA DC would be applicable to the present dispute.

72. Be that as it may, it follows from paragraph 2 of Article 4 of the FDC Edition 2019 that the latter edition also applies to disciplinary offenses committed prior to the date on which it comes into force unless there are any milder sanctions that would apply under previous rules. The term "prior" leaves the Sole Arbitrator in no doubt that the FDC Edition 2019 has retroactive effect, namely to avoid *reformation in pejus*. In other words and following the above Article 4, the Sole Arbitrator notes that if previous rules would have led to a milder sanction pursuant to the FDC Edition 2019, such previous edition must apply. Therefore, the Sole Arbitrator will have to establish whether or not any milder sanctions apply under previous rules. As in principle the 2011 edition would apply, but at the same time noting that the Respondents argue that the FDC Edition 2017 is applicable, the Sole Arbitrator will take a closer look at both editions.

73. Having closely examined the sanctions under these former editions of the FIFA DC, the Sole Arbitrator concludes that it is clear that such editions do not materially differ as to the sanctions, which also follows, at least as to the FDC Edition 2017, from CAS jurisprudence (see, *inter alia*, CAS 2019/A/6661 and CAS 2020/A/6755). In fact, the approach in sanctioning under the FDC Edition 2017, in particular Article 64 of the FDC Edition 2017 (which was the predecessor of the newly Article 15 of edition 2019), has not been drastically amended under the FDC Edition 2019 and one can say, so the Sole Arbitrator finds, that the process of their application has been made more predictable (as was also decided in CAS 2020/A/6755). Also, under the 2011 edition of the FDC (in which Article 64 was materially the same as under the FDC Edition 2017), the Sole Arbitrator concludes that no such milder sanctions applied.

74. In view of the above, the Sole Arbitrator therefore finds that the FDC Edition 2019 applies to the case as, in view of Article 4 of such edition, no milder sanctions would apply under previous rules, neither in the 2011 nor in the 2017 edition of the FIFA DC.

75. The Sole Arbitrator has fully taken note of the position of the First Respondent that no disciplinary sanctions can be applied upon the First Respondent as it found that no such provision as Article 15(4), as laid down in the FDC Edition 2019, is included in the FDC Edition 2017, but does not agree. The Sole Arbitrator brings in mind that Article 15.4 of the FDC Edition 2019 crystallized leading CAS jurisprudence into this legal provision and is a codification of FIFA's jurisprudence, which is also acknowledged by the First Respondent in its submissions. Therefore, the Sole Arbitrator agrees with FIFA that a debate regarding the applicability of the FDC Edition 2019 or the FDC Edition 2017 (or even 2011) is immaterial as these versions (including 2011) allow FIFA bodies to make the legal assessment of whether the First Respondent is the sporting successor of the Original Debtor and decide if the successor is responsible of its predecessor's debts, which was also the approach of the FIFA DC in its cases that were assessed under previous editions (see, *inter alia*, CAS 2011/A/2646 and CAS 2019/A/6461). Put differently, also editions 2011 and 2017, so the Sole Arbitrator finds, allow the assessment of whether or not a creditor must be considered as the sporting successor.

76. Indeed, there is no rule under these editions preventing the FIFA DC from reviewing, making a legal assessment, and deciding on whether the First Respondent is the sporting successor of the Original Debtor and if the enforceability of the First and the Second DRC Decision could be extended to the sporting successor of the Original Debtor. In the view of the Sole Arbitrator, the outcome would be the same, irrespective of which edition is privileged and used as the appropriate statute to deal with the disputes, all the more because the practice and jurisprudence under Article 64 of the 2011 and 2017 editions informed the drafting of Article 15 of the FDC Edition 2019. Put differently and as mentioned before, Article 15(4) is enriched and inspired by many years of CAS jurisprudence until 2019 and was the result of FIFA's policy, and this new provision shares with Article 64, the same *ratio legis*, and objective function, as applied by the relevant jurisprudence.

77. In this regard, the Sole Arbitrator also wishes to add that with regard to the non-compliance of *nulla poena sine lege clara* (principle of predictability), as was also raised by the First Respondent, as set out above, he is mindful of the principle of the association's autonomy under Swiss law, from which it follows that the right of associations to impose sanctions or disciplinary measures on clubs is the expression of the freedom of associations and federations to regulate themselves (see, *inter alia*, CAS 2008/A/1583&1584 and CAS 2019/A/6661). As such, as also clearly follows from Article 2 of FIFA Statutes, FIFA disciplinary proceedings aim to protect the essential objectives of FIFA, by taking appropriate steps in order to prevent the infringements of the FIFA Statutes, the regulations or the decisions of FIFA or of the Laws of the Game.

78. In view of the above, the Sole Arbitrator concludes that the "applicable regulations" are the FIFA Statutes and Regulations, in particular the FIFA Disciplinary Code edition 2019, with Swiss law applying to fill in any gaps or *lacuna* within those regulations.

79. More specifically, as the FDC Edition 2019 is applicable, Article 15(4) of this edition, emerges as the appropriate legal forum to entertain the well-founded of the appeal. It bears repetition though, that the outcome would have been the same, had the Sole Arbitrator decided to apply the 2011 or the 2017 edition of the FDC on the merits. In this respect, other CAS panels had reached the exact same conclusion as to this specific issue (see, *inter alia*, CAS 2020/A/6757, CAS 2020/A/6758 and CAS 2020/A/6831).

80. Further to this, the Sole Arbitrator observes that the Appellant refers to EU law (Council Regulation (EC) No. 1346/2000 of 29 May 2000) in order to support his position as well as that the First Respondent submits that also Romanian law, in particular Romanian Insolvency Law, should apply, as the existence of credit can be determined thereunder.

81. In this context and in view of the background of Article R58 of the CAS Code, the Sole Arbitrator finds that he is in the position to apply EU law as well as Romanian law on a subsidiary basis, but the latter only insofar as application would concern issues in relation to the insolvency/bankruptcy procedure in Romania. As a matter of fact, as to the applicability of Romanian law, the Sole Arbitrator wishes to add that insolvency/bankruptcy proceedings are not governed by the various regulations of FIFA, which also follows from CAS jurisprudence (see, *inter alia*, CAS 2012/A/2750 and CAS 2013/A/3380).

IX. PRELIMINARY ISSUES

82. Before turning to the examination of the substantive issues, the Sole Arbitrator has to address three preliminary points, raised during the course of the present arbitration.

Request for production of evidence

83. The first issue to discuss is the Appellant's request, which was made on 26 July 2020, that FIFA would be ordered by the CAS to produce a copy of all submissions and evidence submitted by the First Respondent to FIFA during the first instance proceedings in cases no. 200638 and 200639, more specifically the submissions and evidence that were filed to FIFA on 9, 13, 15 and 18 May 2020, as indicated above.

84. In this regard, whilst the First Respondent explicitly objected to such request by means of its letter of 27 July 2020 as "*such demand ought to be formulated instead in accordance with Rules 44.3 (mutatis mutandis) and 51 of the CAS Code and hence, formulated in the Appeal Brief*", in its letter of 29 July 2020, FIFA only informed the CAS Court Office that it would agree that the Panel (or Sole Arbitrator) decided about this issue once constituted.

85. By means of its letter of 19 October 2020, the CAS Court Office invited the First Respondent to produce such evidence as the Sole Arbitrator had decided to admit the Appellant's request for the production of evidence. The Sole Arbitrator will now further explain.

86. As a point of departure, the Sole Arbitrator refers to Article R44.3 of the CAS Code, from which it follows that: "[a] *party may request the Panel to order the other party to produce documents in its custody or under its control. The party seeking such production shall demonstrate that such documents are likely to exist and to be relevant.*", which provision is applicable to the present appeals proceedings via Article R57 of the CAS Code.

87. Against this background, the Sole Arbitrator does not agree with the First Respondent as he finds that it is not a prerequisite that a request for the production of evidence must be formulated in the Appeal Brief. Although it is not unusual to do so in the Appeal Brief (or Answer), it is not forbidden to make such request already in the Statement of Appeal, as the Appellant did. The Sole Arbitrator notes that, in light of Article R56 of the CAS Code, the Appeal Brief (or Answer) is, in general, the final moment to specify (further) evidence. However, it does not follow from any provision in the CAS Code that a request in view of Article R44.3 of the CAS Code cannot be made in the Statement of Appeal. At the same time, considering the specific request made by the Appellant in the Statements of Appeal to be provided with documents from the first instance file, it does not seem to be unfair to the Sole Arbitrator that the Appellant is in the possession of the requested documents before filing its Appeal Brief.

88. Moreover, in its decision to accept the Appellant's request, as communicated to the Parties per letter of 19 October 2020, the Sole Arbitrator notes that, considering that the requested submissions were, as set out above, part of the first instance proceedings before FIFA that led to the Appealed Decisions, the documents are likely to exist and to be relevant, and so the conditions under Article R44.3 of the CAS Code are also met.

Submission of jurisprudence

89. Another preliminary issue relates to the submission of jurisprudence during the proceedings and so after the submission of the joint Appeal Brief and of the Answers in light of Article R56 of the CAS Code. In particular, on 30 November 2020 and 3 February 2021, the Appellant and the First Respondent respectively submitted CAS awards to be admitted to the file, i.e. CAS 2020/A/4651 by the Appellant and CAS 2020/A/7092 by the First Respondent.

90. In view of these submissions, there is no need to further motivate this considering the absence of any objection thereto, but, for the sake of further clarity, the Sole Arbitrator wishes to add that the submission of jurisprudence is not an issue of supplementing one's argument or producing further evidence. The Appellant and the First Respondent merely provided CAS awards that were in the public domain. Therefore, it follows that no question arises as to the application of Article R56 of the CAS Code which would justify excluding the documents (see *inter alia* CAS 2006/A/1192, para. 51; CAS 2014/A/3679, para. 49, CAS 2020/A/6884, para. 82). Hence, the submitted CAS awards are admitted to the file.

Rendering of one award

91. The final preliminary issue to discuss relates to the decision of the Sole Arbitrator regarding the Appellant's request to render one award, requested by letter of 20 October 2020, which request was granted by the Sole Arbitrator as was communicated to the Parties on 15 February 2021. The Sole Arbitrator will further motivate his decision in this respect.

92. The Sole Arbitrator finds that both Appeals are so closely connected, as also follows from the above presentation of (procedural) facts, that it makes sense to the Sole Arbitrator to decide to render one award.

93. In order to avoid any misunderstanding, in the letter of the CAS Court Office of 8 February 2021, the Parties were given the possibility to raise objections to this decision. By absence of any such objection, also for this reason the Sole Arbitrator feels comfortable to issue one award in the present appeal proceedings.

X. MERITS

A. The Main Issues

94. Having dispensed with the above preliminary issues, the Sole Arbitrator can now turn to the main issues to be resolved, which are i) the competence of the FIFA DC in first instance proceedings, ii) the Appellant's standing to appeal, iii) the requirement for the Appellant to extend the First and Second DRC Decision to the First Respondent and its claim of prescription under Article 25(5) FIFA RSTP, iv) the issue of sporting succession, and, v) the required degree of diligence. However, the Sole Arbitrator notes that he is free to determine how to address the sequence of the different substantive questions at stake in legal proceedings, which approach is consistent with CAS jurisprudence (CAS 2016/A/4903, para. 81-82 of the abstract published on the CAS website; CAS 2017/O/5264-5266, para. 189). In this regard and for the avoidance of any doubt, the Sole Arbitrator emphasises that also the plea relating to the lack of standing to sue or standing to appeal, is – according to settled jurisprudence of the CAS (cf. CAS 2009/A/1869; CAS 2015/A/3959; CAS 2015/A/4131) and the Swiss Federal Tribunal (the "SFT") (see SFT 128 II 50, 55) – a question related to the merits of the case. Accordingly, the Sole Arbitrator finds that the issue of the Appellant's lack of standing to appeal which was raised by the First Respondent, similar as to the other substantive issues under the merits, does not necessarily have to be addressed first.

95. Having carefully reviewed all the submissions of the Parties, the Sole Arbitrator notes that a significant part of the Parties' submissions is dedicated to the question whether or not the Appellant complied with the required degree of diligence. In this regard, the Sole Arbitrator comes to the conclusion that there is a serious lack of diligence from the Appellant's side in recovering his credits that shall have a decisive impact in the present case. In other words, even if it can be established and the Appellant will succeed in his claim that the FIFA DC was competent, that he has standing to appeal, that there was no requirement for him to extend the First and Second DRC Decision to the First Respondent and, as such, leading to the rejection of the First Respondent's claim of prescription under Article 25(5) of the FIFA RSTP and that the First Respondent is the sporting successor of the Original Debtor, the Appellant's claim will still be rejected.

96. Therefore, and against the above legal background of the Sole Arbitrator's freedom to to address the sequence of the different substantive questions at stake in legal proceedings, in the next paragraphs the Sole Arbitrator will proceed directly to the issue of the required degree of diligence, in particular the lack from the Appellant's side.

Admissibility arguments FIFA

97. Before entering into the issue of the required degree of diligence and as a preliminary matter, the Sole Arbitrator observes that the Appellant claims that the new arguments raised by FIFA in this regard, to be considered by the Appellant as FIFA's *ex post facto* arguments, should be rendered inadmissible. As such, the Appellant argues that these new arguments by FIFA in the Answer are – in effect – made retroactively, as FIFA seeks reasons to justify the Appealed Decisions. The Appellant claims that FIFA cannot rely on arguments, which the FIFA DC member did not consider when issuing the Appealed Decisions, and so its role in appeal is only to defend the Appealed Decisions on the basis of what the FIFA DC member knew and considered at the relevant time.

98. The Sole Arbitrator does not agree with the Appellant. The Sole Arbitrator finds that FIFA, as one of the parties in the current CAS proceedings, has full rights to defend and explain in detail to the CAS the legality and reasoning behind the Appealed Decisions, in particular when it is put in such position due to the arguments as raised by the Appellant. Determining otherwise would mean that FIFA is barred from raising any defense against the arguments that are raised by the Appellant in order to set out his position. This cannot be accepted and would seriously violate FIFA's right to be heard.

99. In this context, the Sole Arbitrator agrees with FIFA that its Answer has been limited to explaining the *rationale* behind the Appealed Decisions, which is, again, its full right. As such, nothing prevents the Sole Arbitrator to accept such arguments, also in light of his *de novo* powers under Article R57 of the CAS Code, as already referred to above.

100. Therefore, the Sole Arbitrator will not declare inadmissible the arguments of FIFA in light of the required degree of diligence, and, in terms of admissibility, will accept them.

General observations in light of the required degree of diligence

101. Returning to the question of the required degree of diligence, the Sole Arbitrator will first make some general observations as to this concept in light of CAS jurisprudence.

102. Indeed, the Sole Arbitrator is aware and remarks that, in the past, CAS panels have also dealt several times with the question whether the creditor showed the required degree of diligence, which obligation does not arise from the FIFA regulations. In fact, it is well-established jurisprudence to assess this aspect in light of a possible contribution to a breach of Article 64 FDC (edition 2011 or 2017) and Article 15 FDC Edition 2019.

103. More specifically, the approach taken by CAS does not only follow from the CAS case "*Rangers de Talca*" (CAS 2011/A/2646), to which the Parties referred, but also from more recent CAS jurisprudence (see, *inter alia*, CAS 2019/A/6461, CAS 2020/A/6884,

CAS 2020/A/6745 and CAS 2020/A/6846). The Sole Arbitrator fully concurs with the general stance taken in such jurisprudence regarding the required degree of diligence.

104. In particular, there should be no doubt, so the Sole Arbitrator finds, that a creditor is expected to be vigilant and to take prompt and appropriate legal action in order to assert his claim. In principle, no disciplinary sanctions can be imposed on a club as a result of succession should the creditor fail to claim his credit in the bankruptcy proceedings of the former club, as there is a theoretical possibility he could have recovered his credit, instead of remaining passive. As was decided in the above cited jurisprudence of the CAS, in such instances it is necessary to examine whether a creditor has shown the required degree of diligence to recover the amounts he is owned. On the other hand, as was also clearly considered by the panel in CAS 2019/A/6461, there is no blanket rule whether a creditor has shown the required degree of diligence. The assessment of the creditor's diligence has to be made based on the specific circumstances of the case.

105. Above all, it also makes sense to the Sole Arbitrator that a creditor exploits its possibilities to recover the outstanding amounts and that, in principle, a creditor should register its claim in bankruptcy proceedings, all the more because it requires little. In this regard, as also referred to by FIFA, the Sole Arbitrator lays emphasis on Article 3(2) of the SCC from which it follows that no person may invoke the presumption of good faith if he or she has failed to exercise the diligence required by the circumstances.

In particular

106. Against the above background, the Sole Arbitrator will now take a deeper look into and will further discuss and analyse the specific circumstances of the present proceedings.

107. As a starting point, the Sole Arbitrator wishes to emphasise that the fact that the Appellant signed the Contract as well as the Termination Agreement at the moment that the Original Debtor was already under insolvency proceedings is considered to be an important element that cannot be taken lightly in view of the required degree of diligence, which, so the Sole Arbitrator finds, even raises the bar in this respect. In fact, at that specific moment in time the Appellant knew that the Original Debtor was not, in light of its financial position, in its strongest state, to say the least. Consequently, the Appellant should have kept a close eye on and monitor further developments in light of the status of the Original Debtor. In other words, the Appellant should have been extra aware in light of future steps that needed to be taken in order to protect its claims, such as registering his credits in potential bankruptcy proceedings of the Original Debtor.

108. In this context, the Sole Arbitrator is fully aware that the Appellant finally submitted his claims in the bankruptcy proceedings, but this was only four years after the opening. This is not only difficult to match with the Appellant's position that he did not have to register his claims and so, at the least, touches upon "*venire contra factum proprium*", but, more importantly, it can be concluded that the Appellant did not take prompt and appropriate legal action to assert his claims, which he was required to do (see, *inter alia*, CAS 2019/A/6461 and CAS 2020/A/6884). Moreover, the Sole Arbitrator notes that as the claims were not filed in time, the bankruptcy authority rejected the Appellant's request and the Appellant did not make use of its right for appeal against such rejection.

109. In addition, the fact that the Appellant submitted his claims not only four years after the opening of the bankruptcy proceedings, but also only one month before he initiated proceedings before FIFA, appears to be an attempt to restore, and hassle, his negligence and, more importantly, that it points in the direction, so the Sole Arbitrator finds, that the Appellant was actually aware that such step was necessary to protect his claims and to avoid any contribution to the non-compliance of the First and Second DRC Decision.

110. Moreover, although the "applicable regulations" are the FIFA Statutes and Regulations, in particular the FIFA Disciplinary Code, with Swiss law applying to fill in any gaps, the Sole Arbitrator recalls that he is in the position to apply Romanian law on a subsidiary basis, as set out above. In this respect, the Sole Arbitrator finds that he cannot close his eyes for the fact, and will so take into account, that under Romanian law, in particular Article 114(1) of the Romanian Insolvency Law 85/2014, the Appellant, as the holder of a claim, who had not submitted a request for admission of his claim in time, would be deprived of his right to be registered in the table of creditors and would not acquire the quality of creditor entitled to participate in the procedure. In other words, under Romanian law, the Appellant lost his right to claim against the Original Debtor. By the same token, the Sole Arbitrator will also take into account Article 102(7) of the Romanian Insolvency Law 85/2014 from which it follows that in case bankruptcy proceedings are opened creditors shall request registration in the supplementary table for credits born after the opening of insolvency proceedings which have not been paid.

111. Furthermore, to avoid misunderstanding, the Sole Arbitrator wishes to emphasize that he does not agree with the Appellant that the existence of any fraudulent intent from the side of the First Respondent would exempt the Appellant from his duty to comply with the required degree of diligence, in particular that his contribution to the breach of the FDC has no relevance in the light of Article 3.2 SCC, which is a misunderstanding.

112. In this regard, the Sole Arbitrator emphasises that such issues should be separated. Put differently, the required degree of diligence, on the one hand, and any fraudulent actions, on the other, are separate issues in terms of the standard of review, all the more so because it is not always clear whether at the moment of the opening of bankruptcy proceedings such practices have already come to light and can already be established. For this reason, the Sole Arbitrator finds it fair to conclude that a creditor must always comply with its own obligations irregardles of the existence of any fraudulent practices.

113. By that as it may, under the specific circumstances it is even not proven that the First Respondent has perpetrated fraudulent actions. At any event, this is not demonstrated to the Sole Arbitrator and no elements have been observed pointing in that direction.

114. The Sole Arbitrator observes that the Appellant also argues that he did not have to register his claims because his credits were preferential, that he did not receive any "individual notice" of the opening of the bankruptcy proceedings, that he could not register the credit related to the Second DRC Decision, that no payments were made from the First Respondent to the Original Debtor and so no funds have been distributed to the creditors. The Sole Arbitrator will now have a closer look at these arguments.

115. As to the issue whether the Appellant did not have to register his claims in the bankruptcy proceedings because his credits were "preferential", the Sole Arbitrator finds that the Appellant's arguments in this regard do not last and must so be rejected.

116. In this regard, it is necessary to make a distinction between insolvency proceedings and bankruptcy proceedings, which are two separate proceedings (see, *inter alia*, TAS 2013/A/3435). During the insolvency proceedings, it is correct that the Appellant had a preferential credit. However, during the bankruptcy proceedings itself the Appellant did not have a preferential credit. The Sole Arbitrator finds however that even if the Appellant had a preferential credit during the bankruptcy proceedings, he still had to be vigilant. In fact, having a preferential credit does not exempt a creditor to be proactive in recovering its claim. At the least, the creditor can still not remain passive. Therefore, the Sole Arbitrator finds that the Appellant did have to register his claims in the bankruptcy proceedings of the Original Debtor, also taking into account Article 102(7) of the Romanian Insolvency Law 85/2014, even if his credits were preferential, which was not even the case during the bankruptcy proceedings, as indicated with the above.

117. In addition, the Sole Arbitrator also finds that it does not speak in the Appellant's favour that several players having preferential credits with regard to the insolvency proceedings of the Original Debtor were named in the list of creditors of 14 March 2018, which does not support his position that his claimed preferential credits could not be included in the list of creditors. Also for this reason, the Appellant's arguments cannot be accepted.

118. Further to this, the Sole Arbitrator takes note of the Appellant's claim that he did not receive the emails dated 7 and 8 July 2016 regarding the opening of the bankruptcy proceedings in Romania and, in this respect, his reliance on Article 40 of the Council Regulation (EC), no. 1346/2000 dated 29 May 2000 ("EU Insolvency Regulation").

119. In light of this issue and as a point of departure, the Sole Arbitrator fully concurs with FIFA that once a message leaves the sender's sphere of control, it enters the recipient's sphere of control and the message is "*deemed to be received*" by the recipient, which approach has indeed been confirmed in jurisprudence. In particular, it follows from the jurisprudence (see, *inter alia*, CAS 2019/A/6253 and SFT 4A_89/2011 E3), that (a) the declaration must have entered the "sphere of influence" of the addressee and (b) one can expect under the circumstances that the addressee has taken note of it (see also CAS 2006/A/1153 and CAS 2004/A/574). Against this background, the Sole Arbitrator finds that the emails of 7 and 8 July 2016 had entered the "sphere of influence" of the Appellant and it can be expected under the circumstances that he also took note of it.

120. In fact, from the documents in file it follows that the emails were sent by the insolvency authority on 7 and 8 July 2016, more specifically to the correct email address of the Appellant, i.e. viktor_genev22@abv.bg. Indeed, this is the same email address that was mentioned in the Contract as well as the Termination Agreement. Also considering that other creditors, who were among the addressees to whom the respective emails of 7 and 8 July were sent, did register their claim, also for this reason it is to be expected, so finds the Sole Arbitrator, that the Appellant has taken note of the message contained therein. Determining otherwise, and the Sole Arbitrator so fully agrees with FIFA in this regard,

would make it too easy for recalcitrant recipients of an undesirable e-mail message to pretend not have received it or not have received it in the proper folder of its e-mail box.

121. As opposed to what the Appellant argues, the Sole Arbitrator finds that there was also no need for the insolvency authority to send the information as contained in the emails of 7 and 8 July 2016 to the Appellant's counsel. As a matter of fact, if there were any changes as to the contact details, it makes sense, so the Sole Arbitrator finds, that this should have been communicated to the judicial liquidator on behalf of the Appellant.

122. Notwithstanding the above, even if there is doubt whether or not the Appellant received the above emails and so was informed about the bankruptcy proceedings, the Sole Arbitrator finds that the Appellant's reliance on Article 40 EU Insolvency Regulation appears to be a too formalistic approach by the Appellant, as was also raised by FIFA, and cannot be of any help, also taking into account that the background thought of said provision is that foreign creditors are informed about and become aware of pending bankruptcy proceedings. As set out, it is clear to the Sole Arbitrator that the Appellant knew, or at the least should and could have known, about the bankruptcy proceedings.

123. Also in this context and as indicated before, the Sole Arbitrator recalls that there was a certain extra degree of diligence to be expected from the Appellant as he was aware of the unstable financial position of the Original Debtor. Therefore, also for this reason, the reliance on Article 40 EU Insolvency Regulation appears to be overly formalistic.

124. In any event – which is also a very important element for the Sole Arbitrator in its assessment – even if the Appellant was notified pursuant to Article 40 EU Insolvency Regulation and even if there was no issue with regard to the question whether or not he received the above emails of 7 and 8 July 2016, there is still no certainty that the Appellant would have registered his credits within the deadline in the bankruptcy proceedings. To the contrary, as the Appellant claims that this was not necessary for several reasons, it is not to be expected that the Appellant would have filed his claims under these circumstances. In any event, the Sole Arbitrator is simply not convinced that, also under such scenario, the Appellant would have registered his credits in time.

125. Moreover, the Sole Arbitrator does not want to leave unmentioned that the fact that the Original Debtor went bankrupt was public information, as also referred to by the First Respondent. Therefore, it appears to be realistic to the Sole Arbitrator, also for these reasons, that the Appellant was aware of the Original Debtor's bankruptcy proceedings.

126. As to the issue whether or not the Appellant could not register the credit awarded to him in the Second DRC Decision, because this decision was issued long after the expiration deadline to register his credit, the Sole Arbitrator is not persuaded by the Appellant's arguments and observes, also here, inconsistencies as to his approach. On the one hand, that he was not required to register this credit due to its claimed preferential nature, and, on the other, and at the same time, defending the position that he was not able to do so.

127. In this context, it is at least clear to the Sole Arbitrator that he was able to register his credit of the First DRC Decision. As to the credit of the Second DRC Decision, the Sole Arbitrator is aware that the Second DRC Decision was issued after the expiration

deadline to register his credit, but if the Appellant had tried to register his claim in the bankruptcy proceedings, he would, at the least, showed his attempt to recover the amount due, by means of which he would have secured his position in light of the required degree of diligence. Therefore, the Sole Arbitrator agrees with FIFA that the Appellant should have made an effort to register his credit in the bankruptcy, which he clearly failed to do, noting at the same time that it is not even ruled out and so far from certain that the relevant authority in Romania would have rejected such registration. In this respect, the Sole Arbitrator wishes to add that it is not ruled out that, as the First Respondent also rightly argued, it would have been considered in appeal proceedings had the judicial administrator rejected such request of the Appellant in first instance.

128. In this regard, it is undisputed that some credits of other creditors were registered in the bankruptcy proceedings after the deadline for filing. Therefore, also as to his credit deriving from the Second DRC Decision, the Appellant, noting that he was aware about the bankruptcy proceedings and that the Original Debtor had stopped its activities in Romanian football, could have done more and was not diligent in recovering his credit.

129. As to the issue that no payments were made from the First Respondent to the Original Debtor and that also no funds were distributed to the creditors in the original bankruptcy proceedings, the Sole Arbitrator finds, even if this were true, this should not to be of much relevance here, at least not in light of Appellant's lack of diligence in the cases at hand.

130. The Sole Arbitrator remarks that the "feasible theoretical possibility" concept follows from the CAS jurisprudence (see, *inter alia*, CAS 2011/A/2646, CAS 2019/A/6461 and CAS 2020/A/6884), to which he also fully adheres. However, the Sole Arbitrator understands in this respect, and so contrary to the Appellant's view, that the creditor should in principle register its credit as the chance exists, and so there it at least a feasible theoretical possibility, that the creditor could well receive the sum (or part) of his credit.

131. Although the Appellant argues that no funds were distributed to the creditors, the Sole Arbitrator wishes to emphasise that, even if this were true, this is, usually, not yet know at the moment bankruptcy proceedings start. Therefore, this cannot be retroactively invoked as a valid reason for the Appellant not to have submitted his claims. In fact, at the specific point in time, i.e. the moment when the bankruptcy proceedings were opened, this was not clear. This might have been different in case it is undisputed that, at the relevant moment in time, no funds would be distributed, but it is the responsibility of the Appellant to demonstrate this, which he failed to do. Therefore, in order to get more clarity, the Sole Arbitrator takes the view that the Appellant should, at the least, have explored all possibilities, should have communicated his credits in the bankruptcy proceedings in Romania, and not remain passive, as he now did in the present cases.

132. In addition, specifically focusing on the question whether the liquidated damages would have resulted in sufficient surplus in a way that the recovery of the debt would have been feasible via this procedure, the Sole Arbitrator notes that the Original Debtor is receiving payments from the liquidation process and that funds have been distributed to some creditors, which is proven by the First Respondent. More specifically, taking into account the latest update until 28 October 2020 as submitted by the First Respondent to

the Sole Arbitrator, it can be noted that an amount of 1,007,492 Lei has been distributed to the creditors sofar. Moreover, as the bankruptcy proceedings were not closed yet, it is also not ruled out, *per definition*, that even more payments will follow in the future.

133. Therefore, if the Appellant had duly registered his credits, it is possible, and at least feasible, so the Sole Arbitrator finds, that funds would be distributed to the Appellant.

134. This, altogether, in the Sole Arbitrator's opinion, leads to the conclusion that there is a lack of diligence of the Appellant in recovering his credits that shall have a decisive impact in the present case. Consequently, the specific circumstances of this arbitration, as indicated, have convinced the Sole Arbitrator that the Appellant did not act with the required diligence in recovering his credits in the Romanian bankruptcy proceedings. Consequently, the Sole Arbitrator resolves that the Appealed Decisions shall be upheld.

B. Conclusion

135. Based on the foregoing, and after having taken into due consideration all the specific circumstances of the cases, the evidence produced and the arguments submitted by the Parties, the Appealed Decisions are upheld as the Sole Arbitrator concludes that the Appellant did not act with the required degree of diligence in recovering his credits.

136. Given the Sole Arbitrator's findings on the issue of the required degree of diligence as addressed above, the Sole Arbitrator does not consider it necessary to make a final determination as to the other substantive issues that are at stake under the merits.

137. All other and further motions or prayers for relief are dismissed.

X. COSTS

138. Article R64.4 of the CAS Code provides as follows:

> *"At the end of the proceedings, the CAS Court Office shall determine the final amount of the cost of arbitration, which shall include:*
> - *the CAS Court Office fee,*
> - *the administrative costs of the CAS calculated in accordance with the CAS scale,*
> - *the costs and fees of the arbitrators,*
> - *the fees of the ad hoc clerk, if any, calculated in accordance with the CAS fee scale,*
> - *a contribution towards the expenses of the CAS, and*
> - *the costs of witnesses, experts and interpreters.*
>
> *The final account of the arbitration costs may either be included in the award or communicated separately to the parties. The advance of costs already paid by the parties are not reimbursed by the CAS with the exception of the portion which exceeds the total amount of the arbitration costs."*

139. Article R64.5 of the CAS Code provides the following:

> *"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."

140. Against the above background, and having taken into account the outcome of the present arbitration proceedings and considering that the appeals by the Appellant have been rejected, the Sole Arbitrator finds that the costs of the arbitrations, to be determined and served to the Parties by the CAS Court Office, shall be entirely borne by the Appellant.

141. In addition and as a final note, pursuant to Article 64.5 of the CAS Code, and in consideration of the financial position of the Appellant, the outcome of the appeal proceedings, the fact that the Second Respondent was not represented by outside counsel as well as that no hearing was held by video-conference (but instead a second exchange of correspondence was granted), the Sole Arbitrator holds that each party shall bear its own legal fees and expenses in connection with these proceedings.

ON THESE GROUNDS

The Court of Arbitration for Sport rules that:

1. The appeals filed on 21 July 2020 by Mr Viktor Viktorov Genev against FIFA and ACS Petrolul 52 Ploiesti with respect to the decisions issued on 9 June 2020 by the Disciplinary Committee of the *Fédération Internationale de Football Association* are rejected.

2. The decisions issued on 9 June 2020 by the FIFA Disciplinary Committee are confirmed.

3. The costs of the arbitrations, to be determined and served to the Parties by the CAS Court Office, shall be borne by Mr Viktor Viktorov Genev in their entirety.

4. Each party shall bear its own costs and other expenses incurred in connection with this arbitration.

5. All other and further motions or prayers for relief are dismissed.

Seat of Arbitration: Lausanne, Switzerland
Date: 8 September 2021

THE COURT OF ARBITRATION FOR SPORT

Frans M. **de Weger**
Sole Arbitrator