CAS 2020/A/7543 FOTBAL CLUB RAPID 1923 SA v. Julio Cesar da Silva e Souza & FIFA

ARBITRAL AWARD

delivered by the

COURT OF ARBITRATION FOR SPORT

sitting in the following composition

Sole Arbitrator: Mr Francesco **Macrì**, Attorney-at-Law, Piacenza, Italy

in the arbitration between

FOTBAL CLUB RAPID 1923 SA, Bucharest, Romania
Represented by Mr Josep Francesc Vandellos Alamilla, Attorney-at-Law, Valencia, Spain

Appellant

and

Mr Julio Cesar da Silva e Souza, Brazil
Represented by Mr José Duarte Reis, Attorney-at-Law, Lisbon

First Respondent

Fédération Internationale de Football Association (FIFA), Zurich, Switzerland
Represented by Mr Jaime Cambreleng Contreras, Head of Litigation, and Mr Roberto Najera Reyes, Senior Legal Counsel

Second Respondent

I. INTRODUCTION

1. The Romanian professional football club brings this appeal FOTBAL CLUB RAPID 1923 SA (the "Appellant" or the "Club") against the decision rendered by the FIFA Disciplinary Committee (the "FIFA DC") of the Fédération Internationale de Football Association ("FIFA" or the "Second Respondent") on 22 October 2020 (the "Appealed Decision"), where the Appellant, as the sporting successor of S.C Fotbal Club Rapid S.A., was found guilty of failing to comply with the decision passed by the FIFA Dispute Resolution Chamber on 18 December 2012, in an employment-related dispute between the former Club, FC Rapid Bucuresti (the "Old Club" or the "Old Debtor" or "Original Debtor"), and the Brazilian professional football player Mr Julio Cesar da Silva e Souza (the "Player" or the "First Respondent").

II. PARTIES

2. The Appellant is a Romanian professional football club affiliated to the Romanian Football Federation (the "RFF"), which in turn is a member association of FIFA.

3. The First Respondent is a Brazilian professional football player.

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

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

III. FACTUAL BACKGROUND

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

A. Facts

6. On 27 June 2008, the Player and the Old Club signed an employment contract valid as from the date of signature until 30 June 2011 (the "Employment Contract"), by means

of which the Player was entitled to receive from the Old Club, *inter alia*, the amount of EUR 1,200,000 net, calculated on a three-years basis employment contract.

7. On 31 December 2008, the Player lodged a claim against the Old Club requesting from the latter the payment of EUR 1,070,000 as compensation plus 5% interest p.a. until the date of effective payment as outstanding salaries.

8. On 18 December 2012, the Dispute Resolution Chamber passed a decision (the "DRC Decision") with the following operative part:

> *"1. The claim of the Claimant, Julio Cesar da Silva e Souza, is partially accepted.*
>
> *2. The Respondent, Fotbal Club Rapid Bucuresti has to pay to the Claimant, Julio Cesar da Silva e Souza, within 30 days as from the date of notification of this decision, the amount of EUR 400,00, as well as 5% interest per annum on said amount as from December 2012 until the date of effective payment.*
>
> *3. If the aforementioned sum is not paid within the stated time limit, the present matter shall be submitted, upon request, to FIFA' Disciplinary Committee for consideration and a formal decision.*
>
> *4. Any further requests lodged by the* [Player] *are rejected. (...)."*

9. The grounds of the DRC Decision were sent to the Parties on 18 April 2013; since no appeal was lodged against it, the DRC Decision became final and binding.

B. Proceedings before the FIFA Disciplinary Committee

10. On 16 July 2014, the Secretariat of the FIFA DC (the "Secretariat") opened disciplinary proceedings against FC Rapid Bucuresti for its failure to comply with the DRC Decision.

11. On 20 August 2014, the Secretariat informed the Player that the Old Club was undergoing insolvency proceedings.

12. On 14 January 2015, through some correspondence from the Romanian Football Federation (the "RFF"), the Disciplinary Committee was informed that FC Rapid Bucuresti was no longer affiliated to the said Federation. Thus, the Secretariat suspended the disciplinary proceedings.

13. On 27 September 2017, the RFF informed FIFA of FC Rapid Bucuresti's disaffiliation.

14. On 6 October 2017, the RFF informed the FIFA DC that the Old Club was no longer affiliated due to its bankruptcy proceedings. On the same date, the Secretariat sent a letter advising the Player of its impossibility to act against clubs that were no longer affiliated.

15. On 2 December 2019, the Player requested the FIFA Disciplinary Committee to open disciplinary proceedings against the club FC Rapid 1923, considering the Appellant as the sporting successor of the FC Rapid Bucuresti. Both the Player and RFF provided

FIFA DC with the requested documents and information on the status of FC Rapid 1923 concerning FC Rapid Bucuresti.

16. On 24 June 2020, the Secretariat re-opened disciplinary proceedings regarding a possible violation of Article 64 FDC (2017 ed.) / Article 15 FDC (2019 ed.).

1. On 22 October 2020, the FIFA Disciplinary Committee decided (the "Appealed Decision") as follows:

1. *"The club FC Rapid 1923 (hereinafter, "the Debtor") is found guilty of failing to comply with the decision passed by the Dispute Resolution Chamber on 18 December 2012, according to which it was ordered to pay to the player Julio Cesar da Silva e Souza (hereinafter, the Creditor) the amount of EUR 400,000 plus 5% interest p.a. as from 18 December 2012 until the date of effective payment.*

2. *The Debtor is ordered to pay a fine to the amount of CHF 20,000. 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 Romanian Football Federation 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 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 Romanian Football Federation is reminded of its duty to implement this decision and provide FIFA with proof that the transfer ban has been implemented at national level. If the Romanian Football Federation does not comply with this decision, the FIFA Disciplinary Committee will decide on appropriate sanctions on the member. This can lead to an expulsion from FIFA competitions.*

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

7. The Creditor is directed to notify the secretariat to the FIFA Disciplinary Committee as well as the Romanian Football Federation of every payment received."

17. The terms of the Appealed Decision were notified on 27 October 2020, and its grounds were communicated to the parties on 16 November 2020.

IV. PROCEEDINGS BEFORE THE COURT OF ARBITRATION FOR SPORT

18. On 25 November 2020, the Appellant filed a Statement of Appeal with the Court of Arbitration for Sport (the "CAS") in accordance with Article 58 of the FIFA Statutes and Articles R47 and R48 of the Code of Sports-related Arbitration (2020 edition) (the "CAS Code") against the Respondents with respect to the Appealed Decision. In its submission, the Appellant requested the appointment of a sole arbitrator. The Respondents agreed to submit this matter to a sole arbitrator.

19. On 3 December 2020, the Second Respondent informed the CAS Court Office to agree to establish English as the arbitration language and submit the case to a sole arbitrator '*as long as he or she is selected from the football list*'.

20. On 10 December 2020, the First Respondent informed the CAS Court Office that it agreed to refer the matter to a sole arbitrator.

21. On 11 December 2020, the Appellant filed its Appeal Brief pursuant to Article R51 of the CAS Code within the extended time limit.

22. On 28 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 Arbitral Tribunal appointed to hear the appeal was constituted as follows:

- Sole Arbitrator: Mr Francesco Macrì, Attorney-at-Law in Piacenza, Italy

23. On 20 January 2021, the Appellant submitted the English translation of Romanian documents, i.e., exhibits 3,4,5, and 12.

24. On 8 February 2021, the First Respondent and the Second Respondent filed their Answers to the Appeal Brief in accordance with Article R55 of the CAS Code.

25. On 5 March 2021, the CAS Court Office informed the Parties that, under Article R57 of the CAS Code, the Sole Arbitrator had decided to hold a hearing videoconference in this matter after consulting the Parties. Per the same correspondence, the Sole Arbitrator admitted an Appellant's letter on 15 February 2021 and its enclosures. The First Respondent was invited to submit a copy of its "Contract for Supply of Sport Services" signed with the old Club on 27.06.2008.

26. On 10 and 12 March 2021, the Respondents and the Appellant returned duly signed copies of the Order of Procedure to the CAS Court Office.

27. In addition to the Sole Arbitrator and Ms Lia Yokomizo, Counsel to the CAS, in the absence of Mr Antonio de Quesada, Head of Arbitration at the CAS, the following persons attended the hearing by videoconference on 8 April 2021:

a) For the Appellant: Mr Josep F. Vandellos Alamilla, Counsel, Mr Saksham Samarth, Counsel and Mr Andrei Nicolescu, Vice-President of the Club.

b) For the First Respondent: Mr Josè Duarte Reis, Counsel

c) For the Second Respondent: Mr Jaime Cambreleng Contreras, Head of Litigation and Mr Roberto Najera Reyes, Senior Legal Counsel

28. Before the hearing was concluded, the Parties expressly stated that they did not have any objection with the procedure adopted by the Sole Arbitrator and their right to be heard had been respected.

29. After the hearing, the Appellant submitted some CAS jurisprudence related to the topics under discussion in the present case to the CAS Court office.

30. The Sole Arbitrator confirms that it carefully heard and took into account in its decision all of the submissions, evidence, and arguments presented by the Parties, even if they have not explicitly been summarised or referred to in the present arbitral award.

V. SUBMISSIONS OF THE PARTIES

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

THE APPELLANT

32. On 11 December 2020, the Appellant filed its Appeal Brief pursuant to Article R51 of the CAS Code. This document contained a statement of the facts and legal arguments. The Appellant challenged the Appealed Decision, submitting the following requests for relief:

"In principle:

- *To declare that the appeal filed by the Appellant is admissible;*
- *To confirm that the claim or complaint filed by the Player before the FIFA Disciplinary Committee was time barred;*
- *To find and conclude that FC Rapid 1923 SA is not the sporting successor of the entity SC Fotbal Club Rapid SA;*

- *To establish that the Player has not been diligent in recovering his credit by failing to register his credit in the bankruptcy proceedings of SC Fotbal Club Rapid SA;*
- *As a consequence of the above, to set aside and annul the decision of the FIFA Disciplinary Committee passed on 22 October 2020 (Ref. No. 140459) and ruling de novo establish that:*

  FC Rapid 1923 SA is not guilty of failing to comply with the decision rendered by the FIFA Dispute Resolution Chamber on 18 December 2012, as a consequence of which no fine and/or disciplinary sanction shall be imposed on FC Rapid 1923 SA;

In subsidiary:

- *To refer the matter back to the FIFA Disciplinary Committee and/or FIFA Dispute Resolution Chamber ordering the competent FIFA body to analyse whether AFC Rapid Bucuresti is the sporting successor of SC Fotbal Club Rapid SA or not.*
- *In any event, to condemn the RESPONDENTS to the payment of all costs related to the present arbitration proceedings;*
- *In any event, to fix a sum, at the discretion of the Panel, to be paid by the RESPONDENTS to the Appellant, in order to pay all the legal fees and costs of any nature incurred by the Appellant as a consequence of the present proceedings".*

33. The Appellant's submissions may be summarised as follows:

Competence of the FIFA DC to rule about sporting succession.

- The appellant disputes the competence of the FIFA DC to adjudicate the existence of sporting successions between clubs based on the objection that the claim of the Player that opened the disciplinary proceedings concerns an employment-related dispute that should be referred to FIFA DRC, as provided by art. 22 of the RSTP. In this regard, the competence of FIFA DC is strictly limited to enforce sanctions if a party has failed to respect a FIFA/CAS decision or not.
- Relying on the reasoning of previous CAS awards, as quoted in the Appeal Brief, the Appellant states that "it *is not the competence of disciplinary bodies to decide upon issues of substantive nature (i.e., contractual/horizontal disputes), but only to investigate, prosecute and sanction conducts: Article 27 FDC: The FIFA judicial bodies shall be competent to investigate, prosecute and sanction conduct within the scope of application of this Code.".* The fact that reports of conduct are qualified as "complaints" (see article 52 par. 2 FDC) instead of "claims" and that disciplinary proceedings are not of contradictory nature (i.e., the player is not a party) is relevant to the role of the Disciplinary Committee in the context of its disciplinary

prerogatives. The Disciplinary Committee is competent to sanction infringements (see article 53 FDC), not to decide on whether a club is the sporting successor of another or not. In brief, in the Appellant's view, the dispute around the existence or not of a sporting succession is a new claim between the Appellant and the Player, which the competent FIFA legal body can only deal with according to the article 22 RSTP.

- Moreover, the Appellant finds out that the procedural and substantive rules applicable to the proceedings before FIFA DC do not have the same content and do not comply with the higher standards of diligence and legal certainty requested before FIFA DRC. This is confirmed by reading the statutes of limitations (art. 10 FDC), which establish five years to prosecute a disciplinary infringement instead of two years-time limits applicable to the contractual disputes.

- The burden of proof before DRC lies with the party claiming a right (art. 12.3 FIFA Procedural rules) whereas, before FIFA Disciplinary Committee, the burden of proof to prove the existence of a disciplinary infringement rests solely on FIFA. Lastly, FIFA DRC and PSC require the highest standards of proof, namely "beyond any reasonable doubt". In contrast, such standard in disciplinary proceedings complies only with the "comfortable satisfaction of the competent judicial body" (art. 35.3 FDC).

FIFA DRC decision does not apply and extends to the Appellant.

- The Appellant argues that it was constituted on 2 June 2017, that is after that FIFA DRC rendered its decision concerning the Original Debtor and the Player. The Appellant was not a part of those proceedings, and, even before, it did not sign any employment agreement with the player.

- Moreover, the Player failed to extend the effects of the FIFA DRC Decision to the Appellant after it came to existence; consequently, given the two-year statute of limitation provided by article 25 of the FIFA RSTP, he is banned from any request against the Club. On the flip side, the Appellant contends that if it were correctly summoned to the proceedings after it came to existence, it would be in a proper position to exercise its rights and object to the FIFA DRC decision.

- Hence, being a third party to the FIFA DRC decision, the Appellant can't be the addressee of any order in favour of the Player.

Time-barred complaint.

- As to the admissibility of the claim of the First Respondent, filed for the first time on 20 August 2019, and finally on 2 June 2020, against the Appellant, the latter argues that the complaint was time-barred. More than five years have elapsed since the Player was informed that the Original Debtor was undergoing insolvency proceedings on 20 August 2014 when he received the letter from FIFA DC.

Therefore, the Player failed to bring the complaint against the Appellant within the time limit provided by article 10 co. 1 of the FDC.

- As the FIFA DRC passed its decision on 18 December 2012 against the Original Debtor, the five-year time limit to enforce the disciplinary sanction has elapsed. The Player cannot try to prevail over the Appellant as it is a new and different entity that did not acquire the federative rights of the older Club, nor succeeded the Debtor in football competitions and, lastly, it has never been informed about the FIFA decision.

- Moreover, on 20 August 2014, FIFA DC informed the Player that the Original Debtor underwent insolvency proceedings, but he did not register his credit during the insolvency proceedings and bankruptcy proceedings. As the Player was negligent in recovering his credit during the entire bankruptcy proceedings, he cannot be granted an extension of the limited time provided by article 10 para. 3 of FIFA DC as the time limit wasn't effectively interrupted. Therefore, starting from the date of FIFA's communication mentioned, the time limit to enforce the FIFA DRC decision expired on 20 August 2019. The complaint filed by the Player against the Appellant was time-barred and, therefore, inadmissible.

Sporting successorship

- About the sporting successorship of the Old Entity, the Appellant acknowledges that the CAS and the FIFA DRC has decided in some cases that, under certain circumstances, it is possible to consider a new entity as a successor of the old entity and to condemn the said new entity to take over and pay the debts of the Old Entity. However, these cases are always cases where shady practices have been followed with the sole and precise aim that the club and/or its owner avoids the payment of outstanding and/or agreed amounts to players, coaches, other clubs, and other creditors, including tax and national insurance obligations.

- The Appellant avers that some FIFA and CAS jurisprudence regarding sporting succession are applicable in the present matter since crucial elements of all those cases are significantly different than the ones in the present case, where, among others, other CAS jurisprudence has made it clear that for a new club to be deemed as the sporting successor, it must embody the former club "for all practical purposes". This means that the new club should have acquired the federative and sporting rights of the former club and continue the operations of the former club to take part in the league. In the absence of such elements, the new club cannot be considered the older club's sporting successor.

- Putting in comparison the differences with the Older Club, it derives that the Appellant is not the sporting successor of the Old Debtor. In this regard, the Appellant reports some distinctive elements: different name, registered address, competition category, date of incorporation and entry in the trade register, sports identification number, ownership/shareholders. The CAS jurisprudence that acknowledged and accepted cases of so-called "sporting succession" in its entirety

concerns cases of clubs that had acquired in a public tender, auction or otherwise assets of the former club, including the federative rights and/or the license to participate in the first division and did participate immediately and without any interruption in the top-level divisions replacing the old club. In addition, in such cases, the management and/or the actual owners of both the old and the new club were usually the same, and the new clubs had all or most of the players of the old clubs. The same applies for FIFA jurisprudence. In other words, it is clear that in all the cases where succession was confirmed, FIFA and the CAS had discovered shady practices and a clear intention to circumvent laws and regulations and avoid obligations, while they were still enjoying and taking advantage of the assets of old clubs and were operating under the same management and/or were being controlled by the same persons and of course continued to play without any interruption in the same football division of their countries.

- The Appellant did neither acquire the original Debtor's federative nor the sporting rights in the present case. It started by incorporating a new entity, having different ownership, and not continuing the Original Debtor's footballing activities, having fulfilled a new and different affiliation procedure. Whereas the Original Debtor was a professional entity, the Appellant being an amateur entity, it started its activities from the lowest regional category in Romania.

- In June 2008, the Player signed a contract with the Original Debtor, namely SC Fotbal Club Rapid SA, that was regularly competing in the national and international tournaments after having received the federative rights from another Club in Bucharest, AFC Rapid Bucuresti. The Original Debtor went on bankruptcy on 13 June 2016 and, consequently, on 6 October 2017, the Romanian Football Federation informed FIFA that the Club was no longer affiliated with the Federation. After the bankruptcy proceedings, AFC Rapid Bucuresti continued the sporting activities of the Original Debtor as proved by the by-law of the Original Debtor and confirmed by a contract of transfer of federative rights concluded between SC Fotbal Club Rapid SA and AFC Bucuresti in 2009. In Appellant's view, only AFC Rapid Bucuresti is the sporting successor of the Original Debtor.

- Following the relevant dates of its history, the Appellant was constituted as "SC Fotbal Club R Bucuresti SA" on 16 April 2018 as per the merger between two former clubs, "Academia Rapid" and "CS Miscarea CFR Bucuresti". Both clubs had no links with the Original Debtor or other clubs connected with. The Appellant started its football activity in the 2017/2018 season from Romanian Football's second-lowest regional category. At the end of the 2017/2018 season, the Appellant was promoted to the Romanian third league and, consequently, it requested the affiliation to the Romanian Football Federation on 10 July 2018. During the 2018/2019 season, the Club was renamed "Fotbal Club R Bucuresti"; from 2019, it has the present denomination "Fotbal Club Rapid 1923 SA".

- On 24 July 2018, the Appellant and Sierra Quadrant Filiala Bucuresti S.P.R.L., the company that acted as the official receiver of the Original Debtor during the insolvency proceedings, signed an "Exclusive Trademark Licensing Agreement"

under which SC Fotbal Club R Bucuresti (i.e., the former name of the Appellant) acquired the right to use the brand "FC Rapid". Para II -Contract Object- of the Agreement reads: *"by acquiring the FOTBAL CLUB RAPID brand, the assignee shall acquire the exclusive right of using the history of the assigned brand, as well as all the sports achievements obtained by the assignor under this brand from the very incorporation of this football club. By acquiring the FOTBAL CLUB RAPID brand, the assignee shall acquire the exclusive right of using the colours associated to the FOTBAL CLUB RAPID brand and its history, as well as other elements (designations, logs, symbols, slogans, etc.) associated or which are obviously related to the FOTBAL CLUB RAPID brand"*. The Appellant paid the price of EUR 406,800 as requested by Sierra Quadrant for the assignment of the brand.

- On 4 August 2020, the Court of Bucharest ruled that the trademark 138145/05.03.2015, assigned to the Appellant by Sierra Quadranta, was registered in bad faith by the Old Debtor and another club, namely AFC Rapid, was the club entitled to use that brand.

- There is no sporting succession since the Appellant started its football activities from the lowest categories; neither did acquire any federative or other license rights of the Old Entity nor any of the players and/or other assets of the Old Entity. The Appellant used the Rapid brand legitimately as it resulted the winner of the auction launched by the official receiver of the Club under insolvency proceedings without any relation of any nature or at any level with the Older Debtor. In any case, because of the ruling mentioned above of the Court in Bucharest, the Appellant is no longer the owner of the Rapid brand.

- The Appellant and the Old Debtor are two completely different entities. The Appellant was founded long after the Old Entity entered bankruptcy proceedings and disaffiliated from the RFF. Furthermore, the Appellant did not acquire any of the assets of the Old Entity, and it has different management and different owner and, as an amateur entity, it started from the regional series and did not replace the Old Debtor. The Appellant did not want to be identified with the old club for all practical purposes. It did not try to deceive the competition as it started from the lowest division in Romanian football.

- The relevance of sporting continuity and category of competition has been outlined in recent FIFA DC decisions about two Italian clubs, Parma Calcio and ASD Martina Calcio 1947 (the first passed on March 2020 and the second on October 2020), where those Single Judges underlined the importance of ascertaining the category of competition: " *Consequently, considering that the New Club began to compete at amateur level and in a lower division than the Original Debtor, and that its participation in this category was not connected with the "sporting relegation" of the Original Debtor, the Single Judge believes that this fact indicates that there is no sporting continuity between the New Club and the Original Debtor" (ref. FDD-5855).* In a similar case relating to the Romanian club, FC Farul Constanta, the Chairman of FIFA DC, further embraced this reasoning.

- The key elements of so-called "sporting succession" were enshrined in the CAS Award 2011/A/2646. The Panel clarified that this institution essentially aims to avoid fraudulent behaviours to the detriment of the competition and the clubs that participate in it. Although the agreements for the sale of corporate assets may also take place regularly and in compliance with the substantive rules of reference, the institution of "sporting succession" is instead aimed at avoiding that such transfers, even if formally lawful, seek to circumvent the principles of the regularity of the competition and avoid fulfilling the financial obligations assumed towards the creditors.

- The appealed decision rests on the erroneous assertion that the Appellant is the sporting successor of the Old Club based on the principles affirmed by the CAS jurisprudence: "*CAS already considered that a "new" club had to be considered as the "sporting successor" of another one in a situation where a) the "new" club created the impression that it wanted to be legally bound by the obligations of its predecessor, i.e., the "old" club, b) the "new" club took over the license or federative rights from the "old" club and c) the competent federation treated the two clubs as successors of one another (...)*". On the contrary, the Appellant never created an impression that it wanted to take on the obligations of the Original Debtor, neither acquire the federative rights, nor the Romanian Football Federation treated the Appellant as the successor of the Original Debtor. Moreover, it is worth noting that the Appellant is no more entitled to use the trademark "RAPID" as the Court of Bucharest ruled that the Old Club registered the trademark in bad faith. As such, the Appellant is not taking advantage of any assets or federative rights of the Original Debtor.

- AFC Rapid Bucuresti, that is the club entitled to use "RAPID" trademark as ruled by the Court of Bucharest should be considered the sporting successor of the Original Debtor, pursuing to the Articles of Association of the Original Debtor and under the contract concluded between those clubs, by which AFC Rapid Bucuresti has to be considered the entity who is entitled to continue the domestic and international footballing activities of the Original Debtor under the same affiliation number. Since the Old Club has registered the trademark in bad faith, the consequences of such wrongful act cannot fall on the Appellant who bought the brand lawfully from the receiver of the bankruptcy proceedings.

- With the above in mind, the Appellant started its football activities with a different name from the Original Debtor and climbed to the second national division for its own sporting merits. Consequently, there is no legal basis for sporting succession. Further, neither FIFA nor the player has demonstrated that the Appellant acted fraudulently to circumvent the dictates of sporting succession. Nor can it be considered evidence against the Appellant that it waived to appeal the previous decision of FIFA DC since the costs of proceedings before the CAS exceeded the amount in dispute (15.000,00 euros).

- It cannot be disputed that the elements acknowledged by the panel in CAS 2020/A/7092 are all against considering the Appellant as the sporting successor of

the Old Club: the Appellant does not have common players with the Old Club, has different owner and management, did not acquire the federative rights of the Old Club and the right/license to participate in the same category and did not claim any amounts that the Old Club was entitled to receive according to decisions of FIFA or as solidarity contribution for players trained by the Old Club.

The diligence of the creditor

- Regarding the CAS award CAS 2011/A/2646, *Club Rangers de Talca v. FIFA*, the Player, by not trying to recover his credit in the bankruptcy proceedings, had forfeited his right to request that sanctions be imposed on the new club. Applying this reasoning to the current matter *mutatis mutandis,* the First Respondent was not entitled to claim the amount allegedly due by the Old Entity from the Appellant, since the First Respondent had forfeited such right by not announcing its claim to the liquidation procedure of the Old Entity and by not showing the necessary and expected diligence in recovering his claim. It is irrelevant whether the First Respondent knew the existence of such possibility or not since, according to FIFA jurisprudence, the creditor could not invoke lack of knowledge as a defence because he was obliged to show the proper diligence in recovering his claim.

- On 6 October 2017, FIFA informed the Player that the Original Debtor went under bankruptcy proceedings and that, consequently, was no more affiliate the Romanian Football Federation. The Player had sufficient means and time to get news about the fate of the Club but remained guilty inactive as confirmed by the communication from the judicial liquidator of the Old Debtor and by the table of the creditors where the name of the Appellant was not registered.

- As states by the relevant provisions of the Swiss Private International Law Act (i.e., art. 1, 154, 155), the Romanian Law on Insolvency proceedings shall be applicable at the case at stake, where this law provides for the obligation upon the creditors to promptly register their receivables in the registers of the ongoing proceedings; failing this obligation, the credit shall be extinguished and the application inadmissible.

- Moreover, as the Player signed a "contract for the supply of sports services" and not an "employment contract", its credit towards cannot be considered as a preferential one and the Player should be diligent in recording it in the creditors table of the bankruptcy proceedings, pursuant also art. 44 of the Swiss Code of Obligations.

The request of the Player is groundless, and no degree of fault and negligence can be attributed to the Appellant.

- In no case could the Appellant be liable to pay any kind of compensation to the First Respondent for a breach committed by the Old Entity and not by the Appellant.

- Since the Appellant was not a party to the contract between the Player and the Old Debtor and nor the Appellant was a party to the FIFA proceedings before the DRC, nor is it liable for the termination of the contract according to Article 17 of FIFA RSTP. Moreover, the credit of the Player does not exist anymore as the Player failed to register his credit in the bankruptcy proceedings, so that there isn't any legal or contractual relationship with the Appellant.

- Since this is a disciplinary procedure, the imposition of a sanction can only take place if a certain degree of fault or negligence on the person (the Appellant) is found. In the present case, it is clear that the Appellant had no relationship with the Old Club, did not benefit from the bankruptcy, and had no active role in disrupting the contractual relations between the Player and the old club.

FIRST RESPONDENT

34. On 8 February 2021, the First Respondent filed his Answer in accordance with Article R55 of the CAS Code, submitting the following requests for relief:

"- Refusing to grant the appeal;

- Confirming the appealed decision of FIFA's Disciplinary Committee, that made a correct evaluation of the evidence and decided accordingly, within the legal framework applicable to this case;

- Obliging the Appellant to pay the costs of the appeal;

- Given that the Respondent was assisted in the present procedure by a professional legal adviser, to order the Appellant to contribute towards its costs".

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

Competence of the FIFA DC to rule about sporting succession.

- FIFA DC issued its decision on the complaint of the Player to consider the Appellant as the sporting successor of the Old Club without any connection with the employment-related dispute that was already decided with prejudice by FIFA DRC. This competence criterion was confirmed by CAS in cases n. 2018/A/5647 and n. 2019/A/6461, where it was stated that it is for FIFA DC to establish sporting succession between two clubs, examine the successor's liability, if any, and eventually apply the sanctions provided by the FIFA Disciplinary Code.

- As a club affiliated to the Romanian Football Federation, the Appellant is under the jurisdiction of the FIFA Disciplinary Committee.

FIFA DRC decision does not apply and extends to the Appellant. Time-barred complaint.

- The appealed decision is correct and entirely agreeable. The limitation period for prosecuting the violation upon the Appellant started from 6 October 2017, i.e., the date on which it was clear for the Player that he could no longer try to enforce the DRC decision before FIFA. Moreover, the Player could request the enforcement of the DRC decision against the Appellant once it became a member of the Romanian Football Federation (as of 2018), after which under the jurisdiction of FIFA.

Sporting successorship

- Contrary to the statements of the Appellant, the First Respondent believes that the Appellant is either the same entity or as the sporting successor of the Old Club, bound by a valid decision of the FIFA DC.

- The First Respondent disagrees with the Appellant that acquisition of the federative and sporting rights of the original debtor shall be a mandatory condition to recognize a club as the sporting successor of the original debtor under insolvency proceedings. As the Clubs under insolvency proceedings are no more affiliated to their Federation and, therefore, they do not have federative or sports rights to sell, it follows that they have nothing to sell, nor a third party can acquire.

- Rather, following the provisions of article 15 of the FIFA DC and the criteria to assess whether a party shall be considered as a sporting successor, it appears clearly that such rule is aimed at enforcing contractual obligations between the parties rather than ascertaining whether the sports assets (or federative rights) between the two clubs under investigation were sold in bad faith. FIFA and the CAS have thus demonstrated a degree of willingness to accept that a debt, contracted in the past, by an organization that is now legally dissolved, is enforceable against the new entity, even though a liquidation procedure has been completed according to national law, provided that certain criteria are established.

- Article 15(4) of the FIFA Disciplinary Code (the "FDC) does not constitute a *numerous clausus* to determine the issue of sporting succession, and, accordingly, the FIFA DRC and/or CAS, retain a discretion to consider any other elements which they may deem relevant in determining the outcome of a dispute. Even though the Appellant's attempted outward manifestation of its intention to be recognized as its own separate legal and/or sporting entity, which it claims is accordingly not responsible for the debts of the Old Club, internally, however, it continues to identify itself as the same entity to arrange and conduct its affairs and activities, even when dealing with the change of management companies utterly different from themselves.

- In this regard, it should be noted that (i) FC Rapid 1923 continues to be known as Rapid Bucuresti by its supporters, and the directors are former players of Rapid (ii) 1923 makes explicit reference to the year of the foundation of the Rapid and the colors of the clubs are the same, purple and white; the new Club is still based in Bucharest, (iii) Rapid always played in the Giulesti-Valentin Stanescu Stadium and, only after the demolition on 2018 the successor started the construction of a new

stadium, (iv)) After the appellant purchased the brand from the liquidator of the Old Club, both the Appellant and the Old Club identify themselves according to the same footballing heritage and historical figures, thereby seeking to exploit supporter's affiliation these icons and momentous events, as it can be easily read on the website of the Appellant.

- Moreover, the Appellant paid a certain amount to acquire the brand of Rapid to be identified with the Old Debtor, and a previous decision of the Single Judge of the FIFA Dc already stated that the Appellant is the sporting successor of the Old Club and the Appellant complied with such finding.

The diligence of the creditor

- The jurisprudence relied upon by the Appellant to demonstrate a lack of diligence of the First Respondent by failing to announce his claim within the bankruptcy, liquidation or other relevant procedures is not appropriate concerning the current dispute under consideration and thus should not be applicable.

- This dispute comes from a disciplinary sanction that can only be imposed in terms of vertical disputes, namely between FIFA and the Appellant, where the disciplinary proceedings were opened after the Player's complaint due to the failure to respect the decision of FIFA DRC issued on 18 December 2012. Therefore, as article 15 of FIFA DC applies, it is not mandatory the participation of the Player in the insolvency proceedings.

- On 7.12.2012, the Old Club entered insolvency proceedings. The judicial administrator, Ms Cristina Andronache, sent FIFA a request for staying of the disciplinary proceedings. She attached a certificate of the Court of Bucharest with the number of the case. That certificate also indicated the name of the parties of the procedure before FIFA (I.e., the Old Club and the player) and the amount of the sum granted to Mr. Da Silva and Souza by way of damages and interests. This proves that the Player, as a creditor of the Club, was well identified by the officials of the insolvency proceedings.

- Furthermore, according to Romanian Law, the credits of the employees are automatically registered in the table of receivables without a need of an application filed by such creditors. Art. 3 of Romanian Law no. 85/2006 provides that salaries shall be registered ex officio by the judicial administrator "according to accounting records". Therefore, the First Respondent's conduct cannot be an implicit waiver of his right to collect the debt; instead, he was entitled to participate in the insolvency proceedings without the need of submitting any application of his credit.

- In this regard, the First Respondent quotes the decision of the Chairman of FIFA DC, particularly where it is emphasized that the bankruptcy of the club was declared four years after the decision of the FIFA DRC, when the player had already returned to Brazil. Further, the Player notes that no amount has ever been disbursed in his favor by the receivers of the bankruptcy procedure despite his credit being well

known to them. Consequently, the player cannot be considered negligent in attempting to recover his credit.

- The First Respondent avers that he did not try to recover outstanding payments, which is why the Player attempted to enforce his complaint before in front of FIFA on 2 December 2019 and 2 June 2020; however, due to circumstances beyond his control, it was not possible to recover the outstanding payments.

SECOND RESPONDENT

36. On 8 February 2021, the Second Respondent filed its Answer in accordance with Article R55 of the CAS Code, submitting the following requests for relief:

"(a) rejecting the requests for relief sought by the Appellant;

(b) confirming the Appealed Decision;

(c) ordering the Appellants to bear the full costs of these arbitration proceedings

(d) ordering the Appellant to make a contribution to FIFA's legal costs."

37. The submissions of the Second Respondent, in essence, may be summarised as follows:

Res judicata

- The FIFA Disciplinary Committee already declared the Appellant as the sporting successor of the Old Club at the outcome of other proceedings. The Appellant paid the amount owed to the creditor, thereby recognizing the effectiveness of such a decision.

- Therefore, the Appellant is estopped from claiming a different position in the current proceedings, and the sporting succession with the Original Club has become *res judicata.*

- The first Disciplinary Committee's Decision concerned the same party (FC Rapid 1923), the same facts (the progressive growth of the club in the Romanian football panorama), and the same legal basis upon which that decision relied. The Appellant never filed any claim against the judgment and paid the due amount to the creditor.

Competence of the FIFA DC to rule about sporting succession.

- FIFA objects to the misleading reasoning of the Appellant about the competence of FIFA DC in opening disciplinary proceedings and rule on the dispute at stake.

- The FIFA Disciplinary Committee is entitled to ascertain whether the original club has been ordered to pay a debt through a final and binding decision of the DRC or PSC and if a sporting succession occurred upon the new club. Therefore, to sanction the sporting successor for failing to comply with said final and binding decision.

- Once the FIFA DRC or PSC ruling becomes final and binding, such a decision becomes mandatory against the original club and towards the sporting successor. Recalling the conclusions of two CAS awards 2019/A/6461 and 2018/A/5647, FIFA states that a decision issued within the 5-year limitation period of Article 10FDC also applies to the sporting successor. Besides, although the burden of proof stands on the creditor or the Disciplinary Committee, the sporting successor will always have the chance to submit its position. The standard of proof remains the same regardless of which the body is entitled to analyze sporting succession.

- CAS awards 2020/A/6745 and CAS 2020/A/7092 confirm the competence of FIFA DC to rule on the sporting succession of the clubs without the need to refer the dispute to FIFA DRC or PSC if such sporting succession takes place. This competence bases on the "*lex sportiva*" that, as a "*lex specialis*", introduces such a specific legal principle only applied by sports bodies and CAS.

- Furthermore, the Appellant was able to know the existence of the DRC Decision and the consequences to bear in taking the position of the Old Debtor.

Time-barred complaint

- The Appellant's letter of December 2019 triggered the re-opening of a disciplinary proceeding in compliance with Article 10(1) FDC.

- Even if the DRC Decision became final and binding on 10 May 2013, following Article 10(3) FDC, it is undoubtedly that the 5-year limitation period was interrupted on 14 January 2015, when the Secretariat suspended the disciplinary proceedings and on 6 October 2017 when the decision that it was impossible to act against the Old Debtor (as it was no longer affiliated to RFF) was forwarded to the Player.

- Therefore, even if the *dies a quo* of the limitation period would be 20 August 2014 as suggested by the Appellant, the limitation period would have been interrupted, however. Consequently, the claim of the First Respondent was not time-barred, and the arguments of the Appellant in this regard should be dismissed.

Sporting successorship

- The Appellant is to be considered by all means the Old Club's sporting successor. In this regard, the reasoning of the Appellant contains some fallacies. The first flaw in the Appellant's line of defence consists in suggesting the necessity that sporting succession can only take place in case of acquiring the federative rights of the Old Club and taking over the exact position of the Old Club in the same league. These could be relevant indicators but are not exhaustive or considered mandatory to decide about sporting succession.

- Underlining that even the Appellant's website refers that the history of the Club is unique, starting from CRF Association to FC Fotbal Rapid 1923, the guiding

principle behind all cases of sporting succession is the new club's intention to be seen by the public as the same original club that ceased its activities and take advantage of the Old Club's goodwill. As a result, the Club must be considered the sporting successor of the Old Debtor, even for *"all practical purposes"* as argued by the Appellant.

- The second flaw in the Appellant's line of defense consists in portraying the necessity of suspicious intentions behind the bankruptcy of the old club for the sporting succession to produce its effects upon the new club vis-à-vis the creditors of the old club. Although when football clubs are concerned by insolvency proceedings, bankruptcy and sporting succession somehow dovetailing, these are two different concepts that pertain to other domains and should not be conceptually juxtaposed.

- Most importantly, however, the obligation resting with the successor to pay the predecessor's previous debts is not dependent on whether the reasons triggering the bankruptcy *ab initio* were legitimate or suspicious but on the fact that a new club takes over the old club's assets and its sportive distinctive traits.

- In other words, a finding of sporting succession does not have to derive necessarily from fraudulent conduct, nor does FIFA have to prove the existence of "shady practices" from the sporting successor. While this can certainly be an element to consider when analyzing a concrete scenario, it does not constitute a *conditio sine qua non* for the Committee – or the Sole Arbitrator – to conclude that sporting succession occurred. *In casu*, it is evident that the Appellant took advantage of the situation to use the essential elements that conformed to the Old Club and with which the fans use to identify Rapid to continue with that club's activity. Even if the Appellant's stance does not contravene any rule in Romania, it creates an undesirable and unwarranted situation in football.

- The Disciplinary Committee has the competence to ascertain the sporting succession based on the so-called *lex sportiva* and ensuing the principle of specificity of the sport.

- The specific circumstances of this case show that the Appellant is the Old Club's sporting successor. In this regard, the Second Respondent stresses that (i) both clubs have always been identified, and competed, simply as "Fotbal Club Rapid", with the only difference of number 1923 added to the name of the Appellant; (ii)The Appellant's website reports all the phases of the history of Fotbal CLUB Rapid from the very beginning in 1923 to nowadays, included al the trophies and sporting achievements gained during all those years; (iii) the colors of the Clubs, purple and white, are the same and even the logo is identical to the one shown by the Old club during its participation in the 2011/2012 Uefa Europa league season; (iv) until the starting of the reconstruction, the stadium Giulesti Valentin Stanescu was the one where the team appeared during official and friendly matches; (v) the Appellant maintained the same internet domain as "*fcrapid.ro*".

- Finding such identification with the Old Club, the Appellant benefited from the pre-existing fan base, commercial value, and legacy that it could never obtain in the short period from its foundation since the football season 2016/2017.

- CAS jurisprudence, i. e. CAS 2013/A/3425, stated that *a club is a sporting entity identifiable by itself that, as a general rule, transcends the legal entities which operate it:* this means that, regardless the acquiring of the federative rights by the Appellant, it occurs sporting succession whenever the Successor wants to display similarities with the Old Club.

- After the opening of the bankruptcy procedure, the Successor started its football operation as an Amateur club (Miscarea Feroviaria CFR Bucuresti) that, in only two season, 2017/2018 and 2018/2019, rapidly achieved the second national league changing its name in Fotbal Rapid, taking advantage of the ensuing sporting succession. CAS 2016/A/4576 confirmed that in football, a club is a sporting entity identifiable by itself that transcends the legal entities which operate it. This principle is to be also applied in situations such as this one in which an entity tries to benefit from the fan base, history, and commercial value of a pre-existing club while pretending to disregard the millionaire debts that said club left unpaid. This aspect shall prevail over the managerial and administrative elements relied upon by the Appellant.

- In this regard, the Appellant was already found to be the Old Club's sporting successor by the FIFA Disciplinary Committee (the "FIFA DC") within the scope of four different proceedings (all of which involved breaches of Article 64 of the FDC for not respecting the FIFA DRC decisions passed on 2013 and 2015) and never appealed any of the respective decisions. As a matter of fact, the Appellant has already reached payment agreements with the creditors or even fully paid said debts in compliance with the relevant decisions. It seems that up to the moment it lodged this appeal, the Appellant itself never considered not to be the Old Club's sporting successor.

- The CAS case law demonstrates that in all the cases of sporting succession, the new clubs identified themselves with the same or very similar logos, colors and/or history as the original clubs they claimed not to be the successors of. As a result, given that any objective observer would readily identify the new clubs with the old ones, the different panels did not doubt to conclude that the new clubs had to be considered the sporting successors of the well-known and reputed original clubs.

- The Second Respondent deems that there is no other option than to conclude that the Appellant is the Old Club's sporting successor, and thus the Appealed Decision was correct in its finding. Once the sporting succession is established, according to the CAS case law, the successor is held liable for the debts generated and not fulfilled by the previous clubs being replaced, and this is on the basis of the sporting continuity of the club in light of the *lex sportiva.* Consequently, the Appealed Decision correctly found that the Appellant was ultimately liable to pay the Player the amounts deriving from the contractual breaches attributable to the Old Club.

The diligence of the creditor

- The Second Respondent acknowledges that, as submitted by the Player before the Disciplinary Committee, on 17 July 2014, the Original Debtor requested FIFA to stay the disciplinary proceedings since the Player was a registered creditor in the insolvency proceedings. Therefore, as the debtor was aware of the outstanding amount owed to the Player, the latter cannot be deemed somehow responsible for failing in registering his credit under bankruptcy proceedings.

- The Player was never informed about the start of bankruptcy proceedings before he found that a "new" Rapid arrived on the scene; relying on the only above-mentioned communication received by the Old Club, he trusted that his credit was duly registered in the logs of the bankruptcy proceedings by the receiver. On the other hand, it was undoubtedly that the Old Club was aware of the credit of the Player, but it ignored registering it in the bankruptcy proceedings. Consequently, as the sporting successor of the Original Rapid, the Appellant shall bear the consequence thereof, as it has benefited from this credit's exclusion the moment it replaced the historical Rapid Bucuresti.

- Bearing this in mind, as CAS 2015/A/4162 stated, FIFA is free "*to determine and require conditions for the recognition of foreign insolvency proceedings*" when it has to evaluate whether a creditor was diligent or not under the provision of Article 15 FDC without being bound by the same procedural rules and standards applicable in each country's bankruptcy or insolvency proceedings. As the Player did not willfully refrain from registering his credit in the bankruptcy proceedings, he was simply confident that such credit was duly acknowledged relying on the only communication received by the Old Debtor, the Player cannot be deemed to have contributed to the Appellant's breach. As such, the nature of the Appealed Decision does not allow speculations on the possibility to sanction a debtor club concerning the diligence exercised by the creditor in the context of the local bankruptcy proceedings. The Sole Arbitrator should therefore reject such argument.

The Appellant's violation of Article 15 FDC.

- Under Article 15 FDC, FIFA is entitled to sanction anyone who fails to pay another person a sum of money in whole or in part: this system of sanctions for the event of non-compliance with FIFA's decisions or those of CAS is lawful. FIFA also recalls that in the scope of proceedings under Article 15 FDC, the Disciplinary Committee cannot review or modify the substance of a previous decision, which is final and binding and thus has become enforceable. Consequently, the Disciplinary Committee has the sole task to analyze if the debtor complied with the final and binding decision of the relevant body. Suppose the Disciplinary Committee is not provided with proof that the payment has been executed or that a payment plan was agreed upon. In that case, it will render a decision imposing fine and sporting sanctions on the debtor for failing to comply with the final and binding decision and will grant the latter a last period of grace as from the notification of the decision in which to settle its debt to the creditor and/or FIFA before sporting sanctions are implemented.

- The Appellant, being perfectly aware of the content of the DRC decision, was duly informed of the opening of the disciplinary proceedings on 24 June 2020. The Appellant also accepted being the sporting successor concerning a previous disciplinary proceeding, and, despite this, it contended to bear no fault for breaching Article 15 FDC. The combination of these two facts (and most importantly, being informed about the opening of disciplinary proceedings) reveals the Appellant's recognition of its fault in not respecting decisions passed by bodies of FIFA of which it has become liable the moment it purposely became the sporting successor of the Original Rapid.

- As the Appellant solely and exclusively requests the revocation of the Appealed Decision without questioning its proportionality, this issue is undisputed and shall not be addressed in detail. The Second Respondent underlines that the Appealed Decision is in line with the longstanding jurisprudence of the Disciplinary Committee and confirmed by the CAS (*inter alia*, CAS 2019/A/6461). Indeed, the imposed fine and sporting sanction is proportionate to the amount due, and its imposition is justified by the Appellant's attitude, which failed to settle its debt. For the reasons above, the sanctions imposed on the Appellant were proportionate and shall be confirmed in full.

VI. JURISDICTION

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

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

39. The jurisdiction of the CAS derives from Article 58(1) of the FIFA Statutes (2019 edition), which reads:

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

40. The jurisdiction of the CAS is further confirmed by the Orders of Procedure duly signed by the Parties.

41. It follows that the CAS has jurisdiction to decide on the present dispute.

VII. ADMISSIBILITY

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

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

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

44. In accordance with Articles R47 and R48 of the CAS Code, the Club filed its Statement of Appeal on 25 November 2020, which is within the deadline. The Statement of Appeal complied with the other conditions set out in Article R48 of the CAS Code.

45. Therefore, the appeal was timely submitted and is admissible.

VIII. APPLICABLE LAW

46. Article R58 of the CAS Code provides more specifically the following:

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

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

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

48. The Sole Arbitrator notes that the Appellant and the First Respondent have not chosen any law in the Private Agreement.

49. In its submissions, the Appellant submitted that FIFA Regulations, particularly the 2019 edition of FIFA Disciplinary Code, and additionally Swiss law applies according to Article R58 of the CAS Code and the FIFA Statutes. Besides, Romanian Law can be applied whenever necessary given to the facts and circumstances of the present proceedings.

50. The First Respondent submitted that the present proceedings should be decided exclusively under Article 58 of the CAS Code and, subsidiarily, Swiss Law since FIFA is an association incorporated under Swiss Law. The First Respondent also agrees to

apply Romanian Law if needed to rule the facts and circumstances of the present proceedings.

51. The Second Respondent concurs in applying the provision under Article 58 of the CAS Code, firstly FIFA Statutes and Regulations, namely the Disciplinary Code. Subsidiarily, Swiss Law should apply whenever needed to fill a possible gap in the FIFA Regulations. Besides, the Second Respondent submits that Romanian Law can be applied only to bankruptcy proceedings as this kind of proceedings is governed by the country's law where insolvency is established.

52. The Sole Arbitrator is satisfied that the FIFA Regulations, particularly the FIFA DC, edition 2019, are applicable, with Swiss law applying to fill in any gaps or *lacuna* within those regulations. Romanian Law can be applied to understand the carrying out of an insolvency proceeding under Romanian Law if needed to evaluate the Parties' conduct in connection to the facts of the case.

IX. MERITS

A. Preliminary Remarks

53. The Sole Arbitrator acknowledges that CAS jurisprudence has consistently endorsed the understanding that '*a club is a sporting entity identifiable by itself that, as a general rule, transcends the legal entities which operate it*' (*inter alia* CAS 2018/A/5618) and that therefore, the obligations assumed by such club must be respected regardless of the legal vehicle used to manage the club. The provided criteria under Article 15.4 FDC (2019 Edition), such as the name, the crest, the history, the fanbase, the history or the roster of players, among others, are addressed by such regulations to demonstrate the continuity of a club throughout time irrespective of the ownership structure behind it. However, the list of these criteria is not exhaustive (Article 15 *"...among others..."),* and other elements can give value to establishing the existence of a sporting succession.

54. When a case of sporting succession is confirmed, the new club - considered to be the sporting successor - can be held liable to assume the financial obligations of the former club (i.e., often an old club that no longer exists and/or is no longer affiliated to the national association it belonged) due to a final and binding decision. This is the case even if the new club (i.e., the sporting successor) was not a party to any agreement with the creditor and not named in the decision the creditor seeks to enforce (e.g., for unpaid salaries), like the case at stake.

55. This having stated, sporting succession can be commented as a provision strictly necessary for the football governing body to warn all the subjects involved in football competitions that certain conducts, if aimed at avoiding financial obligations, cannot be accepted by football stakeholders and to safeguard the integrity of the competitions.

56. Thus, it appears consequent that the issue of sporting succession has to be evaluated case by case and sometimes facts and circumstances can tip the balance in favour of one or the other part.

57. Briefly, as the legal autonomy of a sports organization (*"... the private autonomy of the organisation to adopt rules and norms that have a legal impact in a legal framework imposed by the State at national or at international level..."* Oswald, 2010, p.155, *Associations, fondations et autres formes de personnes morales au service du sport*) has been widely recognized by legal writings and case-law, within this framework it derives that private associations adopt the disciplinary system to regulate the life of its members and its provisions take on a peculiarity of their own that necessarily goes outside national laws unless some facts are not regulated by such provisions, or those regulations are contrary to the public order: "*imposition of disciplinary measures ...* [serves] *to "compel" the debtor to comply. Indeed, the Federal Tribunal, in its decision of 5 January 2007* [4P.240/2006, at consid. 4.2], *acknowledged that the imposition of a sanction has the purpose to secure the observance of the rules of the association, deterring an associate from breaching them, and therefore constitutes an element of pressure on the associate to comply ›4!fth its financial obligation towards the other affiliates* (in *the similar way, see the decision of the Federal Tribunal of 27 March 2012, 4A 558/2011): such effect, however, does not put the power of the association to sanction in conflict with the State monopoly on enforcement procedures, provided that sufficient grounds are offered by the rules of the association for the exercise of that power (and provided that the sanction imposed does not severely infringe the personality right of a player. decision of 27 March 2012)" (*CAS 2012/A/2817, para. 104).

58. The Sole Arbitrator will take note of the numerous CAS Awards reported by the parties as a valuable reminder of the cases analysed by other Panels. Still, it must be stressed that being at stake a disciplinary issue, facts and documents submitted by the parties will be freely analysed and addressed, especially following the football regulations accepted by the Parties of these proceedings, save they are contrary to the public order. Besides, in doing so, the Sole Arbitrator does not consider himself bound by prior decisions of the FIFA Judicial Bodies or CAS.

59. Now, therefore, the main issues to be resolved by the Sole Arbitrator are:

i) Did FIFA DC have the competence to rule about this issue?
ii) Did the FIFA DRC decision extends to the Appellant?
iii) Was the claim of the First Respondent time-barred?
iv) If not, is the Appellant the sporting successor of the Old Club?
v) If so, did the First Respondent act with due diligence?

60. The Sole Arbitrator is eager to emphasize that, since the FIFA Disciplinary Code 2019 entered in force, sporting succession is regulated under Article 15.4 of the FIFA Disciplinary Code. This provision is included in 'Title II. 'Offences' and explained in "Chapter 2 – Disorderliness at matches and competitions". These violations are adjudicated by the FIFA Judicial bodies (Article 27); precisely, they fall under the competence of the single Judges of the Disciplinary Committee in accordance with Article 54.h) of the Code ("cases involving matters under article 15 of this Code).

61. Appropriately, the Appellant reported both CAS awards that dealt, amongst other, about the competence di FIFA DC, namely CAS 2018/A/5647, Sprockel v. FIFA & PFC CSKA Sofia, in support of such competence, and CAS 2017/A/5146, Bolado Palacios v. FIFA, Bulgarian Union Football & PFK CSKA Sofia, where that Panel credited FIFA DRC to rule about sporting succession. Relying on the second reasoning, the Appellant also objects that even the wording of Article 27 FDC does not attribute competence to FIFA DC to rule over the sporting succession. It shall be considered a horizontal dispute between the Player the Club(s). Moreover, the Appellant stresses that, if applying disciplinary provisions in a contractual dispute (as the one at stake), the right of the charged Club should be somehow deprived or less safeguarded: the statute of limitation to prosecute a disciplinary infringement is longer (5 years) than one provided for contractual disputes (2 years); the burden of proof to ascertain the disciplinary infringement rests solely on FIFA and not on the claiming Player; the standard of proof is lesser (comfortable satisfaction) than the one requested before FIFA DRC or PSC.

62. The Sole Arbitrator recognises that the submissions of the Appellant are well reasoned under a systemic perspective. Still, it needs to be stressed that sporting succession under the FDC 2019 has become a disciplinary issue. Tellingly, the wording of Article 15.4 refers to a "non-compliant" party, where it relates to a previous decision (final and binding) that already adjudicated the existence of an infringement on the Old Club. Therefore, what must be done is ascertain whether the New Club is the sporting successor under the criteria provided by Article 15.4 FDC.

63. Otherwise, it should be assumed that the Disciplinary Committee is competent only to ascertain the existence of the sporting succession and that, once ascertained such event, the matter should be sent back to FIFA DRC to decide again on the merits of the dispute between the player and the new successor club. Then, whether such a recent decision should not have complied, return to FIFA DC to ascertain whether the new club has complied or not with the 'new' FIFA DRC decision. This could be not the case, and either this can be allowed if it is true that the investigation of the sporting succession is intended to affirm or deny the existence of a breach of a final and binding decision of a FIFA Judicial Body (DRC in the present case) in the charge of the Appellant.

64. Furthermore, the Appellant's issues as to the possible breach of legal certainty do not appear to be well-founded and applicable to the present judgment, since, as preliminarily above mentioned, it is necessary to assess the club's conduct from a strictly disciplinary point of view under those rules that has been provided and accepted by the Parties of these proceedings (see Art. 53.2 of FIFA Statutes: "*The Disciplinary Committee may pronounce the sanctions described in these Statutes and the FIFA Disciplinary Code on member associations, clubs, officials, players, intermediaries and licensed match agents*").

65. In this respect, it appears fair and consequent that the statute of limitation has been established in a longer period having to "*investigate, prosecute and sanction*" the possible disciplinary violation compared to the two years provided for the prescription of a right (i.e., salaries) that the holder well knows and which it can immediately dispose of and even waive. Moreover, suppose the FIFA judicial bodies have the disciplinary

power to sanction. In that case, it derives that the burden of proof rests only on such a prosecutor within the standards provided by the FDC.

66. That said, the Sole Arbitrator is satisfied with the findings of CAS 2019/A/6461 (Tartu Jalgpallikool Tammeka v. FIFA): "*At any rate, it was within the power of the FIFA Disciplinary Committee to consider whether the Appellant bears responsibility for the debts incurred by the Debtor club. Indeed, having identified a clear case of succession between the two clubs, the FIFA Disciplinary Committee legitimately concluded that the successor club, in this case, the Appellant, is liable for the debts incurred by its predecessor, the original Debtor. This is well in line with the legal principle confirmed by CAS Panels, that the successor club is bound by the debts of its predecessor and should bear the consequences for its failure to pay (CAS 2011/A/2646 §20). Consequently, the FIFA Disciplinary Committee had a duty to address the issue and to examine the liability of the Appellant and, thus, applied correctly Article 64 of the FDC*".

67. Therefore, FIFA DC is competent to rule on the issue of sporting succession and to ascertain if this "offence" has taken place amongst two clubs.

i) FIFA DRC decision does not apply and extend to the Appellant.

68. The Appellant quotes the reasoning of Prof. Ulrich Haas about the enforcement of CAS football-related awards against the so-called third party: "*.... it should be noted that the decision that has been rendered between the creditor and the debtor-despite the extension of enforceability- does not have any legal force against the third party...for it is incompatible with the right to a fair hearing to make the decision binding on a third party if said third party did not have the opportunity to intervene in the proceedings in a supervisory manner...*"[....] "*The decision must be rejected. It—detached from the FIFA Regulations and from state law---creates a concept of alleged universal succession in order to then extend the effects of enforcement to the Third Party...*". The Appellant was not a party to the proceedings between the Old Club and the Player and it can be assumed as the new debtor.

69. As stated above, the Sole Arbitrator agrees with the FIFA Single Judge's introduction of the appealed decision: "*...Moreover, the Single Judge wishes to recall that, according to art. 53 par. 2 of the FIFA Statutes, the Disciplinary Committee (hereinafter also referred to as "the Committee") may pronounce the sanctions described in the Statutes and the FDC on member associations, clubs, officials, players, intermediaries and licensed match agents.*"... "*Clubs are affiliated to regional and/or national football associations and these national football associations are members of FIFA. Consequently, football clubs are considered as "indirect members" of FIFA and therefore, are subject to and bound by the FIFA Statutes and all other FIFA rules and regulations, as well as by all relevant decisions passed by the FIFA bodies. "The aforementioned principle is embedded in art. 14 par. 1 lit. d) of the FIFA Statutes which requires the member associations "to cause their own members to comply with the Statutes, regulations, directives and decisions of FIFA bodies" as well as in art. 60 par. 2 of the FIFA Statutes that states that the member associations, amongst others, "shall*

take every precaution necessary to ensure their own members, players and officials comply with these decisions". The foregoing is only possible to the extent that the so-called "members" are still affiliated to the member associations of FIFA".

70. This quoted reasoning dovetails with the concept of *lex sportiva*, "a *transnational autonomous legal order created by the private global institutions that govern international sport*' (Ken Foster, 'Lex Sportiva and Lex Ludica: the Court of Arbitration for Sport's Jurisprudence'. [2005] - Entertainment and Sports Law Journal, para 6.). In other words, since the issue of sporting succession is not even known to the State systems, it is recognised that sports bodies, the football ones here, created a regulatory system autonomous and necessary to safeguard the integrity of the competition, in the case at stake regarding compliance with contractual obligations.

71. Consequently, since the Single Judge recognized Fotbal Rapid 1923 as the sporting successor of the Old Club, and therefore declared it obliged to pay the outstanding amount due to the player under the decision of the DRC, the provision enshrined in art. 15.4 of the FDC must be considered applicable also to the Appellant.

72. Lastly, the Sole Arbitrator argues that, after the Disciplinary Code 2019 edition come into force, the issue of sporting succession is now properly regulated and it is no longer a "creation of jurisprudence" as before, which, as such, could lend itself to the interpretation of scholars.

73. In light of above, FIFA decision on 18 December 2012 can be applied and extended to the Appellant if it is found to be the sporting successor of the Old Debtor.

iii) Was the claim of the First Respondent time-barred?

74. The Appellant objects that the First Respondent's claim before FIFA Disciplinary Committee, filed on 2 June 2020, is time-barred.

75. As a starting point, the Sole Arbitrator refers to Article 10 of the FIFA DC, to which provision the Parties also referred in their submissions, which reads as follows:

> ➢ *1.Infringements may no longer be prosecuted in accordance with the following periods:*
> ……
> *c) five years for all other offences.*
>
> ➢ *2.The limitation period runs as follows:*
> *a) from the day on which the perpetrator committed the infringement;*
> *b) if the infringement is recurrent, from the day on which the most recent infringement was committed;*
> *c) if the infringement lasted for a certain period, from the day on which it ended;*
> *d) from the day on which the decision of the Dispute Resolution Chamber, the FIFA Players' Status Committee or the Court of Arbitration for Sport (CAS) becomes final and binding.*
>
> ➢ *3.The limitation periods set out above are interrupted by all procedural acts, starting afresh with each interruption.*

76. In this context, the relevant dates to be considered for the issue at stake are:

- 10 May 2013: the FIFA DRC Decision, ref. 09-00709, rendered in the case between the Player and the Old Club became final and binding;
- 16 July 2014: the Secretariat of FIFA DC informed the Romanian Football Federation about the opening of a disciplinary proceedings against the Old Club;
- 20 August 2014: the Secretariat of FIFA DC noticed all the Parties, included the RFF, that, due to fact that FC Rapid Bucuresti was undergoing insolvency proceedings, the Disciplinary Committee was "*monitoring and evaluating the situation*";
- 14 January 2015: answering the reminder of the Player on 7 January 2015, the FIFA DC informed the Parties that the disciplinary proceedings were suspended until the insolvency proceedings against the Old Club were finalized in accordance with Romanian Law.
- 27 September 2017: the RFF informed FIFA that FC Rapid Bucuresti was no more affiliated to the Federation and it was undergoing bankruptcy proceedings;
- 6 October 2017: the Secretariat of FIFA DC noticed the Parties and RFF that, due to the disaffiliation of the Old Club, the Disciplinary Committee could no longer proceed with the disciplinary proceedings against such Club;
- 2 December 2019 and 2 June 2020: the Player requested FIFA DC to open a disciplinary proceeding against the Appellant, founded on 2016 as the sporting successor of the Original Debtor, for not complying with the FIFA DRC decision;
- 3 June 2020: the Secretariat of FIFA DC requested the RFF to provide comments about the Player's allegations and information about the Old Debtor and the Appellant;
- 24 June 2020: FIFA DC informed the Parties and RFF of the opening of disciplinary proceedings against the Appellant for the potential breach of Art. 15 and 64 of FDC.

77. As the Appellant objects that the Single Judge of FIFA DC wrongly applied Art. 10.3 of the Disciplinary Code as he stated that the limitation period for prosecuting the violation was interrupted on 6 October 2017: that is when the RFF communicated that the Old Club was no longer affiliated, and DRC could not enforce anymore. As the Player was informed since 20 August 2014 that the Old Club was undergoing insolvency proceedings (and thus the Player failed to register his credit before the Romanian Insolvency Tribunal), the complaint against the Appellant should have been filed as of 20 August 2019. Since the five-years' time limit expired, the complaint of the Player was time-barred.

78. Regarding this question, the Sole Arbitrator finds that, as sporting succession is inserted under Title II "Offences" of the Disciplinary Code, article 15 DC provides a hypothesis of "infringement itself" that can be evaluated only if a sporting successor appears on the football scene. In other words, sporting succession is not the fact that triggers the former disciplinary proceedings between the Player and the Old Club, but it is truly the infringement that must be prosecuted from that moment on. Therefore, from a starting point, as the Appellant appeared in the Romanian Football championships as of 2017 (the foundation of Academia Rapid) or 2018 (the incorporation under Fotbal Cub R Bucuresti), this (these) should be the effective year(s) for the calculation of the

limitation period. As the complaint of the Player was lodged on 2 December 2019 (or anyway on 2 June 2020), it is not time-barred, and the disciplinary proceedings was lawfully opened and concluded.

79. Regardless of this preliminary consideration, the Sole Arbitrator is satisfied with the finding of the FIFA Single Judge as, firstly, on 14 January 2015 the disciplinary proceedings were suspended "*until the insolvency proceedings against the Old Club were finalized in accordance with Romanian Law*". Although such '*suspension*' is not regulated under the Disciplinary Code, such communication has to be intended as a "procedural act" during the disciplinary proceedings that interrupted the limitation period under art. 10.3 of the DC. Therefore, the Player's complaint was not time-barred.

80. Moreover, this reasoning is also sustained by the Swiss Code of Obligations' provisions regarding the interruption of the limitation period. In this regard, Art. 135 reads: "*The prescriptive period is interrupted: [...] 2. by debt enforcement proceedings, an application for conciliation, submission of a statement of claim or defence to a court or arbitral tribunal, or a petition for bankruptcy.*". It is worth noting that, on 27 September 2017, the RFF informed FIFA about the opening of bankruptcy proceedings against the Old Club, and such notice, again, can be considered as a new procedural act that interrupted the limitation period.

81. Considering the above, the Sole Arbitrator concludes that the First Respondent's claim against the Appellant was not time-barred.

ii) If not, is the Appellant the sporting successor of the Old Club?

82. Having established that the claim of the First Respondent is not time-barred, the Sole Arbitrator shall now examine whether the Appellant is to be considered the sporting successor of the Old Club, i.e., the entity which was ordered by the FIFA DRC to pay the amount of EUR 400,000 to the Player as the due compensation for the breach of contract.

83. In this regard, Article 15.4 of the Disciplinary Code reads as follows:

"The sporting successor of a non-compliant party shall also be considered a non-compliant party and thus subject to the obligations under this provision. Criteria to assess whether an entity is to be considered as the sporting successor of another entity are, among others, its headquarters, name, legal form, team colours, players, shareholders or stakeholders or ownership and the category of competition concerned."

84. The Sole Arbitrator acknowledges that a heated legal debate arose around sporting succession and that many CAS Awards dealt with the several issues of this subject. Therefore, it might be helpful to recall the legal framework the Sole Arbitrator will turn his attention to.

In general: points of departure and legal framework

85. As a first important point of departure and to have this distinction clear, the Sole Arbitrator emphasises 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*" (CAS 2016/A/4550 & 4576, para. 134, or CAS 2016/A/4918, para. 150). As such, the mere fact that two parties appeared as two separate legal entities is, so the Sole Arbitrator finds, not a decisive factor in ruling sporting succession. The Sole Arbitrator underlines that the question is not whether the Appellant is the legal successor of the Old Club: instead, if the Appellant is the sporting successor of the Old Club.

86. In addition, and for the sake of further clarity, the Sole Arbitrator also emphasizes, as opposed to the concept of legal succession, that "*in the context of sporting succession it is of relevance to determine this concept in light of the eyes of the general public. In other words, so the Sole Arbitrator finds, the picture the alleged sporting successor presents to the general public is of relevance. A parallel can be drawn with the "sporting name" of a club, which is the name under which a club appears in public. The Sole Arbitrator points out that these circumstances are more significant to determine whether or not sporting succession occurred*" (CAS 2020/A/7290).

87. The Sole Arbitrator stresses that sporting succession, as enshrined in the Disciplinary Code, is a disciplinary issue. In this regard, the wording of Article 15.4 DC is quite clear: if a sporting succession occurred, the successor of a non-compliant party becomes automatically a non-compliant party itself, even with no need for fraudulent conduct (the Disciplinary Code does not require such element).

88. Consequently, the Sole Arbitrator will find a comfortable satisfaction when there is the general understanding that the new club is the "sporting" successor of the old (and debtor) club, and the alleged successor did nothing to refrain from giving that general understanding. Bearing this in mind, it will be not for the Sole Arbitrator to ascertain the validity of sale or merger of clubs and administrative rights, even if a bankruptcy occurred, and to exclude the sporting succession. Those facts may be of some importance, but they are not crucial to the scope of this arbitration.

89. In this context, the Sole Arbitrator underlines a significant number of CAS awards that deal with the legal concept of sporting succession. The Sole Arbitrator refers to well-established jurisprudence from which it follows under what circumstances a "new" club can be considered as a "sporting successor", listing criteria to determine if "sporting succession" has taken place, regardless of the legal form under which the respective clubs have operated (see, *inter alia*, CAS 2007/A/1355, CAS 2011/A/2614, CAS 2011/A/2646, CAS 2012/A/2778, CAS 2016/A/4550 and CAS 2016/A/4576).

90. In particular, the Sole Arbitrator refers to an essential award in CAS 2013/A/3425 (as was also referred to in CAS 2018/A/5618), from which it follows that:

> *"The Sole Arbitrator highlights that the decisions that had dealt with the question of the succession of a sporting club in front of the CAS (CAS 2007/A/1355; TAS 2011/A/2614; TAS 2011/A/2646; TAS 2012/A/2778) and in front of FIFA's decision-making bodies (...), have established that, on the one side, a club is a sporting entity identifiable by itself that, as a general rule, transcends the legal entities which operate it. Thus, the*

> *obligations acquired by any of the entities in charge of its administration in relation with its activity must be respected; 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 recognised, even when dealing with the change of management companies completely different from themselves"* (original text in Spanish).

91. This approach has been applied in several decisions of the CAS (see, *inter alia*, CAS 2016/A/4576, CAS 2018/A/5618, CAS 2020/A/6884, CAS 2020/A/7092, and CAS 2020/A/7290). The effect of these decisions, to which the Sole Arbitrator fully adheres, is that the sporting successor of a former, no longer existing club can, as a matter of principle, be liable to meet the financial obligations of that former club notwithstanding that the successor is not a party to any agreement, arrangement or understanding according to which the monetary obligation arose and regardless of whether there has been a change of management or corporate structure or ownership of the club in question.

92. Additionally, the Sole Arbitrator wishes to add that if a club is a sporting successor of a non-compliant club, once this is established, the sporting successor shall be considered a non-compliant party (see, *inter alia*, CAS 2020/A/7092). Although the Appellant disputes the validity of a system whereby sanctions can be imposed for non-compliance with a decision of FIFA, while it is not a party to the proceedings, the Sole Arbitrator *"finds that is not per se illegitimate, for it is a commonly accepted principle that in case of abuse the corporate veil may be pierced, i.e., Durchgriff"*. (CAS 2020/A/7092).

93. For the sake of clarity and avoidance of any misunderstanding, the Sole Arbitrator further recognizes that the elements as referred to in Article 15(4) of the 2019 edition of the FDC are not exhaustive, as clearly follows from the words "*among others*". The Sole Arbitrator feels forced to emphasize this. In other words, the existence of several elements considering this provision can lead, in its combination, and so even if not, all aspects are met in a specific case, to the conclusion that a club has to be considered as a "sporting successor." The overall package of features is decisive (see also CAS 2020/A/6884).

94. As above underlined, the Sole Arbitrator also feels not bound by previous decisions, considering that there is no "stare decisis" in arbitration. At the same time, as rightly stated by previous Panels, the Sole Arbitrator is aware that CAS rulings form a valuable body of case law and can strengthen legal predictability in international sports law (see, *inter alia*, CAS 2004/A/628, CAS 2008/A/1545). More specifically, the Sole Arbitrator has taken the CAS decisions regarding sporting succession as listed above into attentive consideration and, as such, accorded to such awards a substantial precedential value.

95. Before analysing the relevant criteria, the Sole Arbitrator points out that sporting succession does not necessarily derive from "shady practises" to avoid due payments, or the existence of malicious intent from the sporting successor must be proved. Taking advantage of a systemic view of Title II of the Disciplinary Code, not all the listed

"Offences" derive from fraudulent conducts: "Unless *otherwise specified in this Code, infringements are punishable regardless of whether they have been committed deliberately or negligently. In particular, associations and clubs may be responsible for the behaviour of their members, players, officials or supporters or any other person carrying out a function on their behalf even if the association or club concerned can prove the absence of any fault or negligence*" (Art. 8 DC – Responsibility).

96. In this regard, as was also argued by the Second Respondent, shady practices, or somewhat fraudulent practices by parties trying to avoid payments, do not constitute a *conditio sine qua non* to conclude that sporting succession occurred. In other words, sporting succession can exist even if such practices are absent. The same applies to the absence of bankruptcy proceedings. Put differently, sporting succession can also exist even if there is the absence of bankruptcy proceedings (see, *inter alia*, CAS 2013/A/3425 and CAS 2020/A/6884). By the same token, the Sole Arbitrator wishes to add that sporting succession is not exclusively limited to entities that purchase clubs through public tender or auction (see, *inter alia*, CAS 2018/A/5618).

97. Against the above legal background and given the relevant criteria that apply to the present dispute, the Sole Arbitrator finds conclusive evidence that it concerns a matter of sporting succession at a sporting level in the present case. Many relevant criteria are present as clearly listed in Article 15(4) of the FDC and those derived from the above CAS jurisprudence. Therefore, the Sole Arbitrator concludes, as will be demonstrated below, that, in this case, the Appellant is the sporting successor of the Old Club. The Sole Arbitrator will now turn to assess the issue of res judicata, as raised by the Second Respondent, and the individual criteria to support the found succession

Res judicata

98. The Second Respondent submitted that the FIFA Disciplinary Committee had already declared the Appellant as the sporting successor of the Old Club at the outcome of other proceedings (n. 180204 PST, 25.09.2019). The Appellant paid the amount owed to the creditor, thereby recognizing the effectiveness of such a decision. Therefore, the Appellant is estopped from claiming a different position in the current proceedings, and the sporting succession with the Original Club has become res judicata.

99. Namely, the Second Respondent sustained that the first Disciplinary Committee's Decision concerned the same party (FC Rapid 1923), the same facts (the progressive growth of the club in the Romanian football panorama), and the same legal basis upon which that decision relied. The Appellant filed a claim before CAS (2020/A/6821) against the decision, but such proceedings were terminated pursuant Art 64.2 of the Code, and, most of all, paid the due amount to the creditor.

100. The Sole Arbitrator firstly notes that CAS jurisprudence stated that decisions of an association tribunal, as FIFA, are not vested with *res judicata* effects (see CAS 6483, 6873 & 7183). For instance, in CAS 2019/A/6483: "*The Panel notes that according to Swiss law the principle of res judicata only applies to arbitral awards and court decisions. The types of decisions that enjoy res judicata effects are defined by law. It is not within the Parties' autonomy to extend the number or types of decisions that are*

vested with res judicata effect. If it were, otherwise, a violation of the res judicata principle could not – contrary to jurisprudence of the SFT – constitute a violation of the ordre public. There is no provision in Swiss law that confers res judicata effects to decisions of association tribunals. Decisions of a judicial body of a sport federation, which are not arbitral tribunals, are mere embodiments of the will of the federations concerned (SFT 4A-374/2014, consid. 4.3.2 and SFT 4A_222/2015, consid. 3.2.3.1)."

101. Moreover, the Sole Arbitrator observes, as also noted by the Appellant, that the concept of *res judicata* is not codified in the FIFA DC or Swiss law. It is, however, clear that *res judicata* is part of procedural public policy, and it applies both domestically and internationally (4A_633/2014). As such, the Sole Arbitrator remarks that in accordance with the jurisprudence of the SFT, "*il y a autorité de la chose jugée lorsque la prétention litigieuse est identique à celle qui a déjà fait l'objet d'un jugement passé en force (identité de l'objet du litige). Tel est le cas lorsque, dans l'un et l'autre procès, les mêmes parties ont soumis au juge la même prétention en se basant sur les mêmes faits*" (which could be freely translated into English: "*there is res judicata when the claim in dispute is identical to that which was already the subject of an enforceable judgment (identity of the subject matter of the dispute). This is the case when in both litigations the same parties submitted the same claim to the court on the basis of the same facts*").

102. The Sole Arbitrator points out that the procedural concept of *res judicata* has two elements: 1) the so-called "*Sperrwirkung*" (prohibition to deal with the matter = ne bis in idem), the consequence of this effect being that if a matter (with res judicata) is brought again before the judge, the latter is not even allowed to look at it, but must dismiss the matter (insofar) as inadmissible; and 2) the so-called "*Bindungswirkung*" (binding effect of the decision), according to which the judge in a second procedure is bound to the outcome of the matter decided in res judicata (see CAS 2013/A/3256).

103. It is mainly the second concept that is pertinent in this case.

104. In addition, for the First DC Decision and the Appealed Decision to have the force of res judicata, the Sole Arbitrator underlines that, as also follows from established CAS jurisprudence, the "triple identity check" must be met. The triple identity check consists of the verification of (i) the identity between the parties to the first decision and the subsequent one, so that if the parties were the same in both cases, the situation of res judicata might come into play; (ii) the identity of objects between the two decisions at stake; and (iii) the identity of the basis (*causa petendi*) on which the claim is submitted.

105. As referred to by the panel in CAS 2013/A/3380, the Sole Arbitrator wishes to quote the decision rendered in CAS 2006/A/1029, which refers to the triple identity check: "*This Panel notes that the issue to be decided in the present dispute is not whether a Judgement has legal force as soon as it is rendered but whether it has legal force only between the parties in the dispute before the Courts or also in relation to third parties not involved in the dispute. Legal jurisprudence establishes the three elements of a res judicata, namely: The same persons – eadem personae; The same object – eadem res; The same cause – eadem causa petendi*"

106. The three elements of *res judicata* are of equal fundamental importance and relevance. The aspect of the same persons (*eadem personae*) is therefore as important as the other two elements. Its absence is enough to exclude the plea of *res judicata* since those who were not present in the judicial proceedings could not be considered bound by a sentence rendered *res judicata.*

107. The Sole Arbitrator notes that the First Respondent was not a party in the first proceedings; consequently, this is not met in the present case regarding the identity test. However, the same complaint against the Appellant as the sporting successor of the Old Club, the facts of the two proceedings are not the same as they are related to two separate agreements of two different players.

108. Finally, the Sole Arbitrator agrees with the findings of the recent decision of the SFSC n decision 4A_536/2018 (16.03.2020) that confirms its long-standing jurisprudence, according to which the res judicata effect of arbitral awards and state court decisions is limited to their operative part: precisely, the SFT held that *res judicata* effect is limited to the operative part of a decision and does not extend to its considerations; the considerations may be used to understand and interpret the operative part.

109. This stated, the Sole Arbitrator finds that the issue of res judicata does not apply to the present dispute but, anyway, the reasoning of such DRC decision must be taken in account, at least as a presumption, if needed for the outcome of these proceedings: in particular, that the Appellant was once found to be the sporting successor of the Old Debtor and did not object to such reasoning and decision.

110. The Sole Arbitrator now turns its attention to the criteria provided by Article 15.4 of the DC whether they apply in the case at stake.

In particular: the criteria

111. First, the Sole Arbitrator observes and finds it of much importance that the names of the Appellant and the Old Club are practically identical. The Appellant presents itself as "Fotbal Club Rapid 1923 SA" and refers to the Original Rapid as "S.C. Fotbal Club Rapid S.A.". The only difference between both names is the number 1923 which precisely seeks to dissipate any doubt about the date of creation of the Appellant. This also clearly follows from the Appellant's website, which is an important indication as it is not information simply following from some internet sources or social media platforms.

112. Further to this, there is no doubt that the Appellant publicly portrays itself being the same club as the Old Club. In this regard, the Sole Arbitrator attaches much value to the public's perception, as set out above. Moreover, it is clear to the Sole Arbitrator that the Appellant identifies itself as a sports entity founded on 25 June 1923 and the list of titles and achievements of the team starts as from 1942 (Copa Basaribiei). As such, the history of the Old Club is the same as the Appellant (that appears on the website and Wikipedia page), and a significant number of players who played for the Original Debtor are recognized in the Appellant's history, thereby, as correctly stated by the First

Respondent, seeking to exploit supporter's affiliation with these icons and momentous events to maximize financial gains.

113. This is also confirmed by the official website of the Club that, regarding to the club's history, it refers (Exh. 16 from FIFA):

"*In the summer of 1923, the "CFR Cultural and Sports Association" was founded, meaning today's Rapid*"

[...] *In December 2012, the club launched insolvency proceedings, and in the summer of 2013, George Copos withdrew and ceded his shares to Adrian Zamfir. In just one year, the club was taken over by Valeri Moraru.*

The team went into a sharp decline and, in 2013, was sent by TAS (Sports Arbitration Tribunal) in the Second League, on financial criteria, after having, however, disputed a dam (won 2-1 in face of Concordia Chiajna) and the first two rounds of League I! He immediately returned to the first division, but in 2015, he was relegated for the seventh time to the second echelon.

In May 2016, Rapid was able to celebrate its promotion to Liga I, but on June 14, the court ruled the club's bankruptcy in the first instance. Finally, the bankruptcy was finally pronounced on December 14, 2016.

The darkest year in Rapid history was beginning. Starting with the autumn of 2016, two projects, the Rapid Club Football Association and the CFR Movement Sports Club, tried to keep the rapidist spirit alive, in the 5th League of Bucharest. At the end of the season, both groups managed to be promoted to the 4th League.

In the summer of 2017, in partnership with the City Hall of Sector 1, the Rapid Academy project was launched, the team being registered in the 4th League. Academia Rapid licensed the right to use the trademark and announced its decision to participate in the tender for its award. The project was supported by the financial support committee of the CFR Bucharest Movement Sports Club, but not by the Rapid Football Club Association.

The trademark licensing agreement entitles the Rapid Academy to use the logo, colors, and name of the "Rapid" brand, representing the legal way of representing the Rapid football team in sports competitions."

114. The Sole Arbitrator finds this an essential aspect in light of sporting succession. If Appellant wanted to avoid any risk of being considered the sporting successor of the Old Club, it could have distinguished itself from the Old Club, but it opted not to do so. At the least, it cannot be denied that the Appellant had a serious hand in the creation of confusion towards the public, which could have been easily avoided.

115. The Sole Arbitrator finds evidence of these findings reading the Wikipedia page of the Appellant, edited on 27 January 2021 (edited even after the annulation of the trademark acquired by the receiver – exh. FIFA no. 16), where it is stated: *[...] "by the time the*

auction for the bankrupt company's brand was finalized, Academia Rapid concluded a lease agreement for a period of one year. This team has proven to be very popular among supporters, who consider it the moral successor of the parent club. In the same summer Miscarea Feroviaria disappeared [...] On 12 June 2018, after 18 auctions along which the price of Rapid brand has fallen with about € 3 million, Academia Rapid bought the FC Rapid Bucuresti brand, becoming officially the successor of the original club. The transaction was made for the amount of € 406,800, thus giving legitimacy to the new entity, even though it had already been accepted by most supporters and ex-legends of the club as the successor of the original club, a fact confirmed in the championship match against CSA Steaua on April 14, when on the Arena Nationala 37.000 fans attended the match...".

116. The Sole Arbitrator is aware that Wikipedia is not the official website of the Club. Still, it is well known that such a website is implemented by the ones concerned, probably fans of the Club or football lovers. Nevertheless, from this reading, it is possible to infer that all the interested people found the Appellant as the sporting successor of the Old Club. Moreover, the Appellant (in its former denomination as Academia Rapid) starting to use the brand under a license agreement for one year before acquiring it from Sierra Quadranta: this finding proves that, since the very beginning, the Appellant, and its representatives, were looking for being identified with the Old Debtor. As a result of its action, the Club inspired a considerable number of fans to attend at the match against CSA Steaua.

117. The Appellant states that it did not acquire the federative rights and the assets of the Old Debtor, but only gained the right to use the "brand FC Rapid" from Sierra Quadranta, the bankruptcy receiver; that contract entitled the Appellant to use history, sports results, website, colours, cups, trophies etc. (Appeal Brief para 98). Although the Appellant objects that the Bucharest Tribunal annulled that agreement, that contract appears as the proven intention of the Appellant to be recognized as the sporting successor of the Old Debtor, under the reasoning above explained, bearing in mind that sporting succession is not legal succession.

118. Additionally, the Sole Arbitrator underlines that the Old Club and the Appellant use the same logo, colors (purple and white), and uniform. Hence, the Successor Rapid has maintained the same logo that the Original Rapid used until the present day and the same website (www.fcrapid.ro – exh. 14 FIFA). This finding is also the proof that the Appellant has misleadingly stated that *"after the decision rendered by the Bucharest Tribunal, the Appellant is no longer entitled to use the trademark and the logo."*

119. Moreover, the Appellant is based in Bucharest, and used the same stadium of the Old Debtor, the Giulești Valentin Stănescu Stadium; only after its demolition the Appellant changed for another stadium while the new was under construction. In this regard, the Sole Arbitrator stresses that the stadium was not included in the contract with Sierra Quadranta. Nevertheless, the Appellant used such a stadium as an icon of its connection with the Old Debtor.

120. The arguments as raised by the Appellant that premises, ownership, license football teams, and legal entities are different are fully noted and taken into account by the Sole

Arbitrator. However, these arguments will not prevail over the significant number of elements on the other side, as summed up above, that point toward the existence of sporting succession. "*... the Sole Arbitrator reiterates that the elements are not exhaustive and are purely meant as indicative pointers of direction in order to determine whether sporting successorship exists. In this context, it is the combination of elements that exist in the present arbitration, as referred to above, that leads to the conclusion that the Appellant is considered as the sporting successor of the Old Club*" (CAS 2020/A/7092). In addition, whether a club is operated through a different legal entity does not bear relevance on whether a sporting succession has taken place, i.e., "*a sporting entity identifiable by itself that, as a general rule, transcends the legal entities which operate it*" (CAS 2013/A/3425 at par. 139). It is undeniable that, by identifying itself as the exact same club that had earned popularity in Romania for almost a century, the Appellant has benefited from a pre-existing fan base, commercial value, and a legacy that an actual new club could have never obtained from one day to another.

121. Further to this, the Sole Arbitrator does not want to leave unmentioned that according to the so-called "*Rangers de Talca case*" (CAS 2011/A/2646), a new club acquiring in the bankruptcy proceedings the "*economic unit composed of all the assets seized*" from another club, was to be understood as a successor of the old club since it was clear that the new club, by purchasing the assets of the old club, continued the activity formerly developed by the old club with the same image, badge, hymn, representative colours, emblems and placement. In the present case, the Appellant uses the same logo, internet domain, and stadium and holds its office in the same city of the Old Club against a considerable remuneration (the brand's acquirement). The fact that the Bucharest's Tribunal annulled the trademark sold by the Old Club's receiver would not only not prevail over the criteria that point in the direction of sporting successorship but is also not convincing and questionable.

122. In this regard, the Sole Arbitrator agrees with the findings of CAS Panel in 2020/A/6831: "FIFA *has no mandate to organize bankruptcy proceedings, and FIFA, obviously, accepted as much at the hearing. Nevertheless, succession does not only happen through direct purchase of assets. It can also happen following the initiation of insolvency proceedings against a club that fails to meet its obligations".* Therefore, despite the very suggestive and respectable arguments submitted by the Appellant, it is consequent that bankruptcy does not create an insurmountable barrier to applying sporting succession.

123. As a final note, although this aspect is not decisive as to his judgment, the Sole Arbitrator does not want to leave unmentioned that the Appellant has already been found to be the Old Club's sporting successor by the FIFA DC in another different proceedings and it did not object to such findings.

124. Considering the foregoing, the Sole Arbitrator agrees with the Respondents and rejects the Appellant's arguments on the issue of sporting succession and upholds the findings in the Appealed Decision that the Appellant is the sporting successor of the Old Club. The Sole Arbitrator acknowledges that the criteria used for the purpose of these proceedings could not be the same as recalled and applied in other CAS proceedings. Nevertheless, the Disciplinary Code itself leaves the Panels the interpretation of facts

and arguments and, in this case, a sporting succession between the Appellant and the Old Debtor occurred.

iii) If so, did the First Respondent act with due diligence?

125. Now having established that the Appellant is the Old Club's sporting successor, the Sole Arbitrator notes that the Appellant further argues that, even if there is sporting succession, the First Respondent would still not be entitled to any amount from the Appellant as it did not show the required degree of diligence as follows from the jurisprudence of CAS, in particular the "*Rangers de Talca case*" (CAS 2011/A/2646). The Appellant submits that the Player was aware of the financial crisis of the Old Debtor, and he did nothing to register his credit in the insolvency proceedings. Moreover, the Player signed a "Contract for the supply of sports services" with the Old Debtor and not an employment agreement: therefore, his credit was not preferential and due to the Romanian Law, the registration became mandatory.

126. The Sole Arbitrator deems helpful to start from the second objection submitted by the Appellant as it appears that, if the credit at stake was, and it is, preferential, any other duty does not fall on the Player.

127. Regardless of the name of the contract, the Sole Arbitrator remarks that the agreement at stake is an employment agreement (*cuiuscumque nominis pactum est contractus laboris).* As well established by the Swiss Supreme Court: "*A judge will first seek to establish the real and common intention of the parties, adopting an empirical approach, without stopping at the inaccurate expressions or denominations they may have used. If he or she is unable to do so, he or she will seek, by applying the principle of trust, the meaning that the parties could and should have given, pursuant to the rules of good faith, to their reciprocal manifestations of intent, taking into account all the circumstances."* (Decision of the Supreme Court 4A_124/2014 of 7 July 2014, para. 3.4.1.).

128. A quick look at the contract between the Player and the Old Debtor, signed on 21 July 2008, allows the Sole Arbitrator to point out this relevant finding, *inter alia*:

"*Art. 1 Scope: the scope of this convention is the provision of sport services by the Sportsman in favour of the Club, for the training and participation in football competitions....*

Art. 3.2 Price of the convention: the Club reserves its right to offer money bonuses or other incentives, depending on the Sportsman's conduct and performances...

Art. 5.1 b) Obligations of the Sportsman: to participate to the regular training sessions, training stages, training camps, friendly matches and official matches...c) to comply with the training and practice programme established by the Club or by the Club's representative...e) to observe the disciplinary rules established by the Club....

Art. 5.2 the Club hereby undertakes the obligation. A) to pay the sums owed to the Sportsman...b) to offer the Sportsman the appropriate training conditions...

129. In this regard, the Sole Arbitrator notes the following: "*According to Swiss law, the individual employment contract is a contract whereby the employee has the obligation to perform work in the employer's service for either a fixed or indefinite period of time, during which the employer owes him a wage (Article 319(I) of the Swiss Code of Obligations - "CO"). The main elements of the employment relationship are the employee's subordination to the instructions of the employer and the duty to personally perform work* (decision of SFT 4C.419/1999 of 19 April 2000, quoted in CAS 2016/A/4843).

130. A CAS Panel in CAS 2016/A/4709 (SASP Le Sporting Club de Bastia v. Christian Koffi N'Dri Romaric) stated that if a contractual document (a "proposal") signed by both parties to envisage the extension of an existing employment contract contains all the necessary essential elements, i.e. an agreement on the performance of work against remuneration, the names and the signatures of the parties, the club's stamp, a signature date, a reference to the parties' underlying contract of employment, and further stipulates the starting date of the extended employment contract, the player's guaranteed and conditional remuneration during said an extended period and the counterparty's financial entitlements related to a further conditional extension of the parties' contractual relationship, it contains all the contractual *essentialia negotii* to be considered as a valid and binding employment contract in itself.

131. The Sole Arbitrator agrees with the above findings and points out that the contract between the Player and the Old Club is an effective employment agreement. It contains all the essential elements of such category of contracts. Therefore, the credit of the Player cannot have anything else than a preferential nature, and the Player did not have the duty to register its credit into the table of the insolvency proceedings.

132. Besides, the Judicial Administrator of the Old Club was fully aware of the Player's credit as it was reported in the certification of the civil file n. 9873/3/2014 sent by FIFA on 20 August 2014: "*...having his object the request grounded by the claimant SC FOOTBALL CLUB RAPID SA – through Juridical Administrator C.I.I. Cristina ANDRONACHE in contradiction with the defendant JULIO CESAR DA SILVA E SOUZA requesting a finding through which the amount of 400,000 Euros alleged by way of damages and legal interest represents receivable prior to the date of opening of the procedure of reorganization followed to be submitted to the statement of affairs, according to insolvency proceedings.*" (exh. 3 First Respondent).

133. The Player was also diligent under the provisions of the Romanian Law 85/2006, art. 3 on insolvency proceedings. Such Law provides that the credits of the employees are automatically registered in the table of receivables by the judicial administrator/liquidator without the need of an application made by the employees: "... *The debtor's employees have the quality of creditor, without personally submitting the debt declarations. The creditor entitled to participate in the insolvency proceedings is that creditor who has formulated and to whom he has been admitted, in whole or in part, a request to register his claim on the tables of claims against the debtor drawn up in the proceedings and who has the right to participate and to vote in the creditors 'meeting, including on a judicial reorganization plan approved by the syndic judge, to be appointed as a member of the creditors' committee, to participate in the distribution*

of funds resulting from the judicial reorganization of the debtor or the liquidation of the debtor's assets, to be informed or notified about the conduct of the procedure and to participate in any other procedure regulated by this law. The debtor's employees have the quality of creditors entitled to participate in the insolvency procedure, without personally submitting the declarations of debts. [...] *The salary receivables are receivables arising from work reports between the debtor and his employees. These receivables are registered ex officio (automatically) in the table of receivables by the judicial administrator / liquidator.*

Art. 64 of the above referred Law, reads as follows*: Except for the employees whose receivables will be registered by the judicial administrator according to the accounting records, all other creditors, whose receivables are prior to the date of the opening of the procedure, shall submit the application for admission of receivables within the deadline set in the opening session, the claims will be registered in a register, which will be kept at the court registry.*

134. It follows that the Player, as a debtor's employee, was entitled to take part in the insolvency proceedings having his credit registered ex officio by the judicial administrator or liquidator. No degree of fault can be found on the First Respondent.

135. To not leave unanswered the submissions from the Appellant, the Sole Arbitrator is aware and remarks that, in the past, CAS panels have also dealt several times with the question if the creditor showed the required degree of diligence, which obligation does not arise from the FIFA Regulations.

136. More specifically, the approach taken by CAS panels does not only follow from the CAS case "*Rangers de Talca case*" (CAS 2011/A/2646), to which the Appellant referred, but also from other CAS jurisprudence (see, *inter alia*, CAS 2019/A/6461, CAS 2020/A/6884, and CAS 2020/A/6745). The Sole Arbitrator fully concurs with the general stance taken in jurisprudence regarding the required degree of diligence.

137. The Sole Arbitrator also fully adheres that a creditor is expected to be vigilant and to take prompt and appropriate legal action to assert his claims. In principle, no disciplinary sanctions can be imposed on a club because of succession. Should the creditor fail to claim his credit in the bankruptcy proceedings of the former club, as there is a theoretical possibility, he could have recovered his credit instead of remaining passive. As was decided in the above CAS jurisprudence, in such instances, it is necessary to examine whether a creditor has shown the required degree of diligence to recover the amounts he is owned.

138. Nevertheless, in Rangers de Talca case, the player had been duly informed about the start of insolvency proceedings, but it had never been told that the competent court had already recognised its credit. Due to the player's voluntary inaction, the sporting successor was finally not considered liable for the debts of the original club. Therefore, the present case is not comparable to the Rangers de Talca Award, and the Appellant's arguments in that regard shall be dismissed.

139. In light of the above, the Sole Arbitrator is comfortably satisfied with ascertaining that the First Respondent acted with due diligence in this case.

B. Final Remarks

140. The Sole Arbitrator concludes that the Appellant is the sporting successor of the Old Club and that the decision of the FIFA DRC must be confirmed.

141. In this regard, it is worth noting that the Appellant did not contest the amount due to the Player or the proportionality of the appealed decision. Therefore, there is no need for the Sole Arbitrator to address that point.

142. The Sole Arbitrator confirms that he has carefully read the parties' submissions and examined their reasoning, appreciating their content and the following engaging debate.

143. Furthermore, the Sole Arbitrator notes that regarding the interpretation and application of art. 15.4 DC, a remarkable amount of arbitration awards has been issued. The parties of the CAS proceedings quote those decisions, extrapolating those excerpts that can better sustain their mutual requests for relief. Often, the issues at stake and the following requests for relief of the Parties are related (and even consequent) to the changed conditions on the football market, the rapid development of the corporate structures, while taking due account of the fact that national laws often raise questions about their possible harmonization with the cd. *Lex sportiva.*

144. Legal processes such as bankruptcy and other insolvency procedures (often bound to eliminating insolvent entities) may raise questions about the correct approach to a standard rule such as art. 15.4 DC, which remains unique in its content and application, particularly regarding the clubs that may deal with the legal legacy of the Old Debtors.

145. Such being the regulations provided by the Bodies in charge of the football government, the appointed Panel has nothing to do but apply such principles where the criteria of art. 15.4 DC are met.

146. However, due to the rapid changing of duties, targets, legal relationships of the professionals and entities that work and act in the world of football and the impact of those elements in such scenario (with particular reference to the increasing number of cases of bankruptcy of football Clubs, as a legal issue with specific effects on football clubs), the Sole Arbitrator trusts that it will be possible to achieve in a reasonable time the desired harmonization of the disciplinary rule at stake with the factual and legal situation of football today.

C. Conclusion

147. Based on the foregoing, and after having taken into due consideration all the specific circumstances of the case, the evidence produced and the arguments submitted by the Parties, the Appealed Decision is upheld as the Sole Arbitrator concludes that:

i) The appeal of the Appellant was not time-barred;

ii) The Appellant is the sporting successor of the Old Club;
iii) The First Respondent acted with due diligence;
iv) The outstanding amount is in total EUR 400,000 plus 5% interest *p.a.* on the amounts as further specified by the FIFA DRC in the Appealed Decision.

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

X. COSTS

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

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

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

> "*In the arbitral award, the Panel shall determine which party shall bear the arbitration costs or in which proportion the parties shall share them. As a general rule and without any specific request from the parties, the Panel has discretion to grant the prevailing party a contribution towards its legal fees and other expenses incurred in connection with the proceedings and, in particular, the costs of witnesses and interpreters. When granting such contribution, the Panel shall take into account the complexity and outcome of the proceedings, as well as the conduct and the financial resources of the parties.*"

151. Having taken into account the outcome of the present arbitration proceedings, in particular the fact that the appeal by the Club has been entirely rejected, the Sole Arbitrator finds that the costs of the arbitration, to be determined and served to the Parties by the CAS Court Office, shall be borne by the Appellant in their entirety.

152. Finally, concerning the legal fees and other expenses incurred by the parties in connection with these proceedings, considering the complexity and the specific circumstances of this case, as well as the conduct of the parties, the Sole Arbitrator finds fair and reasonable that the Appellant shall pay a contribution towards the First Respondent's legal fees and other expenses incurred in connection with these arbitration proceedings in the amount of CHF 3,000 (three thousand Swiss francs). Furthermore, taking into account that FIFA did not use an external counsel, the latter shall bear its legal fees and other expenses incurred in connection with these proceedings.

ON THESE GROUNDS

The Court of Arbitration for Sport rules that:

1. The appeal filed on 25 November 2020 by the FOTBAL CLUB RAPID 1923 SA against Mr Julio Cesar da Silva e Souza and FIFA with respect to the decision issued on 22 October 2020 by the Disciplinary Committee of the *Fédération Internationale de Football Association* is rejected.

2. The decision issued on 22 October 2020 by the Disciplinary Committee of the *Fédération Internationale de Football Association* is confirmed.

3. The costs of the arbitration, to be determined and served to the Parties by the CAS Court Office, shall be borne by FOTBAL CLUB RAPID 1923 SA in their entirety.

4. FOTBAL CLUB RAPID 1923 SA is ordered to pay to Mr Julio Cesar da Silva e Souza an amount of CHF 3,000 (three thousand Swiss francs) as a contribution towards his legal costs and expenses incurred in connection with the present proceedings.

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

Seat of Arbitration: Lausanne, Switzerland
Date: 26 April 2022

THE COURT OF ARBITRATION FOR SPORT

Francesco **Macrì**
Sole Arbitrator