Arbitration CAS 2012/A/2754 U.C. Sampdoria v. Club San Lorenzo de Almagro & Fédération Internationale de Football Association (FIFA), award of 8 February 2013

Panel: Prof. Petros Mavroidis (Greece), President; Mr Efraim Barak (Israel); Mr Carlos Terán (Venezuela)

Football
Transfer of a player
Notion of decision subject to appeal
CAS jurisdiction towards a final decision made on behalf of a FIFA's decision-making body
Evidence of a longstanding practice having acquired force of customary law
FIFA jurisdiction towards a club undergoing restructuring or bankruptcy proceedings
Validity of a penalty clause

1. **The form of the communication has no relevance to determine whether a decision exists or not. In particular, the fact that a communication is made in the form of a letter does not rule out the possibility that it constitutes a decision subject to appeal. In principle, for a communication to be a decision, it must contain a ruling, whereby the body issuing the decision intends to affect the legal situation of the addressee of the decision or other parties. In this respect, a FIFA's letter refusing to entertain a club's claim and compelling that club to bring its claim before a national court, in full contradiction with its prevailing regulations and with a contract which includes an arbitral clause referring any dispute to FIFA or to CAS, is indeed a ruling materially affecting the legal situation of the club.**

2. **Pursuant to FIFA and CAS regulations, any FIFA decision which is intended to be made on behalf of FIFA's decision-making bodies and which is formulated as a final decision must be deemed subject to an appeal in front of CAS. The case should not be referred back to FIFA under the principle of double instance. The right of double instance as recognised by the International Covenant on Civil and Political Rights of 16 December 1966 applies only for criminal procedures.**

3. **The existence of a long-lasting and undisputed practice, which has acquired force of customary law should be objectively demonstrated by the party alleging such practice. In this respect, the discontinuation of any proceedings before FIFA involving a party encountering itself in a bankruptcy procedure has not been established to constitute a long-lasting and undisputed practice.**

4. **The recognition of a debt and its execution have clearly distinct objects so that it cannot be argued that the initiation of one of them produces an effect of *lis pendens* on the other. Pursuant to FIFA Regulations, a distinction must be made between the recognition of the debt and its execution. In this regard, FIFA's deciding bodies are**

competent as long as they are asked to address the issue of the recognition of the claim. It is only when FIFA's deciding bodies are seized with a request for the enforcement of the claim that, according to FIFA's Disciplinary Code, disciplinary proceedings may be closed if a party declares bankruptcy.

5. From the moment a club fails to comply in part or in full with its obligations arising from the applicable contract, a new and autonomous obligation is created and becomes due under the penalty clause provided in the contract.

I. PARTIES

1. U.C. Sampdoria (hereinafter "the Appellant") is a football club with its registered office in Genova, Italy. It is a member of the Italian National Football Association (Federazione Italiana Giuoco Calcio), which is affiliated to the Fédération Internationale de Football Association since 1905.

2. Club San Lorenzo de Almagro (hereinafter "the Respondent 1") is a football club with its registered office in Buenos Aires, Argentina. It is a member of the Asociación del Fútbol Argentino (hereinafter referred to as "AFA"), itself affiliated to the Fédération Internationale de Football Association since 1912.

3. The Fédération Internationale de Football Association (hereinafter "FIFA") is an association under Swiss law and has its registered office in Zurich, Switzerland. FIFA is the governing body of international football at worldwide level. It exercises regulatory, supervisory and disciplinary functions over continental confederations, national associations, clubs, officials and players worldwide.

II. BACKGROUND FACTS

4. On 19 July 2002, the *"Juzgado Nacional de Primera Instancia en lo Comercial N 22"* in Buenos Aires, Argentina, approved a reorganisation plan (*"concurso preventivo de acreedores"*) for the Respondent 1. This plan is allegedly still in effect.

5. J. (hereinafter the "Player") was born on 14 September 1984 and is of Argentinean nationality. During the 2008-2009 season, he was registered as a professional player with the Appellant.

6. On 11 August 2009, the Appellant and the Respondent 1 signed an agreement (hereinafter the "Contract"), which provides so far as material as follows:

   (i) Article 4.1: The Player's federative and economic rights were to be transferred from the Appellant to the Respondent 1 for the sum of EUR 1,400,000.

   (ii) Article 4.2: This amount was to be paid in the following five instalments:

- EUR 200,000 by 21 August 2009
- EUR 300,000 by 31 January 2010
- EUR 300,000 by 31 January 2011
- EUR 300,000 by 31 January 2012
- EUR 300,000 by 31 December 2012

The last four instalments were supposed to be secured by bank guarantees.

The parties to the Contract have agreed the following penalty clause:

> *"La falta de cumplimiento oportuno de una de estas obligaciones generará una multa a favor de Sampdoria equivalente a la suma de Eur 600.000/00 (…) dentro del término de 20 días de incumplidas las obligaciones".*

Or freely translated:

> *"The failure to execute timely on any of the above obligations will entitle Sampdoria to claim a penalty of EUR 600,000 to be paid within 20 days of the due date".*

(iii) Article 6: This provision reads as follows, where relevant:

"6 Litigios

6.1 En caso de litigio entre las partes, la toma de decisiones al respecto le corresponde a los órganos FIFA.

6.2 En caso de una falta competencias de los órganos FIFA, por cualquier razón, sustancial y/o de procedimiento, los propios litigios serán directa y obligatoriamente trasladados a la atención del Tribunal Arbitral du Sport (TAS) de Lausanne (CH) cuya jurisdicción y competencia se declara de forma voluntaria e irrevocable aceptada por las partes firmantes como previsto por el TAS Code de l'arbitrage en matière de sport"

Or, as translated by the Appellant:

"6 Disputes

6.1 In case of dispute amongst the parties, the decision will correspond to the FIFA bodies.

6.2 In case of any lack of competence by the FIFA bodies, for any reason, either substantial and/or procedural, the disputes will be directly and mandatorily brought before the Court of Arbitration for Sport (CAS) of Lausanne (Switzerland) which jurisdiction and competence is accepted voluntarily and irrevocably by the signing parties under what is foreseen in the Code of Sports related Arbitration".

7. It is undisputed that, to date, the Respondent 1 has only paid the first instalment of EUR 200,000.

III. THE PROCEEDINGS BEFORE FIFA

8. On 19 July 2010 and after numerous failed attempts to get the Respondent 1 to make the outstanding payments, the Appellant filed a claim with FIFA. While the case was pending before FIFA two other payments (31/1/2011 & 31/1/2012) fall due however the Respondent 1 failed to pay them as well.

9. On 1 March 2012, FIFA sent to the Appellant the following document, signed by Mr Marco Villiger, its Director of Legal Affairs and by Mr Omar Ongaro, Head of its Players' Status and Governance:

"(…)

In this respect, we wish to inform you that in accordance with the annexed decision passed by the local court in Argentina on 19 July 2002, Club Atlético San Lorenzo de Almagro appears to have been put under administration. Furthermore, according to the said decision, the administration by the club of its actives and passives might be subject to the intervention of a judicial appointed authority.

On the basis of the aforementioned decision, we must inform you that, as a general rule, our services and decision-making bodies (i.e. the Players' Status Committee and Dispute Resolution Chamber as well as the Disciplinary Committee), cannot deal with cases of clubs which are in a bankruptcy proceeding, i.e. inter alia under administration.

As a consequence, we, regret having to inform you that we do not appear to be in a position to further proceed with the investigation in the present case.

We therefore kindly invite you to contact the Asociación del Fútbol Argentino directly and immediately, so as to receive indications with regard to the competent authorities to address in order to have your alleged rights preserved.

Finally, we would like to add that our statements made above are based on the information we received from the Asociación del Fútbol Argentino only and hence are of general nature and thus without prejudice whatsoever. (…)".

IV. PROCEEDINGS BEFORE THE COURT OF ARBITRATION FOR SPORT

10. On 16 March 2012, the Appellant filed a statement of appeal with the Court of Arbitration for Sport (hereinafter CAS). It lodged its appeal brief via fax on 30 March 2012. This document contains a statement of the facts and legal arguments accompanied by supporting documents.

11. The Respondent 1 and FIFA filed their answer, respectively on 23 and 30 April 2012.

12. On 30 April 2012, the CAS Court Office acknowledged receipt of the Appellant's payment of the entire amount of the advance of costs.

13. On 25 June 2012, the CAS Court Office informed the parties that the Panel to hear the appeal had been constituted as follows: Prof. Petros C. Mavroidis, President of the Panel, Mr Efraim Barak, arbitrator designated by the Appellant and Mr Carlos Terán, arbitrator nominated by the Respondents.

14. On 10 September 2012, the CAS Court Office informed the parties that a hearing would be held on 29 November 2012 at the CAS Headquarter. The date was fixed with the agreement of all the parties to the present proceedings and was confirmed in the Order of Procedure dated 25 October 2012.

15. On 29 October and 1 November 2012, the Appellant and FIFA returned to the CAS Court Office a signed copy of the Order of Procedure.

16. A hearing was held on 29 November 2012 at the CAS premises in Lausanne, Switzerland. The Panel, assisted by Mr Pedro Fida, Counsel to the CAS, sat in the following composition:

President:	Mr Petros C. Mavroidis
Arbitrators:	Mr Efraim Barak
	Mr Carlos Terán
Ad hoc Clerk:	Mr Patrick Grandjean
CAS Counsel:	Mr Pedro Fida

17. The attending parties did not raise any objection as to the constitution and composition of the Panel.

18. The following persons attended the hearing:

(i) For the Appellant, its attorneys, Mr Lucas Ferrer and Mr Andrea Galli.

(ii) For FIFA, its senior jurist, Mrs Isabel Falconer.

19. The Respondent 1 was not present or represented, in spite of the fact that on 17 October 2012, it announced that its board member, Mr Marcelo Vazquez, would attend the hearing, accompanied by the lawyers Diego Lennon, Gonzalo Mayo Nader or Matías Hernán Elmo. The Panel observes that the Appellant as well as FIFA were available to attend a hearing on 28 September 2012, which was postponed at the express request of the Respondent 1. In addition and despite a reminder, the Respondent 1 has never returned a duly signed copy of the Order of Procedure.

20. As no reason was given by the Respondent 1 to explain its absence and pursuant to article R57 par. 3 of the CAS Code, the Panel decided to proceed with the hearing.

21. No witness was called to testify. The attending parties had ample opportunity to present their respective case, submit their arguments and answer to the questions posed by the Panel. After the attending parties' final submissions, the Panel closed the hearing and reserved its final award. The Panel heard carefully and took into account in its discussion and subsequent deliberation all the evidence and the arguments presented by the parties even if they have not been summarized in the present award. Upon closure, the attending parties expressly stated that they did not have any objection in respect of their right to be heard and to be treated equally in these arbitration proceedings.

V. THE PARTIES' WRITTEN SUBMISSIONS

V.1 The Appeal

22. The Appellant submitted the following requests for relief:

"The Appellant respectfully requests the CAS:

I. To accept the appeal against the decision adopted by FIFA on 1 March 2012.

II. To annul the decision issued by FIFA on 1 March 2012 and issue a new decision establishing that:

a. San Lorenzo de Almagro shall pay EUR 1,800,000 to UC Sampdoria in accordance with the contract signed by them on 11 August 2009, plus the accrued legal interest of 5%.

b. San Lorenzo de Almagro shall reimburse the CHF 5,000 paid by UC Sampdoria as administrative costs within FIFA.

c. The costs related to the present arbitration shall be borne by FIFA and/or San Lorenzo de Almagro.

d. FIFA and/or San Lorenzo de Almagro shall pay the legal fees and other expenses incurred by UC Sampdoria in connection with the present arbitration procedure.

Subsidiarily, only in the event that the above is rejected, the Appellant requests the CAS:

I. To accept the appeal against the decision adopted by FIFA on 1 March 2012.

II. To annul the decision issued by FIFA on 1 March 2012 and refer the matter back to the competent body of FIFA for it to take a decision on the merits of the claim filed by UC Sampdoria within a reasonable time.

III. Establish that the costs derived from the present arbitration shall be borne by San Lorenzo de Almagro and/or FIFA.

IV. Condemn San Lorenzo de Almagro and/or FIFA to pay the legal fees and other expenses incurred by UC Sampdoria in connection with the present arbitration procedure".

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

(i) The present dispute involves two clubs belonging to two different football associations and, therefore, falls within the jurisdiction of the FIFA Player's Status Committee.

(ii) FIFA's letter dated 1 March 2012 can be challenged before the CAS as it contains all the elements inherent to an appealable decision in the meaning of articles 62 and 63 of the FIFA Statutes and article R47 of the Code of Sports-related Arbitration (hereinafter "CAS Code"). As a matter of fact, with this document, *"FIFA is (i) informing of its decision not to deal with the claim presented by the Appellant, (ii) rejecting the requests filed and (iii) resolving the petitum of Sampdoria in a mandatory manner and thus affecting the legal situation of Sampdoria".*

(iii) The decision adopted by FIFA in its letter of 1 March 2012 is unfounded for several reasons:

- It is not based on a legal or regulatory provision but solely on an alleged "general rule" according to which "FIFA cannot deal with cases of clubs that are undergoing through a bankruptcy proceeding".
- There is no customary rule at association level, or at any level, supporting FIFA's approach.
- The fact that the Respondent 1 is the subject of a reorganisation plan does not preclude FIFA from proceeding with a case *"where the parties are just discussing a pure contractual matter related to the recognition of a debt and where there is no sanction requested for any club".*
- The reorganisation plan of the Respondent 1 was approved in July 2002, i.e. more than seven years before the signature of the Contract. Since then, the Respondent

1 has been very active on the football transfer market, hiring and firing several coaches, acquiring and selling numerous players' services. FIFA should not address equally contracts entered into by the Respondent 1 before July 2002 and those signed after that date. *"Any contrary assumption in this respect would lead to a complete distortion of the system and perversion of the most basic principles of the bankruptcy law allowing the clubs under intervention to escape from their obligations"*. Should FIFA be followed in its position expressed on 1 March 2012, *"the clubs undergoing through bankruptcy proceedings will be clearly encouraged to sign all sort of contracts with other clubs or players knowing that FIFA will not act against them in case of breach of their obligations vis à vis other members"*.

- FIFA cannot refuse to hear a case just because insolvency proceedings are initiated against one party, regardless of the applicable insolvency laws, their scope, the type of proceedings, their stage, their effective consequences, etc. In other words, FIFA cannot treat equally any type of insolvency proceedings.
- FIFA took its decision without giving to the Appellant the opportunity to exercise its right to be heard in relation with the impact of the insolvency proceedings on its claim before FIFA.
- In the Contract, which was signed years after the approval of the reorganisation plan of the Respondent 1, the parties "expressly chose FIFA's jurisdiction […] should there be any dispute (see article 6 of the Contract)".

(iv) With its decision, FIFA has infringed the Appellant's due process rights. However, pursuant to the established jurisprudence of the CAS, any procedural defect of the previous instance is cured by virtue of the *de novo* character of the CAS arbitration proceedings and the procedural rights granted therein. *"It is therefore the Appellant's main case that the Panel should not refer the case back to FIFA, because this would lead to undue delays and hardship on the Appellant and would only benefit the party that has been trying to delay the proceedings from the beginning and that, eventually, has caused the present situation"*. In any event and on the basis of article 6 of the Contract, the CAS has jurisdiction to decide on the present dispute.

(v) It is undisputed that the Respondent 1 has not fulfilled its contractual obligations towards the Appellant and has only paid 1/7 of the agreed price amounting to EUR 1,400,000. The violation of the terms of the contract has been acknowledged by the Respondent 1 and is reflected in its correspondence with the Appellant. In view of the circumstances of the case, the Respondent 1 must be ordered to pay to the Appellant the amount of EUR 1,800,000 corresponding to the outstanding debt obligation (EUR 1,200,000) and the penalty (EUR 600,000) as agreed in the Contract.

V.2 The Answers

A. The Respondent 1

24. On 23 April 2012, the Respondent 1 filed an answer, with the following requests for relief:

"The Respondent respectfully requests the CAS:

I. To consider the Appeal Brief withdrawn.

II. To declare the lack of challengeable decision in the Letter and to establish that UC Sampdoria must borne the costs of the present arbitration procedure.

III. Subsidiarity, consider the lack of competence of FIFA to understand on the merits of the case. As well as establish that UC Sampdoria must borne the costs and expenses derived from the present arbitration procedure.

IV. Alternatively, if decided that FIFA is competent to investigate the matter, to refer it back to the previous instance, in order FIFA makes a decision on the merits of the case. Additionally, to make UC Sampdoria responsible of the payment of the costs and expenses arisen from the present arbitration procedure.

V. Finally, if the Panel considers itself competent to investigate and make a decision on the contractual dispute, to establish:

(i) That the amount owed by San Lorenzo is Eur 900,000 (Nine Hundred Thousand Euros), and that the Respondent is not obliged to pay it to the Appellant until the Bankruptcy Proceeding is over.

(ii) Not to compel San Lorenzo to pay both legal interests and the penalty clause".

25. The submissions of the Respondent 1 may, in essence, be summarized as follows:

(i) The Appeal brief was not filed timely and, pursuant to article R51 of the CAS Code, it must be deemed withdrawn.

(ii) FIFA's letter of 1 March 2012 is not a final decision as provided by articles R47 of the CAS Code and 63 par. 1 of the FIFA Statutes. It *"is neither a final decision nor a denial of justice (…); it is just a temporary impediment to decide on the matter"*. As soon as the insolvency proceedings will be closed, FIFA will be able to deal with the Appellant's claim.

(iii) Considering that FIFA's lack of competence is only temporary, the requirements of article 6.2 of the Contract are not met and the case cannot be brought before the CAS.

(iv) *"(…) as a general rule, FIFA is not able to decide on a contractual conflict between two parties, when one of them is under a bankruptcy proceeding. (…). It is public policy rule not to decide on patrimonial issues, when a club is facing a bankruptcy proceeding".*

(v) *"It is necessary to point out that San Lorenzo is not intending to avoid its obligations arisen from the Contract; it is just a matter of time for the Respondent to be in the legal and economic position to do so".*

(vi) The Respondent 1 is unable to pay its obligations derived from the Contract due to the pending bankruptcy proceedings opened against it.

(vii) It is undisputed that the Respondent 1 only paid EUR 200,000 of the agreed transfer price, i.e. 1,400,000. However, the last instalment of EUR 300,000 is not due until 31 December 2012. As a result, the Appellant's claim must be reduced accordingly.

(viii) Both the penalty clause of EUR 600,000 and the payment of legal interest originate from the breach of the Contract by the Respondent 1. *"Therefore if the Panel considers imposing San*

Lorenzo a punishment for failure of payment; it shall require the payment of only one of them, the penalty clause or the legal interest, but definitely not both".

B. Respondent 2

26. On 30 April 2012, FIFA filed an answer, with the following requests for relief:

> *"1. To declare the present appeal directed against a letter dated 1 March 2012 issued by the FIFA Administration inadmissible.*
>
> *2. Alternatively, to reject the present appeal against the letter issued by the FIFA Administration on 1 March 2012.*
>
> *3. In any event, to order the Appellant to bear all the costs incurred with the present procedure.*
>
> *4. In any event, to order the Appellant to cover all legal expenses of the second Respondent related to the present procedure".*

27. The submissions of the FIFA may, in essence, be summarized as follows:

(i) The Appeal brief was not filed timely and must be deemed withdrawn.

(ii) Upon receipt of the Appellant's claim, FIFA immediately took all the necessary measures to deal with the matter at hand. It is only in this context that FIFA was made aware of the situation of the Respondent 1, in particular of the existence of its *"concurso preventivo de acreedores",* the purpose of which *"was to avoid imminent bankruptcy and to restructure the first Respondent's debt by means of a corresponding payment plan"*. Without delay, FIFA sought to obtain all the related official documents, the last one of which was filed on 1 February 2012. *"In light of this information, FIFA proceeded to close the pending procedures in front of its different decision-making bodies in which the first Respondent appeared as a party, be it as the claimant or respondent. The circumstance that these closures occurred almost 10 years after the first Respondent was put under administration cannot be attributed to FIFA, since (…) the latter took corresponding actions as soon as* [possible]*".*

(iii) The appeal is inadmissible as FIFA's letter of 1 March 2012 is not a final decision delivered by FIFA's legal bodies as provided by articles R47 of the CAS Code and 63 par. 1 of the FIFA Statutes. In this regard, *"it is evident from the contents of the challenged letter that none of the requests filed by the Appellant were ever rejected, and its petitum was not resolved in any – let alone mandatory – manner".*

(iv) The letter of 1 March 2012 does not even have the appearance of a decision. It is exclusively of informative nature and was meant to notify the Appellant that FIFA was not in a position to deal with the matter because of the legal situation of the Respondent 1. *"It is therefore also clear that FIFA does not deny the parties legal remedy, but instead refers them to the forum which is exclusively competent to deal with the newly arisen situation".*

(v) It is undisputed that the current FIFA Regulations on the Status and Transfer of Players as well as FIFA Rules governing the procedures of the Players' Status Committee and the Dispute Resolution Chamber do not address the procedural consequences arising from

the fact that a club is placed under judicial administration. This loophole has been taken care of by FIFA's constant, consistent, long-lasting and undisputed practice, which has therefore acquired force of customary law. According to this practice, proceedings before FIFA *"shall be discontinued if one of the parties concerned by the relevant procedures encounters itself in a bankruptcy procedure"*. This can be explained by the following reasons:

- *"(…) at national level, there is a lis pendens, i.e. bankruptcy proceedings before a national court, in which the party claiming before FIFA will also have to participate in order to have its right preserved (…). It is therefore also clear that FIFA does not deny the parties legal remedy, but instead refers them to the forum which is exclusively competent to deal with the newly arisen situation"*.
- *"(…) as soon as national bankruptcy law obliges the parties to bring their disputes and claims related thereto before ordinary courts, the relevant matter may not be pursued in front of FIFA's decision making bodies"*. The objective is a) to avoid possible conflicting decisions and b) to respect the exclusive jurisdiction of the ordinary state courts in matters pertaining to insolvency and bankruptcy. FIFA cannot interfere with measures implemented by the State in order to restructure a club's business and satisfy its creditors. The fact that the reorganisation plan of the Respondent 1 was approved over ten years ago and/or before the signature of the Contract is irrelevant.
- In view of the increasing amount of claims filed with FIFA, the position expressed by FIFA in its letter of 1 March 2012 is the only *"consistent approach on how to deal with clubs put under administration which applies equally to countries from all corners of the world. One of the great challenge thereby is to find a unified approach which can apply to clubs established within a multitude of legal systems and respect one of the fundamental principles of any insolvency procedure, i.e. that all creditors are treated equally"*.

(vi) The Appellant is wrong when it claims that FIFA's position encourages clubs under reorganisation plan to evade from their contractual commitments. As a matter of fact, contracts entered into by clubs undergoing insolvency proceedings have been approved by an appointed administrator. It is not FIFA's task to judge the work done by the said administrator. Furthermore, FIFA closes all the procedures involving clubs undergoing insolvency proceedings, whether they are claimants or respondents.

(vii) It was the Appellant's responsibility to assess the good financial health of the Respondent 1 before signing the Contract. The fact that the Respondent 1 *"is suddenly not able to honour its contractual obligations cannot be imputed on FIFA"*.

(viii) The fact that the Appellant and the Respondent 1 expressly agreed to settle their possible dispute before FIFA is irrelevant as FIFA's deciding bodies are not arbitral tribunals.

VI. APPLICABLE LAW, ADMISSIBILITY, JURISDICTION

VI.1 Applicable Law

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

> *"The Panel shall decide the dispute according to the applicable regulations and 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 application of which the Panel deems appropriate. In the latter case, the Panel shall give reasons for its decision".*

29. Pursuant article 66 para. 2 of the applicable FIFA Statutes, *"[t]he provisions of the CAS Code of Sports-Related Arbitration shall apply to the proceedings. CAS shall primarily apply the various regulations of FIFA and, additionally, Swiss law".*

30. Regarding the issue at stake, the Panel is of the opinion that the parties have not agreed on the application of any specific national law. It is comforted in its position by the fact that, in their respective submissions, the parties refer exclusively to FIFA's Regulations. As a result, subject to the primacy of applicable FIFA's regulations, Swiss law shall apply complementarily.

VI.2 Admissibility

31. In view of the Respondents' submissions, the Panel has to resolve whether the appeal was filed timely and, if yes, whether it was lodged against an appealable decision.

A. Timeliness of the appeal and of the appeal brief

32. On 16 March 2012, the Appellant filed a statement of appeal with the CAS. Its appeal brief was lodged via fax on 30 March 2012 and was received by courier on 3 April 2012.

33. Considering that the appeal was directed against a letter notified by FIFA to the Appellant and the Respondent 1 on 1 March 2012, the statement of appeal was submitted within the deadline provided by article 63 of the applicable FIFA Statutes and the appeal brief within the ten-day time limit of article R51 of the CAS Code.

B. Is FIFA's letter of 1 March 2012 an appealable decision?

a) In general

34. According to the Respondents, the appeal is inadmissible as FIFA's letter of 1 March 2012 is not a final decision passed by FIFA's legal bodies as provided by articles R47 of the CAS Code and 63 par. 1 of the applicable FIFA Statutes.

35. The Respondent 1 claims that with its challenged letter, FIFA's administration was only notifying the Appellant of the fact that it would be able to deal with its claim as soon as the insolvency proceedings would be closed.

36. In the same spirit, FIFA argues that its letter is purely of informative nature. Its only purpose is to refer the parties to the appropriate forum and not to deal with the Appellant's request. The fact that this document expressly states that it has been issued *"without prejudice"* means that a decision can still be taken by FIFA at a later stage. Finally, the letter was signed by members of the FIFA Administration and not by the appropriate legal bodies that can take a formal decision.

b) The applicable regulations

37. Article 63 par. 1 of the applicable FIFA Statutes states:

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

38. Article R47 par. 1 of the CAS Code reads as follows:

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

c) The term "decision"

39. The applicable FIFA regulations, in particular the FIFA Statutes, do not provide for definition of the term *"decision"*. Thus, in accordance with article R58 of the CAS Code, the issue must be examined under Swiss law (CAS 2005/A/899).

40. According to the Swiss Federal Tribunal, *"the decision is an act of individual sovereignty addressed to an individual, by which a relation of concrete administrative law, forming or stating a legal situation, is resolved in an obligatory and constraining manner. The effects must be directly binding both with respect to the authority as to the party who receives the decision"* (ATF 101 Ia 73).

41. The possible characterisation of a letter as a decision was also considered in several previous CAS cases (CAS 2004/A/659; CAS 2005/A/899; CAS 2004/A/748; CAS 2008/A/1633; CAS 2008/A/1548; CAS 2010/A/2188; CAS 2011/A/2343; CAS 2011/A/2586).

42. The Panel agrees with the characteristic features of a *"decision"* stated in those precedents, namely:

- The form of the communication has no relevance to determine whether a decision exists or not. In particular, the fact that a communication is made in the form of a letter does not rule out the possibility that it constitutes a decision subject to appeal (CAS 2005/A/899 par. 63; CAS 2007/A/1251 par. 30; CAS 2004/A/748 par. 90; CAS 2008/A/1633 par. 31).
- In principle, for a communication to be a decision, it must contain a ruling, whereby the body issuing the decision intends to affect the legal situation of the addressee of the

decision or other parties (CAS 2005/A/899 par. 61; CAS 2007/A/1251 par. 30; CAS 2004/A/748 par. 89; CAS 2008/A/1633 par. 31).

- A decision is thus a unilateral act, sent to one or more determined recipients and is intended to produce legal effects (2004/A/659 par. 36; CAS 2004/A/748 par. 89; CAS 2008/A/1633 par. 31).

d) In the case at hand

43. FIFA's letter of 1 March 2012 explains in unequivocal terms that FIFA can no longer intervene in the procedure between the Appellant and the Respondent 1.

44. The said letter explicitly states that FIFA's *"services and decision-making bodies (i.e. the Players' Status Committee and Dispute Resolution Chamber as well as the Disciplinary Committee), cannot deal with cases of clubs which are in a bankruptcy proceeding, i.e. inter alia under administration"*. FIFA's letter does not refer to any internal remedies (for example, the possibility to ask for a "formal" decision on the same subject), but refers the Appellant to the AFA to *"receive indications with regard to the competent authorities to address in order to have* [its] *alleged rights preserved"*.

45. In practical terms, with its letter of 1 March 2012, FIFA closed the case and refused to enter judgement on the matter brought before it by the Appellant. FIFA's position was directly binding on all the parties in the present proceedings, as there were no remaining internal remedies left for the Appellant against such decision.

46. FIFA cannot reasonably suggest that its decision is not final as it was taken *"without prejudice whatsoever"*, i.e. without prejudice to any decision that could be taken at a later stage, in particular when the Respondent 1 is not under judicial administration anymore. To begin with, the Panel finds the wording vague and ambiguous. The fact that this statement is made at the very end of the litigious letter does not help its interpretation. In any event, regardless of the true meaning of the terms *"without prejudice whatsoever"*, FIFA clearly manifested the fact that it would not entertain the Appellant's claim, thereby making a ruling on the admissibility of the said claim and directly affecting the Appellant's legal situation.

47. With its letter, FIFA actually places the Appellant in a dead end situation. On the one hand, FIFA is compelling the Appellant to bring its claim before a national court, in full contradiction with its prevailing regulations, i.e. its Statutes. As a matter of fact, article 64 of its applicable Statutes states that *"Recourse to ordinary courts of law is prohibited unless specifically provided for in the FIFA regulations"*. Any party who fails to respect this rule is actually exposed to sanctions (article 64 par. 4 of the applicable FIFA Statutes). On the other hand, the Panel does not see how an ordinary court can possibly declare itself competent to hear and to determine a claim, based on a contract, which includes an arbitral clause referring any dispute to FIFA or to CAS.

48. In view of the foregoing, it appears that FIFA's letter is indeed a ruling materially affecting the legal situation of the Appellant, which is left with no alternative other than to challenge its content before the CAS.

49. The letter was signed in the name of FIFA by Mr Marco Villiger, FIFA Director of Legal Affairs and by Mr Omar Ongaro, Head of FIFA Players' Status and Governance. There is no doubt that FIFA is validly bound by the signature of those two persons, who actually signed the answer filed in the present proceedings. The Panel finds that any FIFA decision which is intended to be made on behalf of FIFA's *"services and decision-making bodies (i.e. the Players' Status Committee and Dispute Resolution Chamber as well as the Disciplinary Committee)"* and which is formulated as a final decision must be deemed subject to an appeal in front of CAS.

50. Thus, despite being formulated as a letter, FIFA's refusal to entertain the Appellant's claim was, in substance, a decision.

51. The Panel is comforted in its position by the fact that, in very similar situations, other CAS Panels came to the same conclusion (CAS 2011/A/2343; CAS 2011/A/2586).

e) Conclusion

52. FIFA's letter of 1 March 2012 is a final decision as provided by articles R47 of the CAS Code and 63 par. 1 of the applicable FIFA Statutes.

53. The appeal and appeal brief were filed timely.

54. In addition, the appeal complied with all the other requirements set forth by article R48 of the CAS Code.

55. As a result, the appeal is admissible.

VI.3 Jurisdiction

56. The jurisdiction of CAS derives from articles 62 et seq. of the applicable FIFA Statutes and R47 of the CAS Code.

57. Article 63 of the applicable FIFA Statutes provides that final decisions by FIFA's legal bodies may be appealed to CAS. Taking into account the fact that the Panel has found the FIFA letter of 1 March 2012 to be a final decision rendered by FIFA, the Panel concludes that it has jurisdiction to hear the dispute.

58. Under article R57 of the CAS Code, the Panel has full power to review the facts and the law. It may issue a new decision which replaces the decision challenged or annul the decision and refer the case back to the previous instance.

59. Whether or not a *de novo* award is appropriate depends on the individual facts and circumstances.

60. The Respondent 1 is of the opinion that the CAS should refer the case back to FIFA out of respect for the principle of double instance, which is *"a procedural right that must be guaranteed in every procedure, as it has been stated on several international treaties such as the Article 14.5 of the International Covenant on Civil and Political Rights"*.

61. The Panel observes that the right of double instance as recognised by article 14.5 of the International Covenant on Civil and Political Rights of 16 December 1966 applies only for criminal procedures. Furthermore, according to the well established jurisprudence of CAS, which also finds support *inter alia* in the Swiss Federal Tribunal decision 4A_386/2010, and pursuant to the rule that exists in other legal systems, a complete investigation by an appeal authority, which has the power to hear the case, remedies, in principle, most flaws in the procedure at first instance. Hence, if there had been procedural irregularities in the proceedings before FIFA, it would be cured by the present arbitration proceedings (CAS 2004/A/607; CAS 2004/A/633; CAS 2005/A/1001; CAS 2006/A/1153; CAS 2010/A/2188).

62. At the hearing, FIFA's representative, Mrs Isabel Falconer, expressly accepted that article 6.2 of the Contract must be understood as an alternative path giving CAS the jurisdiction to decide on the merits of the dispute between the Appellant and the Respondent 1, within the frame of the appeal arbitration procedure.

63. Based on the foregoing, in view of the consent expressed by FIFA, the absence of any relevant argument raised by Respondent 1 to justify the referral of the present case to FIFA and the need for an efficient administration of justice, the Panel rules that it has jurisdiction to entertain the present matter and eventually to render a new decision.

VII. MERITS

64. The main issues to be resolved by the Panel in deciding the present dispute are the following:

(i) At FIFA level, is there a customary law, according to which ordinary proceedings before FIFA should be closed if a party is undergoing restructuring or bankruptcy proceedings?

(ii) Does the Respondent 1 owe any money to the Appellant and if yes, how much?

A. At FIFA level, is there a customary law, according to which ordinary proceedings before FIFA should be closed if a party is undergoing restructuring or bankruptcy proceedings?

65. It is undisputed that the current FIFA Regulations on the Status and Transfer of Players as well as the FIFA Rules governing the procedures of the Players' Status Committee and the Dispute Resolution Chamber do not address the procedural consequences arising from the fact that a club is placed under judicial administration. It is also accepted that only article 107 of FIFA's Disciplinary Code (edition 2011) deals with such situation by stating that *"proceedings may be closed if (…) a party declares bankruptcy"*. This provision already existed in the 2004 version of the FIFA Disciplinary Code (article 112).

66. However and according to FIFA, any proceedings before it, whether ordinary or disciplinary, *"shall be discontinued if one of the parties concerned by the relevant procedures encounters itself in a bankruptcy procedure"*. This has been implemented by a constant, consistent, long-lasting and undisputed practice, which has acquired force of customary law.

67. The majority of Swiss scholars agree that a custom consists of two elements: objective and subjective. The ordinary meaning of the term "custom" presupposes the existence of widespread practice for a very long time (*longa consuetudo*). The practice should emerge out of the spontaneous and unforced behaviour of various members of a group. The parties involved must subjectively believe in the obligatory or necessary nature of the emerging practice (*opinio juris sive necessitatis*) (WERRO F.; in PICHONNAZ/FOËX (eds.), Commentaire romand, Code civil I, Bâle, 2010, ad art. 1 CC, N. 7, p. 6 and N. 27, p. 12). The recognition of custom as a source of law remains marginal and subject to strict conditions. Where custom is in direct conflict with established legislation, the latter prevails. Whether a custom can fill a regulatory gap will depend on whether the regulation must be considered as comprehensive or not (Judgement of the Swiss Federal Tribunal of 3 May 2012, 2C_1016/2011, consid. 4.5.4).

68. The Panel has to evaluate whether the following criteria are met in the present case:

a) The existence of a longstanding practice and the sense of legal obligation;
b) A gap in the regulation.

a) The existence of a longstanding practice and the sense of legal obligation

69. FIFA claims that its position is supported by a constant, consistent, long-lasting and undisputed practice.

70. As regards the burden of proof, it is FIFA's duty to objectively demonstrate the existence of its allegations (Article 8 of the Swiss Civil Code, ATF 123 III 60 consid. 3a); ATF 130 III 417 consid. 3.1.). It is not sufficient for FIFA to simply assert a fact for the Panel to consider the matter without further treatment.

71. In the case at hand, FIFA has adduced no evidence as to the existence of any longstanding practice. In particular, FIFA has not established the intensity of its alleged practice, the context in which it emerged or the timeframe within which it occurred.

72. In the absence of any evidence of the existence of the alleged widespread practice, the Panel finds that the objective element of practice (i.e. longa consuetude) is not satisfied.

73. Under such circumstances, the Panel is precluded from examining the subjective element of practice, i.e. whether, in the football community, FIFA's alleged practice is accepted as law. At the hearing before the CAS, FIFA's representative actually accepted that its position was being increasingly challenged. This is illustrated by the present proceeding as well as by recent CAS precedents (CAS 2011/A/2343; CAS 2011/A/2586).

b) Is there a gap in the regulation?

74. According to FIFA, its regulations suffer from a loophole. FIFA argues that its practice is justified as (a) *"(…) at national level, there is a lis pendens"*, (b) it tends to avoid possible conflicting decisions and (c) its aim is to respect the exclusive jurisdiction of the ordinary state courts in matters pertaining to insolvency and bankruptcy. FIFA is of the opinion that it cannot interfere

with measures implemented by the State in order to restructure a club's business and satisfy its creditors.

75. FIFA's position does not differentiate between the recognition of the debt and its execution, which are subject to different proceedings; i.e. ordinary proceedings, respectively enforcement proceedings. As a matter of fact, in order to proceed with the enforcement of its monetary claim, the creditor must establish its validity. Two situations can arise:

    i) The creditor is already in possession a) of a valid enforceable judgement confirming the contested debt, b) of an enforceable deed against the debtor, c) of a judicial transaction or d) of a written acknowledgement of debt. Under such circumstances, he can initiate or take part in debt enforcement proceedings.

    ii) In all the other cases, the creditor must pursue its claim on the merits in ordinary proceedings or, where applicable, before an arbitral tribunal (Judgement of the Swiss Federal Tribunal of 2 November 2010, 5A_225/2011, consid. 2.1 and 2.3; SCHMIDT A., in DALLÈVES/FOËX/JEANDIN (eds.), Commentaire romand, Poursuite et faillite, Bâle, Genève Munich, 2005, ad art. 79, N. 11 et seq., p. 6 and N. 27, p. 12).

76. As a result, the two proceedings have clearly distinct objects so that it cannot be argued that the initiation of one of them produces an effect of *lis pendens* on the other.

77. In the present case, the Appellant deems that it is engaged in the situation referred to under letter b) above. As a matter of fact, in view of its request for relief filed in the present proceedings, the Respondent 1 obviously disagrees with the extent of its liability, denying the possibility for the Appellant to enforce its claim. Consequently, the latter chose to file an "ordinary lawsuit" before FIFA, subsequently before CAS, as provided in the Contract. In this regard, at the hearing, the Appellant confirmed that it was exclusively seeking for a final decision on the existence of its claim against the Respondent 1.

78. In addition, it is not disputed that the reorganisation plan (*"concurso preventivo de acreedores"*) for the Respondent 1 had been long approved, when it entered into the Contract, the terms of which were expressly accepted by its legal representatives/administrators. In particular, the latter acknowledged article 6 of the Contract, which governs the jurisdiction issue *"En caso de litigio entre las partes"*. Under such circumstances, it is inconsistent for the Respondents to argue that, because of the reorganisation plan, the Appellant needs to establish the existence of its claim before the national courts of the Respondent 1, in perfect contradictions with the contractual commitments validly made on its behalf by its legal representatives.

79. Finally, the fact that a distinction must be made between the recognition of the debt and its execution, is actually consistent with the present FIFA Regulations. The absence of a similar rule as article 107 of FIFA's Disciplinary Code in FIFA Regulations on the Status and Transfer of Players as well as in the FIFA Rules governing the procedures of the Players' Status Committee and the Dispute Resolution Chamber, confirms that FIFA's deciding bodies are competent as long as they are asked to address the issue of the recognition of the claim. It is only when they are seized with a request for the enforcement of the claim, that FIFA's Disciplinary Code comes into play and that "[disciplinary] *proceedings may be closed if (…) a party*

declares bankruptcy" (see article 107). As a matter of fact, only a disciplinary proceeding as governed by the FIFA Disciplinary Code could interfere with measures implemented by the competent public authorities in order to restructure the commercial activities of the Respondent 1 and satisfy its creditors.

c) Conclusion

80. In view of the above findings, the Panel concludes that FIFA's letter of 1 March 2012 is not the result of a long-lasting practice and is actually in contradiction with FIFA's own regulations, which do not preclude its deciding bodies from ruling on questions validly brought before them in relation with the existence of a monetary claim.

81. As a consequence, FIFA erred in refusing to enter the merit of the claim, validly brought before it by the Appellant. In view of the valid appeal filed before it, it is now the Panel's task to address this issue.

B. Does the Respondent 1 owe any money to the Appellant and if yes, how much?

82. It is undisputed that a) the Contract was validly entered into by the Appellant and by the Respondent 1, b) the Appellant carried out correctly and extensively all his contractual obligations and c), to date, the Respondent 1 has only paid for the first instalment of EUR 200,000.

a) The monetary claim

83. The Appellant claims that the Respondent 1 must be ordered to pay in its favour the amount of EUR 1,800,000 corresponding to the outstanding debt obligation (EUR 1,200,000) and the penalty (EUR 600,000) as agreed in the Contract as well as the CHF 5,000 it incurred *"as administrative costs within FIFA"*.

84. According to the Respondent 1, the last instalment of EUR 300,000 is not due until 31 December 2012 and both the penalty clause of EUR 600,000 and the payment of legal interest originate from the breach of the Contract by the Respondent 1. *"Therefore if the Panel considers imposing San Lorenzo a punishment for failure of payment; it shall require the payment of only one of them, the penalty clause or the legal interest, but definitely not both"*.

85. It is undisputed that the following instalments have not been paid:

- by 31 January 2010 EUR 300,000
- by 31 January 2011 EUR 300,000
- by 31 January 2012 EUR 300,000
- by 31 December 2012 EUR 300,000

Total = EUR 1,200,000

86. In this respect, the Respondent 1 confirmed in its brief that *"It is necessary to point out that San Lorenzo is not intending to avoid its obligations arisen from the Contract; it is just a matter of time for the Respondent to be in the legal and economic position to do so"*.

87. In view of the terms of the Contract and of the payment made to date (EUR 200,000), the amount of EUR 1,200,000 is due by the Respondent 1 to the Appellant. However, the last instalment must be paid on or before 31 December 2012.

88. Regarding the payment of the penalty of EUR 600,000, the interpretation of the Contract is obviously in dispute. Under such circumstances, one must seek the true and mutually agreed upon intention of the parties, without regard to incorrect statements or manner of expressions used by the parties by mistake or in order to conceal the true nature of the contract (Art. 18 par. 1 of the Swiss Code of Obligations).When the mutually agreed real intention of the parties cannot be established, the contract must be interpreted according to the requirements of good faith (ATF 129 III 664; 128 III 419 consid. 2.2 p. 422). The judge has to seek to determine how a declaration or an external manifestation by a party could have been reasonably understood depending on the individual circumstances of the case (ATF 129 III 118 consid. 2.5 p. 122; 128 III 419 consid. 2.2 p. 422).

89. In view of the clear terms of the Contract and particularly of its Article 4.2, the payment of the penalty clause is exclusively conditional upon the failure on the part of the Respondent 1 either to make the timely payment of one of the outstanding instalments or to deliver the contractually agreed bank guarantees. Contrary to the assertions of the Respondent 1, the Contract does not preclude the Appellant to claim the penalty in addition a) to the performance of the contract and b) to the payment of the interests. From the moment the Respondent 1 failed to comply in part or in full with its obligations arising from article 4.2 of the Contract, a new and autonomous obligation was created and became due *"within 20 days of the due date"* of the defective performance.

90. It appears to the Panel that the penalty clause is compatible with the freedom of contract as granted under Swiss law and complies with articles 160 *et seq.* of the Swiss Code of Obligations. The Respondent 1 did not offer any explanation as to why the Appellant *"shall require the payment of only one of them, the penalty clause or the legal interest, but definitely not both"*. In addition, the Panel observes that the Respondent 1 does not question the principle or the amount of the penalty and did not even request its reduction.

91. In view of the above, the Panel holds that the Appellant is entitled to the payment of the penalty clause of EUR 600,000 which is due *"within 20 days of the due date"* of the defective performance (i.e. 31 January 2010), irrespective of the payment of interest on the other unpaid amounts, deriving from the Contract.

92. Finally, the Appellant has established that it paid CHF 5,000 for its right to file its claim against the Respondent 1 before FIFA. In view of the outcome of the present proceeding, the said amount represents a direct damage and was caused to the Appellant by the Respondent 1, which must therefore be held accountable for its repayment.

b) The payment of interest

93. As regards to the interest and in the absence of a specific contractual clause, the Panel can only apply the legal interest due pursuant to article 104 of the Swiss Code of Obligations. This provision foresees that the debtor, on notice to pay an amount of money, owes an interest at the rate of 5 % per annum. Where a deadline for performance of the obligation has been set by agreement, a notice is not necessary (see article 102 of the Swiss Code of Obligations; THÉVENOZ L., in THÉVENOZ/WERRO (eds.), Commentaire romand, Code des obligations I, 2ème edition, 2012, ad art. 102 CO, N. 26, p. 806).

94. The appeal brief of the Appellant did not contain any clear indication concerning the *dies a quo* for the interest (*"San Lorenzo de Almagro shall pay EUR 1,800,000 to UC Sampdoria in accordance with the contract signed by them on 11 August 2009, plus the accrued legal interest of 5 %"*).

95. At the hearing before the CAS, the Appellant clarified that the interest of 5 % shall apply as of 20 days after 31 January 2010, i.e. 20 days after the date of the second instalment, which remained unpaid. At that moment and according to the Appellant, all the unpaid instalments became immediately due.

96. The Panel understands from the Appellant's oral explanations that the parties to the Contract put in place a tolerance time of 20 days, after the due date, for the Respondent 1 to make the agreed payments. Otherwise, the Appellant would have applied for the payment of interest of 5% on EUR 300,000 from 31 January 2010 (i.e. the due date of the second instalment) and 5% on the remaining amount of its claim from 20 February 2010 (i.e. 20 days after 31 January 2010).

97. Whether the Appellant's entire claim (EUR 1,800,000) has fallen due 20 days after the failure of the Respondent 1 to pay the second instalment is not supported by the terms of the Contract and the relevant provisions of which can be summarised as follows:

Article 4.2:

The transfer of the Player's federative and economic rights must be paid in five instalments over a period of two years and four months.

The last four instalments were supposed to be secured by bank guarantees.

"The failure to execute timely on any of the above obligations will entitle Sampdoria to claim a penalty of EUR 600,000 to be paid within 20 days of the due date".

Article 5.3:

The Respondent 1 undertakes not to transfer the Player without the express consent of the Appellant as long as it did comply with its obligations regarding the bank guarantees. In case of violation of this obligation, all the unpaid instalments become immediately due.

98. Article 4.2 of the Contract only provides that the failure on the part of the Respondent 1 either to make the timely payment of one of the outstanding instalments or to deliver the contractually agreed bank guarantees, shall entitle the Appellant to be awarded an amount of EUR 600,000.- as a penalty. This provision does not imply that in case of default of payment of any amount due, the Appellant is enabled to immediately collect the remaining sum owed to it. The Panel observes here that the Appellant has never claimed or established that it terminated the Contract following the failure of the Respondent 1 to perform its obligations. Under such circumstances, the Panel can only conclude that the Contract is still in force.

99. In addition, no other provision of the Contract suggests that the unpaid instalments become immediately due but Article 5.3, provided that the following conditions are met: a) The Respondent 1 transferred the Player without the express consent of the Appellant as long as it did comply with its obligations regarding the bank guarantees.

100. The Appellant did not establish in any manner that the above-mentioned requirements were fulfilled. Hence, the Panel has no reason to accept that the Appellant's entire claim (EUR 1,800,000) has fallen due 20 days after the failure of the Respondent 1 to pay the second instalment, i.e. 31 January 2010.

101. Finally, the Appellant did not claim for interest in relation with the CHF 5,000 paid for its right to file its claim against the Respondent 1 before FIFA.

c) Conclusion

102. Based on the foregoing, the Panel reaches the conclusion that the Respondent 1 must pay to the Appellant the following amounts:

- EUR 300,000 with 5 % interest as of 20 February 2010
- EUR 600,000 with 5 % interest as of 20 February 2010
- EUR 300,000 with 5 % interest as of 20 February 2011
- EUR 300,000 with 5 % interest as of 20 February 2012
- EUR 300,000 will be due on 31 December 2012. This payment will be subject to 5% interests if not paid by the due date.
- CHF 5,000.

103. The above conclusion, finally, makes it unnecessary for the Panel to consider the other requests submitted by the parties. Accordingly, all other prayers for relief are rejected.

ON THESE GROUNDS

The Court of Arbitration for Sport rules that:

1. The appeal filed by U.C. Sampdoria against the decisions issued by FIFA on 1 March 2012 is upheld.

2. The decision issued by FIFA on 1 March 2012 is set aside.

3. Club San Lorenzo de Almagro is ordered to pay to U.C. Sampdoria the following amounts:
   - EUR 300,000 with 5 % interest as of 20 February 2010
   - EUR 600,000 with 5 % interest as of 20 February 2010
   - EUR 300,000 with 5 % interest as of 20 February 2011
   - EUR 300,000 with 5 % interest as of 20 February 2012
   - EUR 300,000 on or before 31 December 2012 (with 5% interest as of same date if the principal amount will not be paid by the due date)
   - CHF 5,000.

4. (…).

5. (…).

6. All other or further claims are dismissed.