CAS 2020/A/7504 PFC CSKA Sofia v. FIFA & Sergio Felipe Dias Ribeiro

ARBITRAL AWARD

delivered by the

COURT OF ARBITRATION FOR SPORT

sitting in the following composition:

President:	Mr. José Juan **Pintó Sala**, Attorney-at-Law, Barcelona, Spain
Arbitrators:	Mr. Ulrich **Haas**, Professor of law, Zurich, Switzerland
	Mr. Juan Pablo **Arriagada Aljaro**, Attorney-at-Law, Santiago, Chile
Ad hoc Clerk:	Mr. Alberto **Donado-Mazarrón Cebrian**, Attorney-at-law, Barcelona, Spain.

in the arbitration between

PFC CSKA-Sofia, Sofia, Bulgaria
Represented by Mr. Marc Cavaliero and Ms. Carol Etter, Attorneys-at-Law with Cavaliero & Associates AG, Zurich, Switzerland

-Appellant-

and

MR. SERGIO FILIPE DIAS RIBEIRO
Represented by Mr. Duarte Costa and Ms. Marina de Cascais, Cascais, Portugal

-First Respondent-

FEDERATION INTERNATIONALE DE FOOTBALL ASSOCIATION (FIFA)
Represented by Mr. Jaime Cambreleng Contreras, Head of Litigation of FIFA, Zurich, Switzerland

-Second Respondent-

I. PARTIES

1. PFC CSKA-Sofia (the "**Appellant**" or the "**New CSKA**") is a Bulgarian football club with its registered office in Sofia, Bulgaria. The Appellant is affiliated to the Bulgarian Football Union ("**RFU**") which in turn is affiliated to the Fédération Internationale de Football Association.

2. Sergio Filipe Dias Ribeiro ("**Barros**", "**the Player**" or "**the Creditor**") is a Portuguese professional football player.

3. The Fédération Internationale de Football Association ("**Second Respondent**" or "**FIFA**") is an international governing body of football. FIFA exercises regulatory, supervisory and disciplinary functions over national associations, clubs, officials, and players belonging to its affiliates. FIFA is an association under Articles 60 et seq. of the Swiss Civil Code with headquarters in Zurich, Switzerland.

II. FACTUAL BACKGROUND

4. A summary of the most relevant facts and the background giving rise to the present dispute will be developed based on the parties' written submissions and the evidence filed with these submissions. Additional facts may be set out, where relevant, in connection with the legal discussion which follows. The Panel refers in the present Award only to the submissions and evidence it considers necessary to explain its reasoning. The Panel, however, has considered all the factual allegations, legal arguments and evidence submitted by the parties in the present proceedings.

5. On 3 August 2012, the Player and the Bulgarian football club CSKA Sofia (the "**Old Club**" or the "**Old CSKA**") signed an employment contract expiring on 30 June 2014.

6. On 3 June 2013 the Player requested from the Old CSKA the payment for his outstanding salaries for the months of February, March and April 2013.

7. In 10 June 2013 the player officially terminated the employment agreement with Old CSKA.

8. On 14 July 2013 The Player decided to lodged a claim before the FIFA Dispute Resolution Chamber ("**FIFA DRC**") against the Old Club for breach of contract and outstanding salaries upon the termination of the contract.

9. On 25 September 2015, the FIFA DRC issued its decision and partially accepted the claim brought by the Player and condemned the Old CSKA to pay to the Player the amount of EUR 37,600 due to outstanding remuneration and an additional amount of EUR 72,300 due to compensation for breach of contract with their corresponding interest rate of 5% per annum.

10. The Old CSKA never complied with his financial obligations towards the Player and on 18 September 2015.

11. On 18 September 2015 the BFU informed the FIFA Secretariat that the Old CSKA was undergoing an insolvency proceeding.

12. On 2 October 2015, the Sofia City Court declared the insolvency of the Old CSKA.

13. The Old Club played its last official football match in 2015 and did not participate in any of the two-tier championship of the BFU during the 2015/2016 season.

14. On 4 and 5 November 2015, within the deadline resulting from by Bulgarian Law, the Player registered his claim in the bankruptcy proceedings and requested that the amount recognized both by the FIFA DRC decision was included as a privilege credit in the bankruptcy proceeding.

15. The claim filed by the Player was not accepted by the bankruptcy trustee as the amount requested was considered as not proven and therefore was included in the list of unaccepted receivables in the bankruptcy proceeding.

16. On 5 January 2016, the Player, through his lawyer that also represented other 3 creditors of the Old Club, sent an email to the bankruptcy trustee requesting for the grounds of the rejection of the claim in order to file an Appeal before the Sofia City Court. It also requested the FIFA Disciplinary Committee ("**FIFA DC**") to impose the corresponding disciplinary sanctions against the Club.

17. On the same date, the bankruptcy trustee answered the above-mentioned email in the following terms:

"If your claim from PFK CSKA AD has been placed in the list with "unapproved receivables", this was because you did not provide the required supporting documents that show your right to receive the requested amount. There might be other reasons, as well. For example, if you did not send your claim in Bulgarian language, or if you did not provide an address in BULGARIA. It is important that you consult a Bulgarian lawyer.

If your claim has not been accepted, you have the opportunity, by January 11th to send the court an objection. Please consult this procedure with a Bulgarian lawyer. If you decide to proceed, you need to provide al supporting documents – including bank statements, court decisions, contracts, invoices or any other document – showing that you are entitled to receive the amount that you claim."

18. The Player and the other 3 creditors referred to above hired the services of the Bulgarian lawyer Mrs. Arabadjieva in order to appeal the decision issued by the bankruptcy trustee not accepting their claim.

19. On 11 January 2016, the Player, and the other 3 creditors, filed an objection against the non-acceptance of their receivables before the Sofia City Court and attached several documents that intended to prove the existence of the requested overdue amounts.

20. On 27 January 2016, the bankruptcy trustee filed her position on the objections filed by the Player and the other creditors and stated that the objection should be rejected as the evidence attached did not forego the necessary recognition in accordance with Bulgarian law.

21. A hearing was conducted before the Sofia City Court in which the Player and the other creditors were represented by the abovementioned Bulgarian lawyer.

22. On 25 May 2016, the Sofia City Court rendered its decision rejecting the objection filed by the Player and the rest of the creditors. The main arguments of the decision can be summarized as follows:

    - The Single Judge considered that the creditors had not filed any evidence whatsoever regarding the status and the jurisdiction of the FIFA chambers and/or CAS in solving disputes like the one at stake, nor had presented the arbitration agreements that legitimated such bodies to take any decision regarding the Players claim. Furthermore, it was considered that the creditors had not proven that the referred Arbitration institutions are constantly acting and working Arbitration institutions or established for solving disputes pursuant to Article 3 of the Law of International Commercial Arbitration.

    - It also considered that the FIFA decision cannot be taken into account as it contradicts the Bulgarian Public Order as art 19 of the Civil and Procedural Code that establishes that labour disputes are not subject to arbitration.

    - In this same sense, the Single Judge stated that the FIFA decision had not been recognized through the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards and therefore, had no binding and executive effect in Bulgaria.

    - In light of the above, it was concluded that the due amounts established in said decision could not be accepted for execution in the bankruptcy proceedings and the Sofia City Court had to review the claimed amounts through documents other than the CAS Award, namely the employment contract.

    - In light of the lack of probative value granted by the bankruptcy trustee to the proofs filed by the Player to justify its credit, it finally decided to reject to include all the amount claimed by the Player

23. The Player did not react to said decision.

24. On 13 September 2017, the BFU informed the FIFA Secretariat that the Sofia City Court had declared the Old CSKA bankrupt and drew the Secretariat's attention to the fact that the Bulgarian Football Union's Executive Committee had decided on 20 June 2017 to disaffiliate the Old CSKA.

25. In parallel to the Old CSKA bankruptcy proceeding, on 2016, the Bulgarian football team Litex Lovech, that, at that time, was operated by the company "PFC Litex Lovech AD",

was expelled from professional football due to the existing debts of the club derived from its poor financial situation.

26. In May 2016, a group of investors (the current owners of the Appellant), acting through a holding company named "PFC CSKA-1948 AD", acquired the legal entity "PFC Litex Lovech AD" and therefore acquired the sporting license of its operated football club "Litex Lovech".

27. The new owners accepted all previous financial liabilities of Litex Lovech and satisfied all the salaries, transfer fees and all other financial commitments that had previously been agreed by Litex Lovech.

28. After the acquisition process, the new owners changed the name of the legal entity from "PFC Litex Lovech AD" to "PFC CSKA-Sofia EAD" and the name of the football team from "Litex Lovech" to "PFC CSKA-Sofia".

29. As it has been mentioned above, the New CSKA took over the sporting license from Litex-Lovech as well as the entire football team of said club and, thanks to a re-structuring and re-organization of the highest professional football leagues in Bulgaria, it became entitled to participate in the newly created "First Professional League" as from the football season 2016/2017.

30. In May 2017, the competent bankruptcy trustee conducted a public competitive tender for the adjudication of the IP rights of the Old CSKA.

31. The owners of PFC CSKA SOFIA AD participated in this bid through a legal entity named "Red Animals EOOD" that was entirely controlled by the owners of the New CSKA and acquired the IP rights and other assets of the Old CSKA in exchange of the payment of EUR 4.000.000.

32. The abovementioned amount paid by the owners of the Appellant was directly transferred to the relevant bank account established by the bankruptcy trustee and has been used in the bankruptcy proceeding to pay the privilege creditors their existing debts.

33. As of October 2020, 95% of the privilege creditors submitted their relevant bank account details and have already received their listed claims.

III. PROCEDINGS BEFORE THE FIFA DISCIPLINARY COMMITTEE

34. On 10 March 2020, the Player informed FIFA that due to the recent jurisprudence of the FIFA Disciplinary Committee ("**FIFA DC**"), the new club PFC CSKA-Sofia should be responsible for the debts of the Old CSKA given that both Clubs shared the same identity elements and taking into account Article 64 of the 2017 version of the FIFA Disciplinary Code that was applicable in that time ("FIFA 2017 FDC") that the New CSKA was the sporting successor of the Old CSKA and therefore requested the FIFA DC to impose

sporting sanctions to the New CSKA for not complying with the CAS decision issued against the Old CSKA.

35. On 3 July 2020, FIFA initiated disciplinary proceedings against the New CSKA for a potential failure to respect a decision passed by a body, a committee or an instance of FIFA or a CAS decision.

36. On 15 July 2020, the New CSKA provided its position, which can be summarized as follows:

- The new Club claimed that there was no legal, financial or organizational connection between the legal entity of the original Debtor "PFC CSKA AD" and the new Club "PFC CSKA Sofia EAD".

- In particular, the new Club pointed out that it is the legal successor of the club Litex Lovech and provided the following explanation:

  - In the 2015/2016 season, the club "Litex Lovech" was expelled from the first Bulgarian football league.

  - At the beginning of the 2016/2017 season, a group of investors acquired the company "PFC Litex Lovech AD", the legal entity that was ruling the club Litex Lovech.

  - The main idea of these investors was to create a club that maintains and reflects the historical sporting history of the former club, which at that time was already declared insolvent and was no longer participating in organized football.

  - Therefore, on 2 June 2016, the investors changed the name of the company "PFC Litex Lovech AD" to "PFC CSKA-Sofia EAD". Accordingly, the club Litex Lovech became the club PFC CSKA-Sofia. Nevertheless, the new Club took part in the newly created Bulgarian first division championship (2016/2017season) with the sporting license of the club Litex Lovech.

- Furthermore, the New CSKA admitted that it was using a similar logo and image to the original Debtor because it acquired certain logos, trademarks, and other IP rights out of the bankruptcy mass of the original Debtor. However, the New Club wished to draw the Disciplinary Committee's attention to the fact that the two clubs have different owners, licenses, football teams and legal entities, implying that the New Club cannot be considered as the sporting successor of the original Debtor.

- In these circumstances, the new CSKA argued that it had never signed any contract with the Creditor. In addition, it pointed out that the Creditor participated

in the bankruptcy proceedings before the Bulgarian civil court and his claim was partially accepted.

- Consequently, and given that the amounts accepted and registered in said proceedings have been or will be fully and completely satisfied in the context of the bankruptcy proceedings, the Creditor had no longer any legitimate legal interest to pursue his claim outside of the aforementioned bankruptcy proceedings.

- In addition, the New Club claimed that the bankruptcy proceedings were still ongoing which meant that the original Debtor is still able to fulfil its financial obligations towards its employees. Thus, the New Club pointed out that as long as the original Debtor is still in a position to pay its debt, FIFA cannot initiate proceedings against an alleged sporting successor, as the latter would not be able to comply with a decision based on art. 15 of the 2019 FDC given that it is up to the Sofia Civil Court to decide on the amounts owed to each creditor registered in the bankruptcy proceedings.

37. On 8 October 2020, the FIFA DC issued its decision ("the **Appealed Decision**") which operative part reads as follows:

1. *"PFC CSKA-Sofia is found guilty of failing to comply in full with the decision passed by the Dispute Resolution Chamber on 25 September 2015 according to which it was ordered to pay to the player Sergio Filipe Dias Ribeiro (hereinafter, "the Creditor"):*

   - *EUR 37,600 plus 5% interest p.a. as from 14 July 2013 until the date of effective payment;*

   - *EUR 72,300 plus 5% interest p.a. as from 14 July 2013 until the date of effective payment.*

2. *The Debtor is ordered to pay a fine to the amount of CHF 15,000. The fine is to be paid within 30 days of notification of the present decision.*

3. *The Debtor is granted a final deadline of 30 days as from notification of the present decision in which to settle its debt to the Creditor.*

4. *If payment is not made to the Creditor and proof of such a payment is not provided to the secretariat to the FIFA Disciplinary Committee and to the Bulgarian Football Union by this deadline, a ban from registering new players, either nationally or internationally, will be imposed on the Debtor. Once the deadline has expired, the transfer ban will be implemented automatically at national and international level by the Bulgarian Football Union and FIFA respectively, without a further formal decision having to be taken nor any order to be issued by the FIFA Disciplinary Committee or its secretariat. The transfer ban shall cover all men eleven-a-side teams of the Debtor – first team and youth categories – The Debtor shall be able to register new players, either nationally or internationally, only upon the payment to*

the Creditor of the total outstanding amount. In particular, the Debtor may not make use of the exception and the provisional measures stipulated in Article 6 of the Regulations on the Status and Transfer of Players in order to register players at an earlier stage.

5. *As a member of FIFA, the Bulgarian Football Union is reminded of its duty to implement this decision and provide FIFA with proof that the transfer ban has been implemented at national level. If the Bulgarian Football Union does not comply with this decision, the FIFA Disciplinary Committee will decide on appropriate sanctions on the member. This can lead to an expulsion from FIFA competitions*

6. *The Debtor is directed to notify the secretariat to the FIFA Disciplinary Committee as well as the Bulgarian Football Union of every payment made and to provide the relevant proof of payment.*

7. *The Creditor is directed to notify the secretariat to the FIFA Disciplinary Committee as well as the Bulgarian Football Union of every payment received.*

38. On 29 October 2020, the FIFA DC notified to the Parties the grounds of the Appealed Decision, which can be summarized as follows:

- The members of the FIFA DC considers that 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.

- Furthermore, it establishes 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. In sports related matters, FIFA considers a club to be the sporting successor of a former club as follows: *"A sporting entity identifiable by itself that, as a general rule, transcends the legal entities which operate it"*. Consequently, elements to consider are, amongst others, the name, the logo and colours, the registration address and/or the managing board of the club.

- Regardless of the fact that the New Club has indeed proven that it bought certain IP Rights of the Old CSKA through a public tender issued during the bankruptcy proceedings, the member of the Committee pointed out that decisions regarding the existence of sporting succession between both clubs were recently rendered by the Chairman and the Deputy Chairman of the Disciplinary Committee.

- In those decisions, FIFA has concluded that the New CSKA was the sporting successor of the Old CSKA based on the fact that it was proven that with the acquisition of the former company "PFC Litex Lovech AD" the group of investor's main idea was to maintain and reflect the historical sporting history of the original Debtor, which was already declared insolvent. In this regard it has

been pointed out by FIFA in those decisions that the colours used by the original Debtor and the new Club were identical as well as the logo, the address and the stadium. In addition, it was emphasized that the names of both clubs were very similar and that according to the new Club's official website, they share the same history and sporting achievements.

- The member of the Committee considered that the fact that the new Club uses elements that constituted the identity of the original Debtor, combined with its intention to appear as the original Debtor, had to prevail over the arguments put forward by the new Club, such as its ownership, license, football teams and legal entities being different from those of the original Debtor.

- Having taken all the above into account and on the basis of the information and documentation at his disposal, the member of the Committee decided to endorse the conclusions of the Chairman and the Deputy Chairman of the Disciplinary Committee and considered that there was no other alternative but to conclude that the new Club, PFC CSKA-Sofia, is to be regarded as the sporting successor of the original Debtor, PFC CSKA Sofia.

- The member of the Committee observed that nothing in the casefile reflected any lack of diligence by the Creditor in recovering his debt. To the contrary, the member of the Committee pointed out that the Creditor performed the expected due diligence that the circumstances demanded since he participated in the bankruptcy proceedings at national level.

- Bearing in mind that the Creditor had been diligent in recovering his debt, the members of the Committee found the new Club liable for the debts incurred by the original Debtor– and consequently concluded that the new Club, PFC CSKA-Sofia, was responsible for complying with the aforementioned decision under the terms of art. 64 of the 2017 FDC. However, it appears that the new Club failed to do so and therefore must be sanctioned accordingly.

IV. PROCEEDINGS BEFORE THE COURT OF ARBITRATION FOR SPORT

39. On 11 November 2020, pursuant to Articles R47 and R48 of the Code of Sports-related Arbitration (the "**CAS Code**"), the Club filed its Statement of Appeal directed against the Player and FIFA before the Court of Arbitration for Sport (the "**CAS**") challenging the Appealed Decision. The Appellant nominated Prof. Dr. Ulrich Haas as arbitrator. It also informed the CAS Court Office that a similar Appeals had been submitted at the same time challenging the FIFA Disciplinary Committee decisions FDD-4978, FDD-5030 and FDD-5040, involving the Appellant and FIFA as well as other creditors of the Old CSKA. The Appellant requested that the four matters were submitted to the same Panel. Finally, in its Statement of Appeal the Appellant requested an extension of its time limit to file the Appeal Briefs until 30 November 2020.

40. On 23 November 2020, the Respondents jointly agreed to submit the present case and the one registered under the reference CAS 2020/A/7423, CAS 2020/A/7424 and

2020/A/7505 to the same Panel and also jointly agreed to nominate Mr. Juan Pablo Arriagada Aljaro as arbitrator for the 4 cases.

41. On 8 December 2020 the Appellant filed its Appeal Briefs with the following requests for relief:

Prayer 1: *The Appealed Decisions shall be set aside.*

Prayer 2: *All charges against PFC CSKA-Sofia are dismissed and the disciplinary proceedings initiated against PFC CSKA-Sofia shall be declared closed.*

Prayer 3: *FIFA and Sergio Filipe Dias Ribeiro shall be ordered, individually or jointly, to bear the costs of the arbitration and to contribute to the legal fees incurred by PFC CSKA-Sofia at an amount of at least CHF 20,000.*

42. On 9 December 2020, the CAS Court Office accepted the request made by the Second Respondent and decided to set aside solely its time limit to file the Answer to the Appeal Brief that would be fixed after the Appellant's payment of its share of the advance of costs in the referenced matters.

43. On 22 December 2020, the CAS Court Office informed the Parties that pursuant to Article R54 of the CAS Code and on behalf of the Deputy President of the CAS Appeals Arbitration Division, the Panel had been constituted as follows:

President: Mr. Jose Juan Pintó Sala, Attorney-at-law, Barcelona, Spain

Arbitrators: Mr. Ulrich Haas, Professor of Law, Zurich, Switzerland

Mr. Juan Pablo Arriagada Aljaro, Attorney-at-law, Santiago, Chile

44. On the same date, the CAS Court Office acknowledged receipt of the Appellant's payments of its share of the advance of costs and in accordance with Article R55 of the CAS Code granted the Second Respondent a new time limit of twenty (20) days to submit its Answer to the Appeal.

45. On 11 January 2021, the Second Respondent filed its Answer to the Appeal filed by the Appellant with the following request 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 Decision;

c) Ordering the Appellant to bear the full costs of these arbitration proceedings;

d) *Ordering the Appellant to make a contribution to FIFA's legal costs."*

46. 12 January 2021, the CAS Court Office invited the Parties to inform whether they preferred a hearing to be held or for the Panel to issue the award based solely on the Parties' written submissions.

47. On 21 January 2021, the Panel, pursuant to Articles R57 of the CAS Code, and taking into account the Parties position in this regard, decided to hold an in-person hearing in the CAS cases CAS 2020/A/7423, CAS 2020/A/7424 and CAS 2020/A/7505 taking into account that they were related cases in which the Appellant and the Second Respondent were the same and the First Respondent of said cases were other creditors affected by the same factual and legal grounds as in the present case regardless that there were 4 different Appealed Decisions issued by FIFA.

48. On 21 January 2021, the Panel decided to reject the Appellant's request to be allowed to file a short new submission without prejudice that the Parties would have full opportunity to deal with the referred topic at the hearing.

49. On 4 February 2021, the CAS Court Office informed the Parties that the hearing date had been established on 12 May 2021 and that the starting time of the hearing would be fixed in advance as it depend on whether the hearing was held in person or by video-conference. A decision regarding the methodology of the CAS hearing would be taken in advance and taking into account the COVID-19 pandemic situation.

50. On 9 March 2021, the CAS Court Office sent the Parties the Order of Procedure that was dully signed by the parties in due time.

51. On 1 April 2021, the Appellant filed a brief submission requesting the Panel the following:

"The alleged creditors shall be limited to plead, if they are allowed or willing to do so altogether, within the scope of the submissions they made in the first instance proceedings before the FIFA Disciplinary Committee and shall not be able to further elaborate on those arguments.

Furthermore, the respective alleged creditors shall not be able to raise any objections that should have made within the first written defense, submit any evidence or ask for evidentiary measures as well as not be able to put forward any motions for relief."

52. On 13 April 2021, the CAS Court Office informed the Parties that the Panel had decided that, in light of the ongoing COVID-19 situation, the hearing scheduled on 12 May 2021 would be held by video conference.

53. On the same date, the CAS Court Office informed the parties that Mr. Alberto Donado-Mazarrón, Attorney-at-law in Barcelona, Spain had been appointed as *ad hoc* Clerk in order to assist the Panel in these proceedings.

54. On 12 May 2021, a hearing was held by video-conference (via Cisco Webex). At the outset of the hearing the Parties confirmed that they had no objection as to the constitution of the Panel.

55. In addition to the Panel, the Ad Hoc Clerk and Mr. Antonio De Quesada, Head of Arbitration to the CAS, the following persons attended the hearing:

a) For the Appellant:
   1. Mr. Marc Cavaliero, legal counsel
   2. Ms. Carol Etter, legal counsel
   3. Mr. Georgi Cholakov, legal counsel
   4. Ms. Dora Zlateva-Mileva-Ivanova, expert

b) For the First Respondent
   1. Mr. Duarte Costa, legal counsel
   2. Miss Ana Carolina de Oliveira Silva, legal counsel

c) For the Second Respondent
   1. Miguel Liétard Fernández-Palacios, Director of Litigation at FIFA
   2. Mr. Jaime Cambreleng Contreras, Head of Litigation at FIFA

56. At the hearing, the parties had the opportunity to present their case, to submit their arguments and to comment on the issues and questions raised by the counterparty.

57. At the closing of the hearing, the Parties expressly stated that they did not have any objections with regard to the procedure. The Parties further confirmed that they were afforded ample opportunity to present their case, submit their arguments and answer the questions posed by the Panel and that their right to be heard had been respected.

V. THE PARTIES' SUBMISSIONS

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

A. The Appellant /The New CSKA

59. The Appellant's submissions, in essence, may be summarized as follows:

a. Principles of Swiss law applicable in association's law

60. Under Swiss law, for a decision of an association to be legally valid, the following requirements must be met:

- The Appealed Decision must correctly apply the applicable law, that is to say the 2017 FDC in the case at stake. Therefore, whether the FDC has been correctly applied by the FIFA DC in accordance with the content, purpose and constant application rules and regulations must be tested.

- The Appealed Decision must also comply with the *"principle of legality"*, according to which, every measure taken by an association needs a clear regulatory basis.

- The principle of predictability must also be met as certain contents of the *nulla poena sine lege* principle are also applicable to disciplinary provisions and proceedings in sports organization. CAS awards consistently hold that sanctions must be predictable; that is to say that the relevant regulations and provisions shall not only be known and understood by a "small group of insiders".

- In connexion with the abovementioned legal principal, CAS also applies the principle of *"in dubio contra preferentem"* and concludes that whenever there is uncertainty or a lack of clarity in the application of Regulations, this must be construed against the federation (CAS 2007/A/1437).

- The common practice of an association must also be respected. The main prerequisites to establish common practice are that a certain understanding or application of a rule is practiced over a certain period of time and that such practice reflects the majority opinion of the relevant stakeholders.

- The principle of equal treatment according to which FIFA must apply the FDC on equal standards against all direct and indirect members of FIFA shall also be respected in all FIFA decisions.

b. <u>The Appellant is the successor of Litex Lovech and not of the Old CSKA</u>

61. On 27 May 2016, all the shares of "PFC Litex Lovech AD" were transferred from "Litex Commerce AD" to "PFC CSKA 1948-AD". This change in ownership was reflected in the Commercial Register on 2 June 2016.

62. The group of investors that acquired Litex Lovech have all been long-time supporters of Bulgarian football and its historically successful clubs. For this reason, on the same date, the new owners changed the name of the company from "PFC Litex Lovech AD" to "PFC CSKA-Sofia EAD" and also decided to change the name of the football club Litex Lovech to PFC CSKA Sofia.

63. The Appellant, emerging out of Litex Lovech, also took over its license and, thanks to a re-structuring and re-organisation of the highest professional Leagues in Bulgaria, it was granted the possibility to enter its team PFC CSKA-Sofia in the newly created "First Professional League" just from the season 2016/2017 and it's still participating in the same league until today.

64. The Appellant also took over from Litex Lovech the main important features of a football club such as the license, the players, the staff and the financial obligations incurred by the old Litex Lovech. Even after the change of name, the Appellant continued to comply with the financial obligations that previously belonged to Litex Lovech.

65. All the above elements show that the Appellant is the legal and sporting successor of Litex Lovech.

66. The Appellant cannot be considered the successor of the Old Club considering that the two clubs have:

- Different legal entities as proved by their different national Identification Number. Consequently, the Creditors concluded their contracts with another legal entity than the Appellant;
- Different football teams taking into account that they have different players, a different coach, different staff and ultimately different sporting personnel;
- Different owners as no person involved in the management of the Appellant was somehow involved in the unfortunate actions which led to the bankruptcy of the Old Club;
- Different licenses issued by the BFU, what undoubtedly implies that the BFU considers the two clubs two different sporting teams.

67. Furthermore, the Appellant was not a party in the bankruptcy proceedings of the Old Club and no liabilities were transferred from the Old CSKA to the Appellant. Moreover, the Appellant participated in the public competitive tender that auctioned assets in the bankruptcy estate of the old CSKA through a legal entity called "Red Animals EOOD". Said company was entirely owned by the group of shareholders that acquired Litex Lovech and founded the New CSKA and was announced as the winner of the bid as it submitted a highest winning bid of BGN 8,000,000.00 (approx. EUR 4,000,000.00). The amount satisfied by the Appellant was directly incorporated into the Old CSKA's mass and therefore was directly used by the bankruptcy trustee to compensate the privileged credits of the company.

68. During the entire creation process of the Appellant, the New CSKA was not involved. Likewise, none of the previous owners of CSKA is in any way involved in the management or ownership of the Appellant. Furthermore, the Appellant and CSKA also have different football teams as the New CSKA never took the licence of the Old CSKA or any other affiliation or federative rights of the Old Club.

69. In conclusion, if the Appellant was deemed to be the sporting successor of both Litex Lovech and CSKA, it would suddenly have to accept financial obligations of two different clubs, which certainly makes no sense.

c. <u>This case differs to past cases related to "sporting successors"</u>

70. The Appellant emphasises that the circumstances of this case are substantially different from every single one of the well-known CAS precedents related to "sporting succession". The concept of sporting succession was developed to prevent abuses by clubs or shareholders of clubs that pretended to take an advantage of said operation to continue with the club's activity without having to pay the debts of the same. In all past cases where this concept was applied, legal formalities were abused by a club with the sole purpose of avoiding to pay old debts. The Appealed Decision does not establish that the Appellant acted in bad faith and tried to circumvent financial obligations at all that is what occurred in the great majority of previous cases related to "sporting succession" (FIFA DRC 121505569, CAS 2007/A/1355, CAS 2011/A/2614, CAS 2012/A/2278, and CAS 2013/A/3425).

71. In the abovementioned cases, the club remained affiliated with the same federative rights, the new club operated with the same management team, players and staff, and also took over the position of the old club in the championship and no proper bankruptcy proceeding was held. None of these circumstances occur in the present case.

72. Moreover, the pertinent case law of FIFA and CAS for "sporting succession", which is now codified in art. 15, para. 4, 2019 FDC, relates only to cases where there were no bankruptcy proceedings and the "new club" simply took over the "old club" with the same management, players and federative rights. If FIFA wanted to include cases involving bankruptcy proceedings into the concept of sporting succession, it should have stated so expressly in this provision.

73. *In casu*, the Appealed Decision does not conclude that the Appellant acted in bad faith and tried to circumvent financial obligations. To the contrary, it has been proved that the Appellant acquired the IP rights of the Old CSKA in a public tender and paid more than double what was necessary to cover all debts towards privilege creditors of CSKA.

d. Appellant cannot be considered as the Sporting Successor (CAS 2011/A/2646 Talca case)

74. The panel in the Rangers de Talca case concluded that the new club took the position of the old club, with the consent and approval of the corresponding national federation. The main elements underlying the CAS decision to accept sporting succession were completely different to the existing situation regarding the Appellant.

75. It is therefore clear, that the present case contains significant differences to the Talca case:

- Appellant did not take over any federative rights of the Old CSKA.
- Appellant did not take over any players of the Old CSKA.
- Appellant did not take over the position of the Old CSKA in sporting institutions and championships, since the Old Club was not participating in any competition.

- The terms of the public tender by means of which the Appellant acquired the IP rights of the Old CSKA did not contain any clause to take over the obligations of said club.

- The terms of the public tender did not expressly state that the highest bidder would be considered the sporting successor of the Old CSKA.

76. The concept of sporting succession as developed by CAS and also in light of the Talca case, clearly does not apply to the Appellant.

77. FIFA recently issued the circular n° 1681 in which it defined the concept of sporting succession with respect to Article 15 of the FDC and referred to its proper understanding of CAS jurisprudence as well as its own proper practice. In the referred circular, FIFA concluded that said provision was added to its regulation to avoid the abusive conduct of a club to escape from its financial obligations. It has been extensively proven that this is clearly not the case *in casu* as the owner of the new club are completely different from the old owners of the Old CSKA and the new owners have even acquired in a public tender several IP Rights in exchange of an important amount of money. In this regard it should be reminded that the new owners have been dealing with the debts inquired by the Old Litex Lovech.

78. In light of the above, FIFA should not have relied in the Talca case in order to justify its decision as it has been proven that both cases are pretty different and therefore a different legal analysis and resolution should be taken.

e. Res judicata effect cannot be extended to third parties

79. The Appellant was not a party of the proceedings leading to the FIFA and CAS decisions. It did not participate in any exchange of submissions, it did not receive any decision, notification, or any other form of information in relation to those proceedings as it was not involved at all in the contractual relationships between the Creditor and the Old Club. Pretending to enforce said decision to the Appellant denies his right of defence. The Appellant is not bound by the CAS Award rendered against the Old CSKA as the principle of *res judicata* cannot be extended to third parties.

80. Cases in which the state legal system allows the res judicata effect to be extended to third parties are rather rare and do not include a sporting successor. A third-party effect of an arbitral award should be clearly distinguished from the *res judicata* technical effect which is linked to the enforceability of the arbitral award.

81. The Creditors would have needed to obtain a new judgement on the merits against the Appellant and then execute such judgements against it.

82. FIFA, when taking the Appealed Decision, merely referred to the case law which is either not applicable or comparable as the cases invoked do not refer to proper bankruptcy proceedings or significant elements differ from the invoked cases and the case at stake. In this regard, it is worth noting that Art 15 FDC and Art 64 2017 FDC do not refer to a case of bankruptcy and cannot be applied to cases in which a club went bankrupt.

83. Art 15 2019 FDC cannot be applied to a case in which a bankruptcy proceeding was held, the old club stopped competing professionally and no federative rights and players were taken over by the new club that ultimately had a new management team. In addition, no legal or financial obligation was circumvented as the new owners even paid a substantial amount of money to acquire the IP Rights of the Club and with said amount all privilege creditor of the Old Club who had filed their claim within the bankruptcy proceeding were covered to a 100% of their respective claim. Therefore the New CSKA may not be affected by a CAS decision taken against a completely different entity that nothing has to do with the new shareholders of the club.

f. Impossibility to open disciplinary proceedings against the sporting successor

84. In the unlikely event that the Panel would consider that the Appellant is the sporting successor of the Old CSKA, it will be demonstrated that the Appellant shall not be considered liable for the debts of the Old CSKA.

85. It is long-standing practice of the FIFA DC that in a case of a bankrupt and disaffiliated club, the FIFA DC is no longer in any position to intervene in the enforcement of claims against the bankrupt entity (or any possible "successor").

86. A national bankruptcy court has the most extensive competence to duly manage the bankruptcy proceedings. In the present case, FIFA has to respect the decisions taken by the national state court of Sofia and the principle of equal treatment of creditors shall also be respected as said principle is established in Bulgarian law. Therefore, FIFA has to respect the decision issued by the bankruptcy trustee as otherwise the Player would have an unfair advantage over all the other creditors.

87. Both FIFA and CAS have repeatedly established that a club undergoing a bankruptcy proceeding is legally not capable of complying with a FIFA decision. Acting against a possible sporting successor when a bankruptcy proceeding has been conducted, or is being conducted, is impossible and contrary to its constant practice.

88. The abovementioned was confirmed by FIFA in two proceedings against the Appellant in the role as the supposed sporting successor of the Old Club. The Sole Arbitrator in CAS 2017/A/5460 stated the following:

"Formal bankruptcy proceedings in accordance with Bulgarian national law were conducted before the Sofia City Court in Bulgaria. Such national bankruptcy proceedings supersede the FIFA Disciplinary Committee's capacity in enforcement proceedings and impedes any initiation of disciplinary proceedings based on art. 64 of the FIFA Disciplinary Code".

89. Hence, if a party who is deemed to be the successor of CSKA should be held liable, it would be through the Bulgarian insolvency courts and always taking into account the principle of equal treatment of all creditors that the invoked claim should be resolved. This has been confirmed by FIFA itself in the CAS case 2018/A/5647): *"FIFA is obliged to take into consideration and respect the decisions of the national State Courts as well*

as the laws of the States regarding bankruptcy proceedings, since the said proceedings are within the exclusive jurisdiction of the State Court".

90. It should also be underlined that the bankruptcy proceedings are still ongoing and, thanks to the abovementioned relevant amount paid by the Appellant in the public tender, all the registered and accepted claims of the privilege creditors will be compensated in full. As October 2020, 95% of the privilege creditors' claims recognized by the bankruptcy trustee have already been settled. If CAS confirms the Appealed Decision and concludes that the Appellant has to satisfy the requested amount to the player, the latter would have an unfair advantage over all the other creditors and the principle of equal treatment would be breached.

g. The Creditor cannot be considered as a diligent creditor.

91. The Player partially participated in the bankruptcy proceedings up to a certain point.

92. The Player filed his claim before the Sofia City Court which was not accepted due to missing documents. Thereafter, the Creditor filed an objection requesting that his claim was accepted and his objection was partially rejected as he failed again to provide all the needed evidence to prove his claim as the Player did not have the FIFA decision recognized in Bulgaria in accordance with the New York Convention and CPIL. In other words, the Player's objection did not contain all the needed evidence, which in itself is already enough to demonstrate the Player's lack of diligence.

93. Taking into account what is established in Bulgarian law, in the case in which an objection is not accepted, the creditor has the right to file a separate lawsuit under art. 684 BCC, claim that would be heard by another panel of the court which is not influenced by the acts of the bankruptcy court and whose decision would be binding in the relation of the debtor, the trustee in bankruptcy and all the creditors. In these proceeding, the creditor would have the opportunity to present the entire amount of his claim and to present all the respective evidences he might consider necessary to prove his claim.

94. The Creditor did not file this separate claim and, therefore it shall be considered that the Creditor was not diligent enough because he did not exhaust all the legal remedies provided by the Bulgarian law.

95. It cannot be reasonably admitted that a creditor may simply ignore the available legal remedies at national level and allow him to pursue his claim in parallel against a new entity before a different forum.

96. The Player was not diligent in obtaining his claim from CSKA and he is therefore forbidden to present his claim before FIFA to remedy such a failure. FIFA is not the appropriate forum to remedy a procedural negligence of the player as only in the event that an old club would disappear and become disaffiliated without the involvement of bankruptcy proceedings, the FIFA DC would be competent to investigate whether the new club can be held liable for the debts of the old one.

97. Consequently, in light of all the above, the Appellant respectfully requests the Panel to issue a decision in line with the Appellant's prayers for relief

B. The Player

98. The player failed to provide an answer to the Appeal Brief filed by the Club in due time.

C. FIFA

a. The Disciplinary Committee is entitled to analyse the matter of sporting succession

99. Although the Appellant is completely right when it considers that insolvency proceedings pertain to the realm of state law, the Appellant misses the crucial point that the Committee does not rule on any bankruptcy matters *per se*.

100. In a similar situation to the case at stake, another creditor of the Appellant, Mr. Sprockel, decided to lodge an appeal before CAS in a pretty similar situation. In the CAS proceeding 2018/A/5647, the panel concluded in the following way:

"The FIFA DC is not prevented from reviewing, making a legal assessment and deciding if the New Club is the same as – and/or the successor of – the Old Club. In the case "CAS 2011/A/2646 Club Rangers de Talca v. FIFA", FIFA DC decided that Club Rangers de Talca (i.e., the New Club in that case) was liable for not complying with a FIFA decision against Club Social y Deportivo Rangers de Talca (i.e., the Old Club in that case) which was declared bankrupt. (...)".

101. In the above-mentioned Award, contrary to the Appellant's argument, it was confirmed by the CAS Panel that also in cases of bankruptcy, the FIFA respective judicial body is entitled to decide on the issue of sporting succession, if any of the creditors brings to its attention that a new entity might be considered as the sporting successor of the one which underwent to a bankruptcy proceeding.

102. Such conclusion results from the fact that, when analyzing the sporting succession, any possible sanction will not be imposed on the bankrupt entity (i.e., the Original CSKA) but on an entity that is not subjected to the strict regulations that govern bankruptcy law (i.e., the Successor CSKA).

103. Moreover, FIFA is not granting any privilege to any bankruptcy creditors but analyzing whether the DRC Decision was respected or not and is potentially ordering a non-bankrupt club as the Successor CSKA to abide by the decision.

104. The figure of sporting succession, which is to be understood in the context of *lex sportiva*, has never been limited to cases in which no insolvency or bankruptcy proceedings took place. According to this line of argumentation, the sporting succession and a bankruptcy proceeding are two separate issues: they are not interdependent on one another nor does the existence of one exclude the appearance of the other.

105. Furthermore, a finding of sporting succession does not have to derive necessarily from a "fraudulent conduct", nor does FIFA have to prove the existence of a "malicious intent". It's not a *conditio sine qua non* for the Committee or the Panel to be able to conclude that sporting succession occurred.

106. Nevertheless, the owners of the successor CSKA took advantage of the situation by acquiring the essential elements that conformed the original CSKA instead of saving CSKA from bankruptcy. This may be legally permissible but creates and undesirable situation in football, giving a *carte blanche* for clubs to disrespect their financial obligations and then manage to re-start their activities with a clean balance sheet at the expense of the clubs' pre-existing creditors.

107. FIFA does not deny that, as the Appellant states, *"cases in which state legal system allows the res judicata effect be extended to third parties, are rather rare"* and they do not recognize the figure of sporting succession. However, is not possible to ignore the reality of sports-related disputes. The reality of sports requires the competent adjudicating bodies to decide the dispute according to the general rules of *lex sportiva* in which the "legal principle" of sporting succession has been created and applied.

108. It is on this basis that, numerous CAS panels – not just the one of the Rangers de Talca case referred to by the Appellant – have already confirmed that a decision passed against an original club affects and binds the successor club.

109. There is no doubt that the Appellant was in a position to know about the existence of the FIFA decision and the consequences deriving from the use of the assets of the Old Club regarding his duty to comply with said decisions.

b. <u>The Appellant is not the successor of Litex-Lovech. It's the successor of the Old CSKA</u>.

110. The argument that the Appellant is the sporting successor of Litex Lovech and cannot be deemed to be the successor of two entities does not stand by its own. Firstly, no rule limits the number of entities that a company may succeed, and secondly the Appellant is not the successor of Litex Lovech.

111. The sole purpose of the shareholders of the Appellant in all these transactions involving Litex Lovech and CSKA has always been to benefit from the social and commercial benefits deriving from being identified as the Original CSKA.

112. As described in the Appeal Brief, following a change in ownership of the pre-existing company PFC Litex Lovech AD, the name of the entity and of the club were amended immediately after being acquired. This is also confirmed by the letter of FIFA of 23 November 2016 in which it took notice that *"from now on Litex Lovech operates under the name PFC CSKA Sofia"*. In other words, the same entity amended its name, nothing else.

113. For this reason, the legal entity continued to be liable for all its existing obligations (contracts and debts) while maintaining its rights (License in the First Professional

Football League). Hence, the Appellant cannot present itself as a new entity/club that voluntarily and altruistically opted to respect all obligations of Litex Lovech.

114. Besides the sporting license of Litex Lovech, the Appellant disregarded all the elements pertaining to said club who has been competing in lower divisions in Bulgaria. In practical terms, the supporters of Litex-Lovech do not have a club in the Bulgarian first division with whom they can identify, contrary to what happens with the fans of CSKA Sofia.

115. It is evident that the Appellant has sought to succeed the Old CSKA, as its sole purpose has always been to benefit from the social and commercial benefits deriving from being identified as the Old Club. As a matter of fact, only such identity with the Original CSKA serves to explain how the New CSKA managed to sign major sponsorship deals with two very big and relevant Bulgarian companies: Mtel (the largest telecommunications company in Bulgaria) and WinBet (a Bulgarian gambling company), already for the beginning of season 2016/2017.

116. There are numerous and relevant elements that demonstrate the existence of a sporting succession as these elements are shared between the Original CSKA and the New CSKA:

- name,
- history, titles and sporting achievements;
- colours;
- logo;
- registered address;
- stadium;
- internet domain.

117. It is undeniable that the Appellant has sought to be identified by the Old CSKA's fan base as the same successful Bulgarian club that, since 1948, had won over 30 national league titles, 4 Super cups and 20 Bulgarian cups, the last of which was won during the 2015/2016 season while the Old CSKA competed in third division.

118. The argument according to which the Appellant *"paid more than double what was necessary to cover all debts towards privileged creditors of CSKA, when purchasing intellectual property"* is not only not correct, but also irrelevant.

119. Since its creation in 1948, the football club CSKA Sofia has been continuously and uninterruptedly identified by its fans and by the general public until 2020.

120. CAS has relied in the past (CAS 2009/A/1996, CAS 2009/A/1881) on the *"general principle of law, expressed by the maxim "cuius commoda, eius et incommoda"*, meaning that the one who seeks and obtains a benefit must also accept the possible burdens which flow from that benefit.

121. Moreover, the Appellant has tacitly accepted to be deemed the sporting successor in four other cases in which the Committee reached the same conclusion concerning sporting succession and the Appellant chose not to appeal those decisions.

c. Other cases of sporting succession and similarities with this case

122. The Appellant tries to identify differences from FIFA's and CAS case law on the topic of sporting succession in an attempt to distance its situation from those other cases. FIFA, instead, wants to demonstrate that there are many similarities between the situations previously analyzed by FIFA and CAS and the present case.

1) FIFA Dispute Resolution Chamber 121505569

123. On 15 December 2015, the FIFA DRC considered a club to be the sporting successor of a former club based on the following elements:

- "Club G is registered at the same address as Club C;
- The official website of Club G is XXXX;
- The official e-mail address of Club G is XXXX;
- Club G started to participate in the competitions organized by the Football Federation of country D, the season immediately after the season when the Club C ceased to participate in the aforementioned competitions;
- Club G started to participate in the division immediately inferior to the one in which Club C was participating during the 2012-13 season and finished in a position leading to relegation".

124. The first 3 points above mentioned are shared *in casu* what therefore implies that there are more similarities between both scenarios than differences.

2) CAS 2007/A/1355 FC Politehnica Timisoara SA v. FIFA & FRF & Politechnica Stintia 1921 Timisoara Invest SA

125. Even though the Committee did not rely on this award to reach its conclusions, it is worth highlighting that similarly to this case, two entities shared an almost identical name, the same colours, the same history and the same logo. Since the clubs could not be differentiated from one another, the new club was ordered to change elements as to not confuse the general public by giving the impression that it was the old and historic Timisoara club.

126. This award allows to reinforce the irrelevance of the entity that runs a concrete club and the fact that clubs transcend the legal entities behind them, said similarities essential aspects may lead the general public to identify a given club with a historically successful one.

3) Tiburones Rojos: CAS 2011/A/2614, CAS 2012/A/2778 & CAS 2013/A/3425

127. The irrelevance of the line of defense that is based on the existence of different legal entities becomes even more evident when analyzing what was established in this three Awards:

"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; and on the

other side, 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 companies completely different from themselves".

4) 2011/A/2646 Rangers de Talca v. FIFA

128. Notwithstanding that there is a difference between the paths followed by the Appellant in the Rangers de Talca case and the Appellant of the present case to obtain their licenses, there are several similarities between them. The Panel on the Rangers de Talca case, in fact, ascertained that *"with the assets purchased to Club Social y Deportivo Rangers de Talca, it continued the activity formerly developed by the referred club with the same image, badge, hymn, representative colours, emblem [...]".* With this conclusion, the Panel considered irrelevant that the new club acquired several assets of the old club in order to determine if there was sporting succession between them.

129. Additionally, in the Rangers de Talca Case, the Panel concluded that since the new entity was not subjected to bankruptcy proceedings (similarly to what happens in the case at stake), it was not legally prevented from paying the debt and *"thus, should, at least theoretically, bear the consequences of such failure to pay".*

130. In light of all the above, the Appellant is certainly not the successor of Litex Lovech but the successor of CSKA Sofia. The numerous elements described above reveal that the Appellant is identified, to all effects, as the club that was incorporated in 1948 and which has won numerous titles.

d. The Creditors' conduct did not contribute to the Appellant's breach

131. It is undisputed that the Player appeared to the bankruptcy proceeding and requested its inclusion in the creditor's list of the bankrupt entity.

132. Whether the Player's credit was included *ex officio*, as per his request or if an appeal was lodged once the complete amount was not recognised does not –at least in this case– make a difference when it comes to analysing the Successor CKSA's liability vis-à-vis complying with decisions passed against – and not respected by – the Old CSKA.

133. FIFA underlines that, according to CAS jurisprudence (CAS 2015/A/4162), it is free *"to determine and require conditions for the recognition of foreign insolvency proceedings"*, when it comes to evaluating the required degree of diligence of a creditor in the context of a violation of the Art. 64 2017 FDC. The Committee is also free "to determine and require conditions" to consider a creditor diligent.

134. Consequently, there are no valid arguments that may support a finding that the Appellant is not liable anymore to pay the amounts owed due to a hypothetical lack of diligence of the Player.

e. The Appellant's violation of Article 64 FDC (Art. 15 – Failure to respect decisions

135. Pursuant to Article 64 2017 FDC (Art. 15, para. 4, 2019 FDC), anyone who fails to pay another person – such a player, a coach, or a club – a sum of money in full or part, even though instructed to do so by a body, a committee or an instance of FIFA or a subsequent CAS appeal decision:

- will be fined for failing to comply with a decision;
- will be granted a final deadline by the judicial bodies of FIFA in which to pay the amount due;
- if it is a club, it will be warned and notified that, in the case of default or failure to comply with a decision within the period stipulated, points will be deducted or demotion to a lower division ordered. A transfer ban may also be pronounced.

136. In the scope of proceedings under Article 64 2017 FDC, the Committee cannot review or modify as to the substance a previous decision, which is final and binding and thus has become enforceable. Consequently, the Committee has the sole task to analyze if the debtor complied with the final and binding decision of the relevant body.

137. In this respect, the CAS has clearly stated in a similar case (CAS 2011/A/2476) the following:

"Clubs are not to be permitted to create a new company or change their legal structure so as to "clean up" their balance sheet while leaving their debts in another legal entity (which is likely to go bankrupt). If allowed, this kind of device would obviously harm the integrity of competition and would contradict the interest of the sport as well as putting at risk the interests of creditors".

138. This is exactly what happened in this case, as the Appellant has taken all elements that conform the well-known club CSKA Sofia in order to continue the activity of the Old CSKA and, therefore, benefit from its pre-existing fan base, commercial value and popularity while attempting to disregard the outstanding debts of the club that it fervently wishes to be.

139. In sum, it is without a doubt that the Committee correctly applied Article 64 2017 FDC to the facts at its disposal in the case at stake; in particular, considering that the Appellant, as the sporting successor of the Old CSKA, had breached said Article by not complying with the final and binding FIFA decision.

140. Nevertheless, and for the sake of completeness, FIFA underlines that the Appealed Decision is in line with the longstanding jurisprudence of the Committee and confirmed by CAS. Indeed, the imposed fine and sporting sanction cannot be considered excessive, it is proportionate to the amount due and its imposition is justified by the Appellant's attitude, which failed to settle its debt.

141. In light of all the above, the Appellant's appeal shall be rejected and the Appealed Decision confirmed, thereby ordering the New CSKA to pay the debt owed to the Player or to undergo the sanctions specified therein.

VI. JURISDICTION OF THE CAS

142. The jurisdiction of the CAS, which is not disputed by the parties, derives from Article R47 of the Code in connection with Article 57 para 1 and R58 para 1 of the FIFA Statutes.

143. Article R47 of the 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."

144. Articles R57 para 1 of the FIFA Statutes reads as follows:

"FIFA recognizes the independent Court of Arbitration for Sport (CAS) with headquarters in Lausanne (Switzerland) to resolve disputes between FIFA, member associations, confederations, leagues, clubs, players, officials, intermediaries and licensed match agents..."

145. Article R58 para 1 of the FIFA Statutes reads as follows:

"Appeals against final decisions passed by FIFA's legal bodies and against decisions passed by confederations, member associations or leagues shall be lodged with CAS within 21 days of notification of the decision in question."

146. The jurisdiction of the CAS is not contested by the Parties and was further confirmed by the Order of Procedure duly signed by the Parties.

147. It follows, therefore, that CAS has jurisdiction in this appeal.

VII. ADMISSIBILITY

148. Article R49 of the Code provides as follows:

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

149. Article 58.1 of the FIFA Statutes (2019 ed.) states:

"Appeals against final decisions passed by FIFA's legal bodies and against decisions passed by confederations, member associations or leagues shall be lodged with CAS within 21 days of notification of the decision in question."

150. The Panel notes that the admissibility of the Appeal is not contested by the Parties. The grounds of the Appealed Decision were notified to the Parties on 29 October 2020. The Appellant's Statement of Appeal was filed on 11 November 2020, *i.e.*, within the 21-day deadline established by Article 58 of the FIFA Statutes and Article R49 of the CAS Code.

151. Consequently, the appeal filed by the Appellant is admissible.

VIII. APPLICABLE LAW

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

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

153. In addition, Article 57.2 of the FIFA Statutes stipulates the following:

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

154. As such, the Panel is satisfied to primarily apply the various regulations of FIFA, in particular the FIFA Disciplinary Code and, subsidiarily, Swiss law shall be applied should the need arise to fill a possible gap or *lacuna* in the various regulations of FIFA. However, and considering the specificities of the current appeal case, in matters related to national bankruptcy proceedings, Bulgarian law is applicable.

IX. MERITS OF THE APPEAL

155. The present Appeal has been filed against a decision by means of which the Appellant is considered to be the sporting successor of the Old CSKA and therefore is found guilty of failing to comply in full with the decision issued by FIFA on 25 September 2015 according to which the Old CSKA was ordered to pay to the player Sergio Filipe Dias Ribeiro an amount due to outstanding remuneration and compensation for breach of contract.

156. In view of the Appealed Decision and the Parties' submissions and requests, the Panel, before entering into the merits of the present case, deems it appropriate to identify and

define the main issues that shall be analysed and resolved in the case at stake which are the following:

i. Was the FIFA DC entitled to open disciplinary proceedings against the Appellant and to issue a decision in accordance with Article 64 of the 2017 FDC?

ii. Shall the Appellant be considered as the sporting successor of the Old CSKA?

i. If there is sporting succession, was the creditor diligent enough in order to recover its debt in the bankruptcy proceedings? And if affirmative, is the creditor entitled to obtain the outstanding amount from the New CSKA?

i. Was the FIFA DC entitled to open disciplinary proceedings against the Appellant and to issue a decision in accordance with Article 64 of the 2017 FDC?

157. The Panel notes that the Appellant claims that it is a long-standing practice of the FIFA DC that in cases in which a bankrupt and disaffiliated club is subject of disciplinary proceedings, FIFA is no longer in a position to intervene in the enforcement of decisions against the bankrupt entity as its national bankrupt court has the most extensive competence to duly manage such proceedings.

158. The Appellant considers that this line of jurisprudence shall also be applicable in cases in which sporting succession may arise and therefore alleges that FIFA should be prevented to initiate any kind of action against its possible successor due to decisions that affected the bankrupt club as it would be directly interfering in the bankruptcy proceeding.

159. In light of the above, the Appellant's conclusion is that FIFA has to respect in its entirety the final decision issued by Sofia City Court as the principle of equal treatment of all creditors established by the Bulgarian Law shall not be infringed by a FIFA decision that may grant the First Respondent a privilege over the rest of national creditors of the Appellant. Therefore, the decision issued by the courts of Bulgaria by virtue of which part of the credit of the Player was not recognized due to missing documents that could accredit its existence shall be respected.

160. On the other hand, the Second Respondent considers that the FIFA DC is entitled to impose disciplinary sanctions taking into account what is established in Article 64 of the 2017 FDC if the New CSKA is to be considered as the sporting succession of the Old CSKA in line with was has been established by FIFA and CAS jurisprudence in this regard. Therefore, FIFA considers that the FIFA DC is entitled to firstly analyze the potential sporting succession existing in the present case if any of the creditors brings to its attention that a new entity might be considered as the sporting successor of the bankrupt club. In this regard, FIFA expressly refers to the CAS case 2018/A/5647 in which the Panel concluded that *"The FIFA DC is not prevented from reviewing, making a legal assessment and deciding if the New Club is the same as – and/or the successor of – the Old Club"*. In this sense, the Second Respondent considers that the abovementioned conclusion also applies to those cases in which the Old Club went bankrupt and therefore such facultative competence is not circumvent only to those cases in which the Old Club is still existing.

161. FIFA reaches such conclusion as it considers that when analysing the sporting succession, any possible sanction that may hypothetically be imposed, will revert not on the bankruptcy entity but on an entity that is not subject to the regulations that govern bankruptcy law. In this regard, the Second Respondent considers that the bankruptcy proceeding and the FIFA Disciplinary proceeding in which the potential sporting succession is analysed are two parallel and separate proceedings that are not interconnected.

162. Regarding the Appealed Decision, the Committee analysed this issue and finally concluded that it effectively had jurisdiction and competence to analyse the case at stake and therefore was entitled to resolve a disciplinary proceeding regarding the potential failure to comply with the CAS decision taking into account what was established in Article 64 of the 2017 FDC (applicable to the case at stake) as the New CSKA, in light with the FIFA and CAS jurisprudence, shall be considered as the sporting successor of the Old CSKA.

163. In this regard the Panel wishes to note that the referred Article 64 of the 2017 FDC, reads as follows:

"1. Anyone who fails to pay another person (such as a player, a coach or a club) or FIFA a sum of money in full or part, even though instructed to do so by a body, a committee or an instance of FIFA or a subsequent CAS appeal decision (financial decision), or anyone who fails to comply with another decision (non-financial decision) passed by a body, a committee or an instance of FIFA, or by CAS (subsequent appeal decision):

a) will be fined for failing to comply with a decision;

b) will be granted a final deadline by the judicial bodies of FIFA in which to pay the amount due or to comply with the (non-financial) decision;

c) (only for clubs:) will be warned and notified that, in the case of default or failure to comply with a decision within the period stipulated, points will be deducted or relegation to a lower division ordered. A transfer ban may also be pronounced;

d) (only for associations) will be warned and notified that. in the case of default or failure to comply with a decision within the period stipulated, further disciplinary measures will be imposed. An expulsion from a FIFA competition may also be pronounced ..."

164. The particularity of the present case lies in the fact that the Old CSKA, that was condemned by the FIFA Decision, to pay certain amounts of money to the Player, is no longer affiliated to FIFA as the club underwent a bankruptcy proceeding and was liquidated, what therefore implies, that the directly infringing party is no longer existing. The controversial situation arises as the New CSKA shares an important amount of intangible assets with the Old CSKA and therefore can be potentially considered as the sporting successor of the Old Club. In such situation, the question that arises is the following: Can the sporting successor be considered liable for infringing the FIFA

regulations by non-complying with the decision issued decision, in light of what is established by Article 64 of the 2017 FDC?

165. In this sense, Article 15 of the 2019 FDC, in line with what is established by FIFA and CAS jurisprudence, establishes 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."* The majority of the Panel wishes to note that this provision is the result of the codification of FIFA and CAS jurisprudence that have extensively faced with cases in which a club went bankrupt and failed to satisfy its main obligations and have consistently reached said conclusion. This conclusion included in said Article 15 comes from a long-standing line of jurisprudence from both FIFA and CAS that reaches said same conclusion in line with Article 64 of the 2017 FDC.

166. Regarding the effect the bankruptcy proceeding may have in the case at stake and if the existence of said proceeding somehow prevents the FIFA deciding body or CAS to adopt a decision regarding the potential sporting successor of the bankrupt club, the Panel wishes to refer to the conclusion reached by the Panel in case 2020/A/6831 in this regard when it states the following:

"However, what this provision does not explicitly address at all, is the manner in which succession has occurred. Article 15(4) does not distinguish between different ways of succession. In principle, this could happen through direct purchase of the assets of the club. Actually, this is in practice the usual succession, as bankruptcies are less frequent and the legislative framework, at least in some quarters, has been enriched to avoid their occurrence, at, at the very least, reduce its frequency. This is precisely, and inter alia, what the UEFA FFP (Financial Fair Play) Regulations was meant to achieve.

[...]

In other words, in the Panel's view, by not prejudging the manner in which sporting succession occurs, Article 15 4 concerns all cases of sporting succession. Yet, it also should be clear that even if the Panel will reach the conclusion that a given entity is a sporting successor of another club by examining the existence of the various elements listed in Article 15 (4), still the Panel may decide, with reasons of course, that the new entity under scrutiny, now announced as "sporting successor" should not bear liability for the all or part of the debts incurred by the club to which it is successor, exactly as was decided in CAS 2011/A/2646 where the Panel found that the entity that was the sporting successor does not bear responsibility towards – in this case – a specific debtor."

167. In this same sense, the CAS case 2020/A/6884 establishes when referring to the existence of sporting succession when a bankruptcy proceeding has been initiated regarding the former club:

"The Sole Arbitrator finds that even if bankruptcy proceedings took place, sporting succession can still exist.

[...]

In addition, and for the avoidance of further doubt, the fact that bankruptcy proceedings are also not mentioned in light of Article 15 4 of the 2019 FIFA DC, as submitted by the Second Respondent, does not mean that such provision should not be applicable to the present arbitration. Moreover, the fact that such provision was created to avoid abuse of clubs trying to escape from financial obligations, is also not put in doubt by the Sole Arbitrator. However, the Sole Arbitrator wishes to underline that even if any abuse is absent or cannot be demonstrated, Article 15 4 of the 2019 FIFA Disciplinary Code can still apply. As a consequence, the Sole Arbitrator concluded that FIFA DC did not misapply such provision by opening disciplinary proceedings against the Second Respondent."

168. The majority of the Panel considers that there is no reason of such entity as to deviate from the argumentation and the conclusion reached by the Panel and the Sole Arbitrator in the referred CAS cases when analyzing a similar situation regarding the same club. The Panel indeed agrees with said conclusion and notes that nothing established in FIFA's Regulations seems to prevent the deciding body to analyse and impose the consequences of sporting succession when the new club is to be considered the sporting successor of a bankrupt club. The FIFA Regulations do not expressly or indirectly exclude from the sporting succession rule the cases in which bankruptcy proceedings occur. The Panel wishes to firstly clarify that Article 107.b of the FDC that entitles the FIFA DC to close any disciplinary proceedings when one of the Parties involved is declared bankrupt shall not be applicable to the case at stake. In this regard, the disciplinary proceedings opened and concluded by the FIFA DC by means of the Appealed Decision involves the potential sporting successor of the Old CSKA, not the bankrupt club itself. In light of the above conclusion, the Panel considers undisputed that the party that has been declared bankrupt is not a party in the present proceedings and therefore the abovementioned Article shall not be applicable to settle the present dispute as any decision adopted by this Panel will not interfere the bankrupt entity in any manner.

169. The Panel agrees with the idea that it is bound by the decisions adopted in the bankruptcy proceedings regarding the Old Club and that therefore no decision can affect in any manner the entity that is undergoing bankruptcy proceedings as stated in Article 107 of the FDC. In the case at stake, the decision adopted by FIFA and/or the Panel affects exclusively the New Club and it is the regulations of a Swiss private entity to which the New Club is adhered, what is applicable. It is without saying that the Panel respects the decisions adopted in any bankruptcy proceedings and has no intention whatsoever in contravening the Bulgarian law or interfering in any way in the bankruptcy proceedings conducted in Bulgaria. The Panel considers itself entitled only to analyse the application of the FIFA Regulations and the decision adopted by the FIFA DC taking into account the FIFA and CAS jurisprudence. In light of the above, the decision adopted by this Panel shall not affect in any way the bankrupt club or the bankruptcy proceedings and shall only affect the Appellant, if any sanction is to be applied.

170. When analysing the rationale of Article 64 of the 2017 FDC, the Panel wishes to start by pointing out that, as the Appellant insightfully alleges in its Appeal Brief, most jurisdictions worldwide recognize in their legal system as one of their main legal principles that an entity is not bound by the actions of a third party nor should be responsible for the obligations incurred by said party. In this same regard, the Panel also

agrees with the Appellant with its allegation that *res judicata* cannot be extended to third parties.

171. Despite the above, the Panel agrees with the reasoning in the CAS case 2020/A/6884 regarding the *res judicata* effect that establishes the following: *"If there are different Parties in the further arbitration proceedings, the prior award will not have conclusive and preclusive effects on a different party (DE LY7SHEPPARD, ILA Final Report on Res Judicata and Arbitration, Arbitration International, Vol 25, N° 1, 2009, p.76). [...]"*. The Panel agrees with said argument and with the conclusion reached in the Award regarding the lack of res judicata effect in any previous decision regarding the Old CSKA.

172. In line with the above, the Panel considers that FIFA, as a Swiss private institution, has approved its own set of rules that is equally applicable to all the sporting stakeholders worldwide with the aim of creating a fair and just legal framework that respects the principle of equal treatment between the different members of the football community.

173. Therefore, FIFA's long-standing jurisprudence has considered that when a football club is to be considered the sporting successor of a former club, this new club shall automatically be considered as non-compliant if the former club has any pending FIFA or CAS decision that has not been complied with.

174. The majority of the Panel considers that the concept of sporting succession shall not be compared with the legal succession figure that is regulated by most of the jurisdictions. In this regard it is without saying that all members of FIFA that are under its scope shall comply with the FIFA regulations and are subject to disciplinary sanctions imposed by FIFA when they do not comply with its provisions.

175. This sporting succession rule aims to provide legal protection to sports creditors who, from a certain moment, due to the submission of the debtor club to insolvency/bankruptcy, extinction or simply dissipation of assets, no longer enjoy FIFA protection for the collection of its credits owed by the Old Club. In this regard with the sporting succession concept that was firstly recognized by the FIFA and CAS jurisprudence and finally expressly included in the FDC itself, FIFA intends to avoid that a new club can benefit from the sporting assets that define and distinguished the old club without having to comply with its sporting pending and recognized liabilities.

176. Therefore, the implementation of the sporting successor concept provides a sporting creditor with efficient means to obtain the payment of monetary claims against the "sporting successor" of a non-compliant debtor and intends to protect football stakeholders by preventing the no compliance of the football club's financial obligations towards them.

177. The majority of the Panel also wishes to note that it agrees with what has been established regarding the application of Article 15 of the 2019 FDC in the CAS case 2020/A/6831: *"This provision, thus, aims to promote both contractual stability, as well as equality of (sporting) competitive conditions. The CAS Panel saw great force in this reasoning, to which it adheres. Unless if the sporting successor were bound by the liabilities incurred by the predecessor, both contractual stability, as well as equality of competition*

conditions would be imperilled." The Panel totally agrees with such conclusion as the protection of not only the club's creditors but also the competitors and the competition itself is necessary. If the sporting successor was totally exonerated of having to comply with the liabilities incurred by the former club and therefore was permitted to maintain an evident sporting continuity between the new and the old club and take economic and sporting advantage of the former club without having to comply with its recognized debts, this situation would gravely endanger the proper competition itself (CAS 2011/A/2614). The core objective of said provision is that football clubs respect their financial obligations and that all creditors' debt is respected and complied with.

178. In light of the abovementioned conclusion, the Panel considers itself entitled to analyse the potential existence of sporting succession what would automatically imply that the Appellant, taking into account that the Old CSKA did not comply with the FIFA decision of 25 September 2015, would have to be considered also a non-compliant party for not having complied with the referred FIFA decision and therefore subject to disciplinary sanctions in light of what is established by Article 64 of the 2017 FDC.

179. Moreover, and regarding the disciplinary power of the FIFA DC in the present case, the Panel is of the opinion that the FIFA DC shall be considered competent to issue the Appealed Decision in virtue of FIFA's disciplinary power regarding its affiliates as it is established by Article 53.2, 56 and 61 of the FIFA Statutes. The Appellant, being an indirect member of FIFA, is obliged to comply with the FIFA regulations applicable in each case.

180. As it has been recognized by the CAS and the Swiss Federal Tribunal ("SFT") on countless occasions, the above argument is nothing more than a manifestation of the fundamental right of freedom of association ("*liberté d'association*"), which allows Swiss private associations to impose sanctions or disciplinary measures on their members in the event of non-compliance with its regulations.

181. Indeed, in their case law, both the CAS and the SFT have clearly established that Swiss law empowers a private association such as FIFA to impose sanctions on its members for non-compliance with its regulations (CAS 2019/A/6309, 2006/A/1175, CAS 2013/A/3358), precisely in order to ensure, or at least promote, compliance with its proper regulation. In accordance with said jurisprudence, when a private association such as FIFA promulgates norms and rules aimed at fulfilling its associative purposes, it is perfectly admissible to establish a procedure for imposing sanctions to ensure that its members comply with their obligations (ATF 4P.240 / 2006).

182. In light of all the above, the majority of the Panel considers that the FIFA DC is entitled to open disciplinary proceedings against the Appellant and issue a decision in accordance with Article 64 of the 2017 FDC if it has to be considered as the sporting successor of the Old CSKA as nothing prevents FIFA from applying its own regulation and jurisprudence.

ii. Shall the Appellant be considered as the sporting successor of the Old CSKA?

183. In order to study if the New Club is the sporting successor of the Old Club, it is necessary to analyse and take into account what has been established by the FIFA and CAS jurisprudence regarding sporting succession and that was codified by FIFA in Article 15 of the 2019 FDC as it has been established above. Said Article establishes the following when referring to the criteria that shall prevail in the analysis of sporting succession cases:

"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."

184. The abovementioned Article, following what has been established by FIFA and CAS jurisprudence, clearly does not create a closed list of criteria that has to be met in order to consider that there is sporting succession, but sets indicatively some criteria that are being taken into consideration by FIFA and CAS in order to decide whether a club shall be deemed as a sporting successor of a former club. In light of the lack of concreteness of the applicable law, there is a vast majority of CAS Awards that analyse the above-mentioned criteria in different ways what does not create a robust and unified jurisprudence in this regard and leaves the analysis of said situation to be decided on a case-by case basis. Therefore, the Panel does not consider itself to be bound by any prior decision of FIFA and CAS regarding what criteria shall be met in order to conclude that sporting succession exists, specially taking into account that there is not a uniform understanding of which are the decisive elements in this regard in the proper FIFA regulations.

185. Regardless of the above, the Panel shall not turn a blind eye to those cases in which the Appellant is directly involved. This is the case of the recent CAS cases 2020/A/6884 and 2020/A/6831 in which the sole arbitrator in the first case and the Panel in the last one already extensively and accurately analysed if the New Club shall be considered as the sporting successor of the Old Club. The Panel considers that it is important to take previous CAS decisions, which are relevant to the case at stake, into due consideration, for reasons of legal predictability and stability. Consistency of interpretations is desirable whenever possible and justified, in order to establish and increase the level of confidence and legal certainty of the existing system. It certainly would not be desirable for the legal certainty of football stakeholders that contradicting decision could be issued regarding the same club as an obvious and undesired legal uncertainty would overfly not only the club at stake but the football community as a hole. However, the Panel also notes that consistency shall not take precedence over correctness, because continuing a wrong practice does not serve justice, but makes thing only worse.

186. Despite the above, the Panel wishes to take a look to the criteria set out in the FIFA and CAS jurisprudence and thoroughly analyse if the New Club has to be considered as the sporting successor of the Old Club as the abovementioned CAS cases have already concluded.

187. As a starting point, the Panel wishes to point that what has to be analysed is strictly if the New Club is the sporting successor of the Old Club taking into account what is established in this regard by the FIFA regulations and the FIFA and CAS jurisprudence and has to

deviate from the concept of legal succession that operates in the vast majority of jurisdiction worldwide. As it has been established in the abovementioned CAS case 2020/A/6884 *"the question is not whether the Second Respondent is the legal successor of the Original Debtor. The central question to address by the Sole Arbitrator is whether or not the Second Respondent is the sporting successor of the Original Debtor"*. The concept of sporting succession shall therefore be analysed taking into account the referred *lex sportiva* that governs this legal approach.

188. In this regard, it is worth noting that there is a significant number of CAS awards that have previously dealt with this legal concept of sporting succession and have created a well-established jurisprudence that has concluded what circumstances and criteria have to be taken into account, regardless of the importance given by each Panel to each of them, to consider a club as the sporting successor regardless of the legal form under which the respective clubs have been operating (CAS 2011/A/2614, CAS 2011/A/2646, CAS 2013/A/3425, CAS 2016/A/4550 among others).

189. The Panel therefore considers that the starting point for the analysis of sporting succession must be the meaning of "sports club", taking into consideration that a club has a series of specific features that identify and distinguish it from other clubs, including its name, clothing colours, logos and other emblems, fans, history, sports achievements, its town or city and stadium, among other factors. Such circumstances or characteristics develop over a long period of time and tend to be permanent and shape an image of what the general public understands or considers to be a club. All these criteria are only relevant though, if they are the property of the old club, since Art. 15 of the 2019 FDC clearly states that *"[c]riteria 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, ...".* (emphasis added). Furthermore, in case the criteria mentioned were in the property of the old club, it is also relevant whether the new club acquired them at arms' length. In the latter case, the use of these criteria is no indication of sporting succession, but for a simple commercial transaction.

190. As it has been above-mentioned, the elements taken into account by the FIFA and CAS jurisprudence are not included in an exhaustive and closed list of elements. Even Article 15 of the 2019 FDC makes it clear that the list is just indicative and not exhaustive as it uses the words "among others". This entitles the Panel to take into account any other element it considers necessary in order to establish if there is sporting succession. In this regard, the existence of several elements can lead, in its combination, and taking into account the particularities of the case, to reach the conclusion that it exists sporting succession although not all elements are met in a specific case. The overall analysis is required as the Panel needs the full picture of both clubs in order to take a decision in this regard as there is no *numerus clausus* that the Panel has to follow in its analysis. The assessment of whether sporting succession exists is therefore left to be decided in the hands of the adjudicatory body in each case.

191. When analysing the criteria established by the FIFA and CAS jurisprudence and taken into account in the Appeal Decision by FIFA, the majority of the Panel respects and agrees with the analysis done in the CAS cases 2020/A/6884 and 2020/A/6831 and by the FIFA decisions regarding the Appellant adopted in the recent years.

192. It is undisputed by the Parties, and has already been noted by the previous FIFA and CAS decisions regarding the Appellant, that both clubs, the Old CSKA and the New CSKA, share an important amount of the intangible assets that identify and distinguished the historical CSKA from the rest of the stakeholders of the football community. In this regard the majority of the Panel founds relevant to note that indeed both clubs share the same name, colours, logo, registered address and therefore headquarters, the public stadium and the internet domain among others. All these elements, that undoubtedly identify a club, are identical between them. In this regard, it shall be concluded that the New CSKA has acquired and maintained generating a clear continuity perception not only towards the historical CSKA fanbase but also with the rest of the football fans in Bulgaria and worldwide.

193. Regarding the above elements, the Appellant alleges that the shareholder of the entity running the New Club acquired, in exchange of an important amount of money, that is to say EUR 4.000.000, the IP rights of the Old Club in a public tender that was offered within the bankruptcy proceeding. Consequently, the Appellant considers that by acquiring the IP rights by double what was necessary to cover all debts towards privilege creditors of CSKA, there was no circumvention of any or all the financial obligations of the Old Club, on the contrary the Appellant alleges it has proven that it even paid a substantive amount of money to acquire and use all the IP rights such as the logo, name and history of the club and therefore consider that they did not incur in any fraudulent conduct whatsoever.

194. Regarding the IP rights acquisition, the Panel agrees with the conclusion reached not only in the Appealed Decision but mainly in the above-mentioned CAS case 2020/A/6884 that already had taken into account this issue regarding the Appellant and concluded as follows:

"However, without entering into the question about the intention, in terms of good or bad faith, of the Second Respondent, and whether or not the Second Respondent always acted transparent (taken note of the substantial number of documents as submitted by the Second Respondent in order to demonstrate its acting), this is not a decisive element in light if sporting succession."

195. The Panel notes that there is no evidence on file that the New Club intended to circunvent the club's financial obligations or to defraud the club's creditor. The majority of the Panel finds, however, that is somehat difficult to jutify the new owner's course of action when acquiring the licence of a minor Bulgarian football club to automatically change its name and try to acquire the IP Rights of CSKA Sofia. It has to be taken into account that the new owners had at least the possibility of acquiring the former CSKA, if their intention was to use the elements of the former club and use its intangible assets. The IP rights acquisition – besides the fact that the owners of the New club are totally different from the club's owner – shall in the view of the majority of the Panel not be considered as an element that gains such importance in the case at stake that implies the automatic rule out of the sporting succession as it is wisely concluded in the abovemntioned CAS case 2020/A/6884.

196. The majority of the Panel is satisfied, at least to a satisfactory extent, that the main aim of the shareholders of the New CSKA is to give continuity to the values and the history that has always been connected to the historical club of the city of Sofia. Therefore, there is a clear umbilical connection with the history, the fanbase and the most relevant intangible assets that define and distinguish a club from the rest. Although the Panel may consider that the new owners did not create the club with the fraudulent intention of misleading the financial obligations of the former club, the majority of the Panel does not wish to turn a blind eye to the fact that the New CSKA is indeed taking advantage of all the history gained by the Old CSKA in the past what clearly implies a sporting and economic benefit for the New Club.

197. The Panel also considers that the new owner had the possibility of trying to make a clear distinction between both clubs, maybe by using some of the assets that they acquired in the public tender but making a clear distinction between the two clubs in order that the football community did not consider that a sporting continuity occurred between them. The Panel does consider the intention of the New Club as a decisive element in order to analyse the existence of sporting succession. The history of a club is perhaps the most important element in this context, since it contains the events that occurred in the past and highlights the relevant milestones in the existence of something. The reality of the case at stake is that the history of the club is only one in time regardless of the legal entity that has been operating the club in the past.

198. The Panel also notes that this approach is also sustained in the CAS case 2011/A/2614 in which the Sole Arbitrator establishes the following:

"Therefore, it is not congruent to maintain that the Club's history should be divided, in order to assume only the "assets "and not the "liabilities" of the same. That is to say, it is not congruent that ADELANTE has occupied all the sports coverage of the Club, from its origin, but is not responsible for obligations incurred by the previous administrator." (Free translation)

199. In this regard it is also worth noting what has been established by the CAS in the past in similar situations, as the CAS case 2011/A/2646 ended by concluding that a new club was to be considered as the sporting succession of the old club despite that the owner of the new club had acquired the economic unit composed of all assets seized from the former club in the bankruptcy proceeding. In said case the Panel considered that the important element was that the new club, by purchasing the assets of the old club, continued the activity formerly developed by the old club and therefore had to be considered as the sporting succession of the Old Club.

200. The Panel is of the opinion that FIFA legitimately intends to protect and veil for the interest of its members and football stakeholders and tries to comply with the principle of equal treatment between them that is the main aim under the promulgation of the referred Article 15 of the 2019 FDC and the FIFA and CAS regulation in this regard.

201. In light of all the above, the Panel considers that the prerequisites for the existence of sporting succession between the Old Club and the New Club are complied with and

therefore is in line with the recent CAS cases 2020/A/6884 and 2020/A/6831 and considers that the Appellant shall be considers as the sporting successor of the Old CSKA.

iii. To what level is the New Club liable?

202. Regarding the legal consequence of the sporting succession, and taking into account what is established by some of the jurisprudence of FIFA and CAS in this regard, as well as what is stated in Article 15 (4) of the 2019 FDC, the majority of the Panel notes that if the old club was considered a non-compliant party, the new club, as the sporting successor of the old club, shall also be considered as a non-compliant party and thus subject to the obligations under the FIFA Regulations. This conclusion undoubtedly produces that the sporting succession entails an economic succession regarding the sporting liabilities that are already recognized by a FIFA or CAS final decisions that was not complied with by the former club.

203. Regarding the extent of the liability on the case at stake, the majority of the Panel considers that it is not for this Panel to decide on the concrete amount that was owed by the Old Club to the Creditor as the Panel considers itself bound by the previous FIFA Decision in this regard. The particularities of the amount owed were already thoroughly analysed in those proceedings and finally the deciding body decided to adopt the final and binding decision that was not appealed by the Old Club.

204. What this Panel is entitled to do is to analyse if the Old Club has complied with said decision and proceeded to pay the outstanding amounts to the Creditor or if the Creditor was diligent enough in the bankruptcy proceedings in order to collect its debt in said forum. In this regard it is undisputed that those amounts remained outstanding as the Old CSKA did not comply with the final and binding FIFA Decision.

205. In light of the above, the majority of the Panel notes that the New CSKA, as the sporting successor of the Old CSKA, is bound by said FIFA Decision and is therefore liable for the potential non-compliance of the same in the exact conditions as it was adopted back in 2015. In addition, the majority of the Panel is of the opinion that it is not the bankruptcy entity in Bulgaria the one that has to establish to what extent is the New CSKA liable for the sporting decisions that were not complied with by the Old CSKA. The Panel does not intend at all to interfere in the bankruptcy proceedings opened in Bulgaria and considers these CAS proceedings regarding the New CSKA as a parallel proceeding to the one initiated in Bulgaria and that will potentially affect a new entity that is not a party in the bankruptcy proceedings.

206. In this regard, the Panel wishes to note that all bankruptcy national regulations worldwide intend to protect the equal treatment of all the creditors of the bankrupt entity. It shall be noted that obviously not all national laws regulate this kind of procedures in the same way and there are significant differences between jurisdictions. The Panel also considers worthy to remark that these bankruptcy national regulations do not veil for the equal treatment of all the sporting members of the so-called FIFA family nor pretend to protect the competition equality between them. This last objective is precisely what is intended by the FIFA regulation and the so-called *Lex Sportiva.*

207. In light of the above, the majority of the Panel notes that FIFA, veiling for the interest of all its members and the football community as a whole, decided to introduce, for the first time in its 2019 FDC, the sporting succession rule whose core objective is to protect sporting creditors and the proper competition itself trying to ensure that if a club goes bankrupt and leaves sporting creditors with outstanding amounts, in case a sporting successor is acting using the main assets of the former club, is this new club the one that has to be considered liable for not complying with any pending decision of the former club. There has been an evident increase in the cases of bankrupt clubs in the last decade, leaving behind an important amount of sporting creditors unpaid what has produced a proliferation of sporting cases recently.

208. This reality that has affected the football community worldwide is what has made FIFA not only implement a stricter financial control over clubs through the different federations, but also has introduced the referred sporting succession protection mechanism that enables FIFA to consider the sporting successor of a non-compliant party to be also a non-compliant party. This sporting succession rule has been introduced by FIFA with the approval of the football community and forms part of the *lex sportiva* that governs football worldwide and that has to be respected by all football stakeholders. The majority of the Panel is of the view that FIFA does not intend to rely this protection only in the proper bankruptcy laws worldwide but includes in its regulation a provision that aims to unify said protection and veil for the interest of football stakeholders in an equal manner. Therefore, the majority of the Panel considers that what has to be taken into account by the Panel is the well-known *Lex sportiva* and the proper regulations established by a Swiss private institution to which the New Club is bound as it is a member of the same in order to decide if the New Club has to be considered liable for not complying with the relevant FIFA decision in light of what is established by Article 64 2017 FDC.

209. In light of all the above, the majority of the Panel is of the opinion that the extent of the liability of the New CSKA is established in the FIFA Decision and that said amounts shall be respected with the exception of those cases in which the sporting creditor has explicitly or tacitly accepted or agreed a different amount in the bankrupt proceeding. In those cases, the Panel would be bound by said decision and shall respect the outcome of the bankruptcy national proceedings.

iv. If there is sporting succession, was the creditor diligent enough in order to recover its debt in the bankruptcy proceedings? And if affirmative, is the creditor entitled to obtain the outstanding amount from the New CSKA?

210. The Panel wishes to start by noting that when a sporting succession is not triggered by the inability of a club to face its financial obligations and, consequently, no bankruptcy proceedings has been opened regarding the former club, as a general rule, what the Panel or the FIFA deciding body has to assess is whether, in light of the specific sports' parameters established in the abovementioned Article 15 2019 FDC, the new club can be considered as the sporting successor of the old club.

211. The situation is slightly different when, instead, the events ultimately resulting in the succession were triggered by the old club's financial difficulties and the ensuing bankruptcy proceedings. It should go without saying that, in such occurrence, after having decided on the issue of sporting succession, the Panel or the relevant FIFA deciding body has to conduct a second analysis to potentially decide if the new club has to satisfy the debts incurred by the old clubs and recognized by an enforceable FIFA or CAS decision, if any, facing a scenario in which (i) State laws and public order prerogatives are involved and (ii) the equal satisfaction of other creditors of the party under insolvency is concerned.

212. If this last referred situation is the one at stake, once the potential sporting succession has been established, a decision has to be taken regarding the enforceability of the debts that have been already recognized by FIFA or CAS regarding the creditor and the former club.

213. In light of the above, the Panel considers that in order to assess if the New Club is liable for non-complying with a CAS decision in the case at stake, it shall bear in mind the spirit of the bankruptcy proceedings and respect the bankruptcy law applicable to it by the Sofia City Court avoiding that any decision adopted in the case at stake may have any effect on the bankrupt entity whatsoever as the CAS decision shall not interfere in such proceeding.

214. In order to decide regarding the undisputed debt, the Panel also considers relevant to analyse the degree of diligence of the creditor in the bankruptcy proceedings as it considers that this is a relevant issue that has to be taken into account in the decision on whether to continue with the disciplinary proceedings arising out of Article 64 of the 2017 FDC or to close them, and that a careless and negligent performance of the creditor may lead to the discontinuation of the disciplinary proceedings.

215. When turning the analysis into the creditors conduct, the Panel wishes to start by noting that the potential upholding of the Player's credit right must be considered to be an "alternative" procedure of last resort. It is undisputed that FIFA has established a protection mechanism that intends to veil for the football stakeholders interest and entitles the deciding body to impose disciplinary sanctions to the sporting successor of a football club if there is a pending decision regarding an existing and overdue debt trowards a football stakeholder. Despite the above, this mechanism shall be considered as a subsidiary procedure that cannot and must not be seen as an opportunity for creditors to refrain from pursuing the recovery of debts owed to them from the original debtor.

216. In line with the abovementioned idea, the majority of the Panel considers that the Creditor certainly complied with the minimum degree of diligence that should be required in this kind of cases in which it has a pending debt regarding a club that has undergone a bankruptcy proceeding in a foreign country. In this regard the Panel notes that the Player participated in the bankruptcy proceedings at a national level.

217. With the above in mind, the Panel could already be entitled to conclude that the Creditor, by participating in the bankruptcy proceedings, has not contributed in any manner to the non-compliance of the CAS award dated 8 September 2015 by the original debtor. In addition to the above, it is worth noting that the Creditor not only participated in the bankruptcy proceeding with the mere intention of complying with a potential requisite in

order to claim its debt at FIFA, as it has been proven that he did intend to fight until the end to recover its debt in the bankruptcy proceeding.

218. The Panel notes that the bankruptcy trustee in a first instance decided not to accept the claim requested by the creditor as it considered that it was unsubstantiated and lacked of the necessary proof that justified its inclusion in the creditor's list of the company. The Creditor did not remain passive and decided to request for the grounds of said decision and contact the bankruptcy trustee to understand the motivation behind such decision. Once the contact was done, and following the recommendations of the bankruptcy trustee herself, the Creditor decided to hire a Bulgarian lawyer in order to appeal such decision and defend its interest before the Sofia City Court.

219. The player, through the Bulgarian lawyer, filed the appeal and requested the inclusion of the recognized debt and attached as prove of the debt the employment contract and the FIFA. The Appeal Decision body finally decided to reject the recognition of the creditor's debt in the accepted arguing a lack of proof as it did not recognize the FIFA decision attached by the Creditor.

220. Taking into account the conduct of the Player, the Panel wishes to note what was established by the CAS case 2019/A/6461 confirming what was previously stated by the well-known Rangers de Talca case regarding the creditor's lack of diligence and the fact that it should not contribute in any manner to the non-compliance of the CAS or FIFA decision and specifically states: "[t]*here is no doubt that a creditor is expected to be vigilant and to take prompt and appropriate legal action in order to assert his claims. So, in principle, the Panel agrees with the general stance taken by other CAS Panels and by the FIFA Disciplinary Committee, that no disciplinary sanctions can be imposed on a new club as a result of succession, should the creditor fail to claim his credit in the bankruptcy proceedingss of the former club, as there is a theoretical possibility, he could have recovered his credit, instead of remaining passive (CAS 2011/A/2646 paras. 20-31). To the understanding of the Panel, in such instances it is necessary to examine whether a creditor has shown the required degree of diligence to recover the amounts he is owed."*

221. The majority of the Panel also considers necessary to highlight that the present case differs from the one in the award CAS 2011/A/2646 Club Rangers de Talca vs FIFA, as this case has been expressly invoked by both Parties in the case at stake. As stated by the Panel in such award: *"in accordance with the evidence taken in these proceedings (i.e. the letter of the bankruptcy's receiver -"síndico"- dated 6 March 2012, not challenged by FIFA), the Player apparently decided not to claim for his labour debt in the bankruptcy proceedings, in spite of (i) being aware of these proceedings and (ii) having announced his intention to do so. This, in the Panel's opinion, is to be considered as a lack of diligence of the Player in recovering his credit that shall have an impact in the present case.*

222. The Panel considers that the Creditor could not have done more to try and recover its debt in the bankruptcy proceeding and therefore its position shall be protected as it shall be considered that it complied with the minimum diligence required to recover the outstanding amounts.

223. Regarding the credit claimed by the Creditor, as it has already been abovementioned, the mechanism stated in the FIFA Regulations shall be considered as an "alternative" procedure of last resort when the creditor has exhausted the basic legal remedies in the bankruptcy proceeding and not remained passive in the collection of his debt. The Panel considers that the Creditor, taking into account the particularities of the present case, shall be entitled to benefit from this alternative procedure to try and recover the rest of its debt that was not recognized in the bankruptcy proceeding.

224. Therefore, the Appellant, as it has been established in the Appeal Decision, shall be considered liable for not complying with the FIFA decision in which the Old CSKA was condemned to pay EUR 37,600 as outstanding remuneration plus 5% interest p.a. and 72,300 EUR 72,300 as compensation for breach of contract plus 5% interest p.a.

225. By adopting this decision, the Panel has no intention whatsoever in interfering in the bankruptcy proceeding opened by the Sofia City Court regarding the entity that ruled the Old CSKA, nor intends to affect in any manner the decision adopted regarding such entity in the referred proceeding. The Panel exclusively applies the FIFA regulations invoked by the Respondent and adopted in the Appealed Decision, and taking into account that, following the FIFA regulation applicable to the case at stake, the New CSKA shall be considered as the sporting successor of the Old CSKA, in light of what is established by the above-mentioned referred FIFA and CAS jurisprudence, the Appellant shall be considered liable for the non-compliance of the abovementioned FIFA decision.

226. The Panel considers that it is not contradicting at all the decisions adopted in the bankruptcy proceedings conducted in Bulgaria as it has to be taken into account that the only motivation under the non-inclusion of the entire credit of the Player in the creditor's list of the bankruptcy proceedings is that the deciding Judge did not grant any probative value to the FIFA decisions filed by the Player to prove the existence of its debt. In line with the above, the Sofia City Court did not recognize FIFA decision and therefore had to analyze the existence of the claim debt only in light of what was established in the Employment Contract filed by the Player. In this regard the Panel wishes to clarify that it does not contradict in any way the decision adopted by said tribunal and does not have any different legal approach that contradicts the decision adopted in Bulgaria. The Panel only notes that it does recognize the probative value of the decision and considers that, applying the FIFA Regulations applicable to the case at stake in the present forum, is entitled to consider that in light of what is established in Article 64 of the 2017 FDC, the Appellant shall be considered liable for not complying with the decision adopted.

227. In light of all the above, the Panel decides to dismiss in its entirety the Appeal filed by the Appellant and therefore confirms the Appealed Decision issued by the FIFA Disciplinary Committee on 8 October 2020.

X. COSTS

228. The Appealed Decision relates to the imposition of sanctions as a consequence of a dispute of an economic nature, so Article R65 of the CAS Code does not apply herein and the present arbitration procedure is subject to the provision on costs set out in Article R64 of the CAS Code.

229. Article R64.4 of the CAS Code provides that:

"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."

230. Furthermore, Article R64.5 of the CAS Code provides that:

"In the arbitral award, the Panel shall determine which party shall bear the arbitration costs or in which proportion the parties shall state them. As a general rule, the Panel has discretion to gran 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."

231. Taking into account the outcome of these proceedings, the Panel considers it fair and reasonable that the arbitration costs, which will be communicated separately by the CAS Court Office to the parties at a later stage, shall be borne in its integrity by the Appellant, taking into account that the Appeal has been dismissed in its entirety.

232. Finally, with regard to the legal fees and other expenses incurred by the parties in connection with these proceeding, taking into account the outcome of the proceedings, the financial resources of the parties, and the complexity and the specific circumstances of this case, the Panel considers it fair and appropriate that each party bears their own legal costs incurred in connection with these proceedings.

ON THESE GROUNDS

The Court of Arbitration for Sport rules that:

1. The appeal filed by PFC CSKA-Sofia on 11 November 2020 against the Appealed Decision rendered by the FIFA Disciplinary Committee on 8 October 2020 is dismissed.

2. The Decision rendered by the FIFA Disciplinary Committee on 8 October 2020 is confirmed in its entirety.

3. The costs of the arbitration, to be determined and served to the parties by the CAS Court Office, shall be borne in its entirety by PFC CSKA-Sofia.

4. Each Party shall bear its own legal fees and other expenses incurred in connection with these arbitration proceedings.
5. All other motions or prayers for relief are dismissed.

Seat of arbitration: Lausanne, Switzerland

Date: 17 January 2022

THE COURT OF ARBITRATION FOR SPORT

José Juan Pintó Sala
President

Ulrich Haas
Arbitrator

Juan Pablo Arriaga Áljaro
Arbitrador

Ad Hoc Clerk
Alberto Donado-Mazarrón Cebrian