Arbitration CAS 2015/A/4097 Fotbal Club CFR 1907 Cluj S.A. v. Romanian Football Federation (RFF), award of 2 February 2016

Sole Arbitrator: Mr Manfred Nan (the Netherlands)

Football
Sanctions against a club for the violation of the Club Licensing Regulations
Overdue payables and licensing under the RFF Licensing Regulations and the UEFA Regulations
Conditions for participation in the Romania Liga 1 Championship under the RFF Licensing Regulations
Definition of "outstanding debts" in the RFF Licensing Regulations
Insolvency of a club, reorganisation plan and due dates under the RFF Licensing Regulations
Lack of financial means as an excuse for failure to make the required payments
Validity of the distinction between an "observation period" and the moment when a "restructuring plan" has been agreed upon in the RFF Licensing Regulations

1. **Under the RFF Licensing Regulations, having overdue payables towards other clubs and employees is not decisive for being granted a license to take part in the Liga 1. Having overdue payables towards football clubs and/or employees is however considered relevant in the process for being granted a license in that clubs having such overdue payables will be deducted points from their league ranking, i.e. the imposition of sporting sanctions. Whereas UEFA maintains a black and white policy in this respect (license or no license), the RFF's policy includes a *"grey area"* (license granted, but deduction of points).**

2. **Different from ordinary businesses, football clubs are in general not automatically entitled to participate in the market (competition) they would like to participate in. Rather, participation may be made subject to certain preconditions. In order to participate in the Romanian Liga 1 National Championship football clubs need to qualify on the basis of sporting merit, but football clubs also need to comply with other preconditions, such as compliance with the RFF Licensing Regulations. The consequences for non-observance of such preconditions may obviously not contravene national law, but are in itself legitimate since football clubs accept to be bound by such limitations by applying for a license to participate.**

3. **The concept of *"outstanding debts"* is clearly defined in the RFF Licensing Regulations: a financial debt is not considered outstanding if a club is protected by insolvency and the syndic judge has confirmed a restructuring plan before 31 March. *A contrario*, based on the same RFF Regulations, a financial debt should be considered as outstanding if no restructuring plan has been concluded before 31 March, despite the fact that a club is in insolvency.**

4. **The mere fact that a club entered into insolvency did not entail that its debts were no**

longer due. Indeed, the involvement of the court in the affairs of a club means that such club was a debtor. The mere fact that a club entered into insolvency did not automatically defer the due dates of the debts, these due dates would only be deferred upon the conclusion of a reorganisation plan, approved by the syndic judge. Until the moment such reorganisation plan is approved, the due dates remain unchanged, with the particularity that the creditors are prevented from enforcing their claims against the debtor.

5. **As established in consistent CAS jurisprudence, lack of financial means, even though caused by sporting conditions, to satisfy an obligation of payment does not excuse the failure to make the required payment.**

6. **The distinction between the *"observation period"* and the period following the conclusion of a restructuring plan in the RFF Licensing Regulations serves a purpose, namely to enhance the financial viability of clubs in Romanian football. As per these regulations, clubs applying for a license to participate in the Liga 1 are not allowed to have outstanding payables towards football clubs and/or employees on 30 April that were already registered on 31 December. The RFF Licensing Regulations enumerate a specific list of exceptions to this general rule. The distinction between an *"observation period"* and the period following the conclusion of a restructuring plan does not discriminate between insolvent companies in the observation period and insolvent companies under judicial reorganisation. The distinction is further not discriminatory: All creditors are treated the same and would in principle have to apply for being officially listed as a creditor of a club in the insolvency proceedings.**

I. PARTIES

1. Fotbal Club CFR Cluj S.A. (hereinafter: the "Appellant" or the "Club") is a football club with its registered office in Cluj, Romania. The Club is registered with the Romanian Football Federation.

2. The Romanian Football Federation (hereinafter: the "Respondent" or the "RFF") is the national governing body of football in Romania with its registered office in Bucharest, Romania. The RFF is affiliated to the *Union des Associations Européennes de Football* (hereinafter: "UEFA"). The RFF has a dual licensing system in place and is therefore responsible for the issuance of licenses to Romanian clubs that are to participate in the national football competitions and to Romanian clubs that are to enter into the UEFA competitions.

II. FACTUAL BACKGROUND

3. Below is a summary of the main relevant facts, as established on the basis of the written submissions of the parties and the evidence examined in the course of the proceedings and at the hearing. This background is made for the sole purpose of providing a synopsis of the matter in dispute. Additional facts may be set out, where relevant, in connection with the legal discussion.

4. On 29 January 2015, the Club filed a motion with the President of the "Cluj Specialized Court" for the initiation of an insolvency procedure related to it.

5. On 4 February 2015, the Cluj Specialized Court issued resolution no. 294/2015 in docket no. 134/1285/2015, admitting the request filed by the Club and ordering the opening of the general insolvency procedure against the Club.

6. Also on 4 February 2015, the "Discipline Committee" of the RFF (hereinafter: the "RFF Disciplinary Committee") issued six decisions without grounds in respect of the Club, all of them imposing a ban on the Club's right to transfer and/or endorse players and a deduction of 4 points from the Club's championship tally, *i.e.* in total 24 points.

7. On 10 February 2015, the Club filed six appeals in respect of the above-mentioned decisions with the "Appeal Committee" of the RFF (hereinafter: the "RFF Appeal Committee").

8. On 11 February 2015, the RFF Disciplinary Committee issued twelve decisions without grounds in respect of the Club, all of them granting the Club's motion for adjournment *"until the resolution and finalization of the motion for the initiation of the insolvency procedure, motion constituting the scope of docket no. 134/1285/2015 on trial before the Cluj Specialized Court"*.

9. On 12 February 2015, the grounds of the six decisions of the RFF Disciplinary Committee dated 4 February 2015 were communicated to the Club.

10. On 19 February 2015, the RFF Appeal Committee rejected the six appeals filed by the Club on 10 February 2015.

11. On 20 February 2015, the official receiver of the Club sought an injunction from the Cluj Specialized Court of the *"provisional adjournment (until the resolution of the appeal before the court of Arbitration for Sports from Lausanne) of the execution of the decisions issued by the* [RFF Disciplinary Committee] *in the following cases:* [nine cases, among which the six cases decided by the RFF Disciplinary Committee on 4 February 2015]*"*.

12. On 24 February 2015, the Cluj Specialized Court determined the following in the operative part of the reasoned decision:

"To admit the plea of general lack of jurisdiction of the Specialized Court in Cluj, invoked by its own motion.

"To dismiss as inadmissible the application for an injunction relief […]*"*.

13. On 10 March 2015, the Club filed a statement of appeal and a request for provisional measures with the Court of Arbitration for Sport (hereinafter: "CAS") in cases CAS 2015/A/3963-3968. With these appeals the Club challenged the six decisions issued by the RFF Appeal Committee dated 19 February 2015.

14. On 13 March 2015, CAS dismissed the Club's application to stay the execution of the six decisions appealed against.

15. On 24 March 2015, the Club filed a new request for provisional measures with CAS.

16. On 27 March 2015, CAS upheld the Club's renewed application to stay the execution of the six decisions appealed against.

17. On 30 March 2015, the Club applied for a license from the RFF to participate in the Liga 1 National Championship in Romania for the 2015/2016 football season.

18. On 15 May 2015, the Licensing Committee of the RFF (hereinafter: the "RFF Licensing Committee") issued its decision, with the following operative part:

"To grant the application formulated by [the Club] *for the license to participate in the Liga 1 National Championship for the 2015/2016 competition season for the license applicant* [Club].

Sanctions the license applicant [Club] *for the nonobservance of the financial criterion as follows:*

- *Subtracts 3 points from the classification of the 2015/2016 season of the Liga 1 National Championship for the violation of provisions set-out by article 46 of the NCLR&FFP.*
- *Subtracts 3 points from the classification of the 2015/2016 season of the Liga 1 National Championship for the violation of provisions set-out by article 47 of the NCLR&FFP.*
- *Rules on the monitoring, on September 30th 2015, of the forecast financial information due to the nonobservance of the provisions set-out by article 48 of the NCLR &FFP".*

19. On an unknown date in May 2015, the Club lodged an appeal with the Board of Appeal for Clubs' Licensing (hereinafter: the "RFF Board of Appeal") against the decision issued by the RFF Licensing Committee dated 15 May 2015.

20. On 21 May 2015, a hearing was held before the RFF Board of Appeal at the headquarters of the RFF.

21. On 22 May 2015, the RFF Board of Appeal issued its decision (hereinafter: the "Appealed Decision"), with the following operative part:

"Rejects the appeal and abides by Decision no. 14/15.05.2015 issued by the [RFF Licensing Committee]*".*

22. Also on 22 May 2015, CAS rendered its decision CAS 2015/A/3963-3968, with the following operative part:

"1. The appeals filed by [the Club] against the six decisions rendered by the RFF Appeal Committee on 19 February 2015 […] are upheld.

2. The six decisions rendered by the RFF Appeal Committee on 19 February 2015 […] are set aside.

3. All disciplinary proceedings of the [RFF] against [the Club] for non-payment of debts in the above-referenced matters are adjourned until the conclusion of the insolvency proceedings pending before the Cluj Specialised Court in docket nº 134/1285/2015.

[…]".

23. On 23 May 2015, the Appealed Decision was notified to the Club, with, *inter alia*, the following grounds:

> *"The appellant's defences according to which the debts highlighted in the financial records submitted are not due on the deadline stipulated in the regulations because the club is under the protection of the insolvency law starting with February 4th 2015 reason why the maturity of receivables was "frozen" pending the determination of a new due date as a consequence of the restructuring plan being approved, are not substantial and will be rejected.*
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> *The Board of Appeal appreciates that the due date of a receivable is not "frozen" through the simple initiation of the insolvency procedure, the only way to affect the due dates of receivables within the procedure is through the syndic judge's confirmation of the restructuring plan or through the distribution plan in the event of the debtor entering the bankruptcy procedure. Until such time of confirmation of the restructuring plan, no other measure commanded within the insolvency procedure affects the due dates of receivables existing on the debtor's estate.*
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> *The court will take into consideration also the provisions of article 140 of Law no. 85/2014 regarding insolvency prevention and insolvency procedures whereby after the entering into force of the sentenæ confirming the restructuring plan, receivables and the rights of creditors and other interested parties are amended as stipulated by the plan, and their payment systemized depending on the determined reimbursement plan. On the contrary, when no restructuring plan confirmed by the syndic judge exists, as is the present case, the receivables of the club's creditors are not modified, their due dates being those determined in the documents generating such receivables. On the date of issuance of the present decision, the appellant club did not file an approved restructuring plan confirmed as per the provisions of artide 140 of Law no. 85/2014, and his representation regarding the future approval of this plan is a future and uncertain event, subjected to the confirmation of the syndic judge and which has no present effects to be taken into account.*
>
> *On the other hand, the board of appeal also takes into consideration the fact that the appellant had the possibility to pay its debts outstanding on December 31st 2014 until the date of initiation of the insolvency procedure, respectively February 4th 2015.*
>
> *The license applicant's arguments regarding the fact that as per article 341 of Law 85/2014, artide 46 and 47 of the CNLR & FFP are not applicable on it are completely insubstantial. The provisions of the CNLR & FFP are special provisions regarding the licensing of football clubs and are not*

contradicting the provisions of the insolvency law. We are taking into account the provisions of par. 2, item B of Appendix VI to the CNLR & FFP which foresee a facility granted to clubs undergoing insolvency so that their debts would not be deemed outstanding in the sense of the CNLR. In light of the above, the provisions of the CNLR & FFP do not appear as coercions enforced on clubs undergoing insolvency but foresee a possibility within their reach, to fulfil the licensing requirements in order to participate in the Liga 1 National Championship.

Furthermore, the National Licensing System has correlated the regulations with the provisions of Law 85/2014 absorbing into the provisions of the CNLR & FFP at par. 2, item B of Appendix VI, article 140, paragraph 1 of the Law according to which, receivables and rights of creditors and other interested parties are amended as stipulated by the restructuring plan. This measure was adopted precisely so that there would be no discrimination between clubs undergoing insolvency and other license applicants. Discrimination means the different enforcement of the same norms in identical situations that license applicant clubs are subjected to. The appellant did not prove the existence of the invoked discrimination.

With regard to the representation of the appellant club related to the fact that the principle of priority set-forth by Law no. 85/2014 against the CNLR & FFP was infringed, the board of appeals finds that this argument is insubstantial seeing as there is not priority of application between law no. 85/2014 and the regulation, as none of the provisions invoked earlier are in competition. As mentioned before, the CNLR & FFP was correlated with the provisions of law no. 85/2014 such being translated in the content of the regulation.

The defences of the appellant club regarding the fact that even the jurisdictional boards within the RFF have stayed the disputes related to the payment of players are not applicable in the case at hand because the licensing procedure analyses whether debts are or are not outstanding and does not command measures as to their execution. The procedure before the licensing boards is not encompassed in the provisions of article 75 of Law no. 85/2014 according to which, on the date of initiation of the insolvency procedure, all judicial, extrajudicial, and forced execution measures for the collection of receivables from the debtor's estate are rightfully suspended.

The appellant club's argument regarding the fact that the due date of any obligation foregoing the date of initiation of the procedure is modified "sine die" at this moment is insubstantial. As per the provisions of law no. 85/2014, at the time of initiation of the insolvency procedure, the only measures affecting receivables recorded against the debtor's estate refer to the suspension of their execution but there is no provision affecting their due date.

The appellant club itself admits in the statement of defense the fact that the due dates of existing financial debts are to be given a new payment term as a consequence of the payment schedule comprised in the restructuring plan being approved, or according to the legal order of distribution in the event of bankruptcy. Therefore, until such approval of the restructuring plan, the due date of obligations remains unchanged.

The appellant club's argument regarding the fact that even though the regulation foresees an extension of the payment term which may consensually intervene, the latter must also admit the legal intervention along with the actuation of the insolvency procedure, a situation when the due date is rightfully postponed, is unwarranted.

As previously reasoned, the due date of outstanding debts is not suspended through the very initiation of the insolvency procedure but rather changes as an effect of the restructuring plan being approved and confirmed.

Considering that the license applicant did not submit a restructuring plan confirmed by the syndic judge, nor has he proven the classification of debts in the exceptions stipulated by article 2 of Appendix VI to the CNLR & FFP, the board of appeal believes that on March 31st 2015, the club was on record with outstanding debts towards other clubs and employees thus violating the provisions of articles 46 and 47 of the CNLR & FFP. The sanction enforced by the first trial committee for each breach of the regulation, respectively the deduction of 3 points from the classification of the 2015/2016 season of the Liga 1 National Championship is correct".

III. PROCEEDINGS BEFORE THE COURT OF ARBITRATION FOR SPORT

24. On 12 June 2015, the Club filed a Statement of Appeal with CAS in accordance with Article R48 of the CAS Code of Sports-related Arbitration (2013 edition) (hereinafter: the "CAS Code"). In this submission, the Club requested the appointment of a sole arbitrator.

25. On 8 July 2015, in the absence of a response from the RFF, the President of the Appeals Arbitration Division decided to submit the present dispute to a Sole Arbitrator, pursuant to Article R50 of the CAS Code.

26. On 8 July 2015, the Club filed its Appeal Brief in accordance with Article R51 of the CAS Code. This document contained a statement of the facts and legal arguments. The Club challenged the Appealed Decision, submitting the following requests for relief:

"I. The decision issued by the Board of Appeal for Clubs' Licensing of the Romanian Football Federation on 22 May 2015, confirming the decision of the Club's Licensing Committee withdrawing 6 points from the classification of the 2015/2016 season of the Liga 1 National Championship, is annulled, the rest of the findings of the decision remaining unaltered.

II. Fotbal Club CFR 1907 Cluj S.A. will have no sanctions imposed on it for the Liga 1 National Championship for the 2015/2016 competitions season.

III. The Romanian Football Federation shall bear the costs of this arbitration and reimburse any and all advances of costs paid by the Appellant.

IV. The Romanian Football Federation shall be ordered to compensate the Appellant for the legal and other costs incurred in connection with these proceedings, in an amount to be determined at the discretion of the Panel".

27. On 23 July 2015, pursuant to Article R54 of the CAS Code, and on behalf of the President of the CAS Appeals Arbitration Division, the CAS Court Office informed the parties that the Arbitral Tribunal appointed to decide the present matter is constituted as follows:

- Mr Manfred Nan, attorney-at-law in Arnhem, the Netherlands, as Sole Arbitrator

28. On 12 August 2015, the RFF filed its Answer in accordance with Article R55 of the CAS Code. The RFF submitted the following requests for relief:

> *"A. to dismiss the appeal lodged by the Appellant against the Decision no. 4 of 22 May 2015 rendered by the Club Licensing Appeal Committee of the Romanian Football Federation;*
>
> *B. to maintain and consider the challenged Decision undisturbed;*
>
> *C. subsequently, to deny all the prayers for relief made by the Appellant;*
>
> *D. to order the Appellant to pay all costs, expenses and legal fees relating to the arbitration proceedings before CAS encumbered by the Respondent".*

29. On 18 and 24 August 2015 respectively, the RFF and the Club informed CAS of their preference for a hearing to be held.

30. On 12 and 15 October 2015, the Club and the RFF returned duly signed copies of the Order of Procedure to the CAS Court Office.

31. On 20 October 2015, the RFF sent an email to the CAS Court Office attaching *"information concerning the Appellant that we have received in the past few days and which we consider significant for the case"* and indicating that it wished to hear Mr Andreea Grigoras and Mr Christian Iliescu by conference call.

32. On 21 October 2015, the CAS Court Office informed the parties that the late filing of the documents by the RFF on 20 October 2015 would be addressed by the Sole Arbitrator at the outset of the hearing.

33. On 21 October 2015, a hearing was held in Lausanne, Switzerland. At the outset of the hearing, both parties confirmed that they had no objection to the constitution and composition of the Arbitral Tribunal.

34. In addition to the Sole Arbitrator, Mr Christopher Singer, Counsel to the CAS, and Mr Dennis Koolaard, *Ad hoc* Clerk, the following persons attended the hearing:

For the Appellant:

- Mr Iuliu Muresan, President of the Club;
- Mr Razvan Zavaleanu, official receiver of the Club;
- Mr Mihai Pop, adviser to the Club;
- Mr Jorge Ibarrola, Counsel;
- Ms Natalie St Cyr Clarke, Counsel;
- Mr Lucian Novacescu, intern at Libra Law;
- Mr Stefan Privee, intern at Libra Law

For the Respondent:

- Mr Paul F. Ciucur, Counsel;
- Mr Adrian Stangaciu, Counsel

35. At the start of the hearing, the Club objected to the examination of Mr Iliescu as a witness, as he was never mentioned in the written submissions of the RFF.

36. After having heard both parties in respect of the examination of Mr Iliescu as a witness and the late filing of the documents by the RFF on 20 October 2015, the Sole Arbitrator decided that there were no exceptional circumstances justifying the late filing of the documents by the RFF and that, as a consequence thereof, it would not be necessary to hear Mr Iliescu at a hearing, to which the RFF did not object.

37. The Sole Arbitrator heard evidence from Prof. Radu Catană, expert witness called by the Club and Ms Andreea Grigoras, employee of Reff Associates in Bucharest, Romania, and expert witness called by the RFF. Whereas Prof Catană attended the hearing in person, Mr Grigoras gave testimony by telephone-conference.

38. Prof. Catană and Ms Grigoras were invited by the Sole Arbitrator to tell the truth subject to the sanctions of perjury. Both parties and the Sole Arbitrator had the opportunity to examine and cross-examine the expert witnesses. The parties then had ample opportunity to present their case, submit their arguments and answer the questions posed by the Sole Arbitrator.

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

40. The Sole Arbitrator confirms that he carefully heard and took into account in his decision all of the submissions, evidence and arguments presented by the parties, even if they have not been specifically summarised or referred to in the present arbitral award.

IV. SUBMISSIONS OF THE PARTIES

41. The submissions of the Club, in essence, may be summarised as follows:

- The Club contends that its debts cannot be considered overdue as per the legal provisions in force. The Club is legally prohibited from making payments whilst in the observation period and can subsequently only do so when a restructuring plan has been approved by the judge, and in accordance with the schedule of payments detailed therein.

- The Club maintains that, as a result, the interpretation of Annex VI para. 2(b) of the CNLR & FFP in the Appealed Decision is an affront to Romanian law, specifically the insolvency law. There is no distinction vis-à-vis protection from creditors between

an insolvent company in the observation period and an insolvent company with a confirmed restructuring plan.

42. The submissions of the RFF, in essence, may be summarised as follows:

- The RFF maintains that the Club violated article 46 of the CNLR & FFP because on 30 April 2015 it had overdue payables towards football clubs in the amount of 2,284,821 Romanian Leu (hereinafter: "RON"), that refer to transfer activities that occurred before 31 December 2014. As a consequence, three points would have to be deducted from the Club's ranking for the 2015/2016 football season. The RFF maintains that the Club also violated article 47 of the CNLR & FFP because it had overdue payables towards employees in the amount of RON 15,302,166 on 30 April 2015. As a consequence, three points would have to be deducted from the Club's ranking for the 2015/2016 football season.

- The RFF argues that according to Romanian law, by opening insolvency proceedings, overdue payables are in no way eliminated in the observation phase, they are merely considered "frozen" in the sense that the penalties and interest rates will be suspended, but that the debt itself continues to exist.

- The RFF submits that the mere opening of insolvency proceedings by a football club cannot create an advantage for such club in comparison with other clubs that also have overdue payables but that *"have not declared its state of insolvency"*. The RFF argues that *"if we did not penalize insolvent clubs in order to ensure the alleged "equality of opportunity" with clubs that are solvent, we would in fact be sanctioning the latter and would create unequal treatment that would favour, ironically, bad debtors"*.

- The RFF states that the Club was in any event not prevented from complying with its obligations before 4 February 2015 and that it continued to make payments to creditors during the insolvency proceedings.

- The RFF maintains that, contrary to the policy of UEFA and other national football federations, license applications for the Romanian Liga 1 are not rejected by the RFF if a club is in insolvency, but licenses are in principle granted. However, to the extent that the minimum requirements established by the financial criteria are not fulfilled, such clubs will be sanctioned with the deduction of points. The RFF refers to CAS jurisprudence in arguing that debts of an insolvent club should still be considered overdue, even if a payment plan has been implemented.

- Additionally, the RFF avers that the Club's motion for insolvency proceedings to be opened against it was filed in serious violation of the principle of *"nemo auditor propriam turpitudinem allegans"*, under which the jurisprudence and doctrine have consistently emphasised that one cannot obtain benefits invoking its own fault, unfairness and dishonesty nor can it defend itself by invoking such grounds.

- The RFF further contends that the Club did not prove in any way that it attempted to seek the approval of payment of debts from the syndic judge, while the syndic judge is authorised to approve the payment of any debt if it is proven that such a measure would lead to a "protection" of the assets of the Club.

- Finally, the RFF asserts that the opening of insolvency proceedings should not be interpreted in the sense that it automatically defers the due date of outstanding debts. Such deferral only occurs at the date of approval of the reorganization plan.

V. JURISDICTION

43. The jurisdiction of CAS derives from article 6 of the National Clubs' Licensing and Financial Fair Play Regulations (hereinafter: the "CNLR & FFP"), as it determines that:

> *"The jurisdictional bodies for clubs' licensing are: the Clubs' Licensing committee (acting as a first trial committee) and the Board of Appeal for Clubs' licensing (operating as the body for appeals) as per artide 69, par. 4 of the RFF Statute. The above are independent from one another as well as from the RFF's Licensing Administration. The Court of Arbitration for Sports from Lausanne (CAS) is the last trial court for decision making in matters of clubs' licensing".*

44. The jurisdiction of CAS also derives from article 6(7) of the CNLR & FFP, as it determines that *"the Decision issued by the Board of Appeal for Clubs' licensing may be challenged with appeal before the CAS. Such CAS ruling is irrevocable".*

45. The jurisdiction of CAS is further confirmed by a statement in the Appealed Decision granting the parties the right *"to appeal before the Court of arbitration for Sports within 21 calendar days sinæ communication"* and by the Order of Procedure duly signed by the parties. The jurisdiction of CAS further remained undisputed by the parties at the hearing.

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

VI. ADMISSIBILITY

47. No deadline for the filing of an appeal with CAS has been set in the CNLR & FFP.

48. Article R49 of the CAS Code determines the following in case no time limit has been adopted in the statutes or regulations of the federation:

> *"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".*

49. The same time limit is granted to the parties in the Appealed Decision, granting the parties the right *"to appeal before the Court of arbitration for Sports within 21 calendar days since communication".*

50. The appeal was filed within the deadline of 21 days and complied with all other requirements of Article R48 of the CAS Code, including the payment of the CAS Court Office fee.

51. It follows that the appeal is admissible.

VII. APPLICABLE LAW

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

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

53. The Club argues that the RFF National Club Licensing and Financial Fair Play Regulations (hereinafter: the "RFF Licensing Regulations") are applicable, with Romanian law applying additionally as per Article R58 of the CAS Code.

54. The RFF maintains that the present case is governed by the RFF Statutes and Regulations where applicable, as well as Law no 69/2000 regarding physical education and sports, the Insolvency Law no. 85/2014 and also the Romanian Civil Procedure Code. In addition, the Statutes and Regulations of UEFA regarding Club Licensing and Financial Fair Play must be observed, complied with and followed by the parties.

55. The Sole Arbitrator observes that both parties agree to the primary application of the RFF Licensing Regulations. The Parties also agreed on the subsidiary application of Romanian law.

56. Since the parties agreed to the application of the RFF Licensing Regulations, the Sole Arbitrator is satisfied to accept the application of these regulations, the Statutes and other regulations of the RFF and to the subsidiary application of Romanian law. The Sole Arbitrator will also revert to the Statutes and the relevant regulations of UEFA, if necessary.

VIII. MERITS

A. The Main Issues

57. In view of the above, the main issues to be resolved by the Sole Arbitrator are:

i. How should the proceedings leading up to the Appealed Decision be qualified?

ii. Did the Club violate the RFF Licensing Regulations by not having paid outstanding debts towards football clubs and/or employees on 30 April 2015?

iii. Is there any reason why the Club should not be sanctioned for violating the RFF Licensing Regulations?

a) Was the Club legally prevented from paying its debts?

b) Do the RFF Licensing Regulations make an impermissible distinction between an "observation period" and the moment when a "restructuring plan" has been agreed upon?

c) Conclusion

iv. If not, what are the consequences of having overdue payables towards football clubs and/or employees?

i. How should the proceedings leading up to the Appealed Decision be qualified?

58. The Club argues that the mere entering into insolvency proceedings renders any debt previously due no longer due until such time as a reorganisation plan has been approved by the syndic judge. The fact that previous RFF jurisdictional bodies have stayed disputes relating to payment of players is relevant in that it demonstrates that these payments, once the Club enters into insolvency proceedings, can no longer be executed. The Club avers that this contention is confirmed by CAS in its decision in CAS 2015/A/3963-3968 to adjourn all disciplinary proceedings of the RFF against the Club until the conclusion of the insolvency proceedings pending before the courts in Cluj.

59. The Club further maintains that the final part of article 341 of Law 85/2014 is designed to assure that when a company obtains the protection against the creditors through the effects of an insolvency proceeding, by applying the statutory rules of insolvency, it would not risk being penalised or sanctioned just for being in insolvency. No contract or statute could provide sanctions for an entity just for being in insolvency.

60. The RFF maintains that the licensing sanctions do not fall under the scope of article 341 of Law 85/2014. If such sanctions are considered to fall under this provision also field-of-play sanctions such as (i) yellow/red cards, (ii) forfeit results due to certain breaches of sports regulations, (iii) penalties imposed on club's officials, coaches, players, etc. can be considered prejudicial on the long term (such as point deduction or relegation) on the club's patrimony and, in conclusion, be "covered" by insolvency proceedings protection. Also, the financial fair play values would become obsolete if teams would be allowed to appeal to the insolvency proceedings to escape creditors and, moreover, usual and necessary sanctions for the specificity of sport.

61. The RFF also argues that the nature of business of football clubs cannot circumscribe to the notion of "free market" since only clubs with the sporting right and holder of the proper license may participate in the National League, according to the provisions of the RFF Statute. Moreover, if the RFF would penalise insolvent clubs in order to ensure the alleged "equality of opportunity" with clubs that are solvent, the RFF would in fact be sanctioning the latter and would create unequal treatment that would favour, ironically, bad debtors. Participating

in a top division is a right earned on the field in the First League competition, with a limited number of clubs participating.

62. The Sole Arbitrator observes that article 75 and 341 of Law 85/2014 determine the following:

> *"As of the opening of the proceedings, all court actions, out of the court actions, or forced execution procedures for the recovery of claims against the debtor's estate shall be suspended.* […]*".*
>
> *"Any preclusions, limitations, interdictions or the like established in laws or contractual provisions in respect of the commencement of the insolvency proceeding shall be applicable only from the date of opening of the bankruptcy proceeding. Any provisions to the contrary are repealed".*

63. The Sole Arbitrator first of all observes that the disciplinary sanctions in the case at hand are not imposed because the Club is in insolvency, but due to the fact that it had overdue payables towards other clubs and employees on a certain moment. It must however be determined whether points may be deducted from the league table of a club in insolvency for having overdue payables or whether this would constitute a violation of article 75 or 341 of Law 85/2014.

64. The Sole Arbitrator observes that, by award dated 22 May 2015, the sole arbitrator in such case reasoned that:

> *"98. The Sole Arbitrator notes the Supreme Court decision cited by the Respondent – not all legal actions do need to be stayed, but the judging authority needs to examine the type of action/proceeding in hand. The Sole Arbitrator has the view that sporting sanctions can have primary objectives, but also secondary effects. This is true with other sanctions in other proceedings. If a landlord seeks to take back possession of a property, the primary objectives is to do with ownership of the property, however a secondary effect may be that the debtor/tenant pays its arrears of rent in order to remain in occupation. If a sporting body seeks to issue sporting sanctions, the club may fall into line and correct the actions or omissions that led to that sanction.* […]
>
> *101.* […] *If a club has overdue payables it won't get license to enter the Champions League or Europa League. It may get a second chance to demonstrate that it has complied with the FFP Regulations at a later monitoring date, but it's not a process commenced by those owed the overdue sums, it's a sporting sanction issued by UEFA, with its primary objectives of integrity and ensuring a level playing field. However, the secondary effect is that once a club is investigated and given the second chance to settle its overdue payables, most tend to focus on this and do so. That way the debts to players and other clubs often get paid".*
>
> *102. The Sole Arbitrator notes the position of Professor Turcu that the sporting sanctions were totally different from enforcement proceedings. As stated above, if the primary objective is punishment or on integrity grounds, then the Sole Arbitrator can understand Professor Turcu's position, but where the primary objective is enforcement, even if this is by a sport tribunal, he cannot concur with Professor Turcu.*
>
> *105. In summary, the Sole Arbitrator was not persuaded by Professor Turcu that the disciplinary measures by the RFF EDC are not linked to enforcement and are completely parallel. Their primary objective is to put pressure on the club to pay its debts to the creditor that petitions the RFF EDC"* (CAS 2015/A/3963-3968).

65. The Sole Arbitrator in CAS 2015/A/3963-3968 concluded that *"[a]ll disciplinary proceedings of the* [RFF] *against* [the Club] *for non-payment of debts in the* [six proceedings related to players claiming outstanding payments from the Club] *are adjourned until the conclusion of the insolvency proceedings pending before the Cluj Specialised Court in docket nº 134/1285/2015"*.

66. The Sole Arbitrator fully adheres to the reasoning of the sole arbitrator in CAS 2015/A/3963-3968, but finds that the present proceedings have a different legal nature as the proceedings at stake in CAS 2015/A/3963-3968. Whereas the above-mentioned proceedings are clear-cut debt enforcement proceedings (*i.e.* if the players are not paid, disciplinary sanctions will be imposed on the Club), the present proceedings are the result of the situation that the Club had overdue payables towards clubs and employees on a certain date, an aspect that is considered relevant within the process for being granted a license to take part in the Liga 1 National Championship for the 2015/2016 football season. The RFF Licensing Regulations have, *inter alia*, primarily the purpose of protecting the integrity and smooth running of the Liga 1 National Championship. The difference in nature can already be derived from the fact that debt enforcement proceedings are instigated by creditors, but that proceedings regarding a failure to meet the criteria to be granted a license are initiated by the RFF, without the creditors being parties in such proceedings.

67. In this respect, the objectives of the RFF Licensing Regulations are clearly set out in article 2 thereof:

> *"1. These regulations aim:*
>
> *a) to further promote and continuously improve the standard of all aspects of football in Romania and to give continued priority to the training and care of young players in every club;*
>
> *b) to ensure that a club has an adequate level of management and organisation;*
>
> *c) to adopt the sporting infrastructure of clubs so as to provide players, spectators and media representatives with suitable, well-equipped and safe facilities;*
>
> *d) to improve the economic and financial capability of clubs, increasing their transparency and credibility;*
>
> *e) to place the necessary importance on the protection of creditors and to ensure that clubs settle their liabilities with players, social/tas authorities and other clubs punctually;*
>
> *f) to introduce more discipline and rationality in football club finances;*
>
> *g) to protect the integrity and smooth running of the First League national championship and of the UEFA club competitions;*
>
> *h) to allow the development of benchmarking for clubs in financial, sporting, legal, personnel, administrative and infrastructure-related criteria throughout Romania".*

68. Different from for example the licensing system implemented by UEFA, having overdue payables towards other clubs and employees is not decisive for being granted a license to take part in the Liga 1 National Championship in Romania under the RFF Licensing Regulations. Having overdue payables towards football clubs and/or employees is however considered

relevant in the process for being granted a license in that clubs having such overdue payables will be deducted points from their league ranking, *i.e.* the imposition of sporting sanctions. It could be said that whereas UEFA maintains a black and white policy in this respect (license or no license), the RFF's policy includes a "grey area" (license granted, but deduction of points).

69. The Sole Arbitrator does not consider it illegitimate that the RFF sought to implement a system whereby the lack of financial viability does not necessarily lead to the refusal of a license but is rather perpetuated in the league standing of the debtor club in order to maintain a level playing field by the fact that having overdue payables entails sportive disadvantages.

70. The Sole Arbitrator finds that the fact that the sportive sanctions at stake in the present proceedings (deduction of two times three points from league ranking) are similar to the sportive sanctions in the debt enforcement proceedings that were at stake in CAS 2015/A/3963-3968 (deduction of six times 4 points from league ranking), is not relevant, since it is the nature of the proceedings that counts. The reason for the deduction of points from the Club's ranking in the present case derives from the fact that the Club had overdue payables towards other clubs and employees on a certain date and the primary purpose of this sanction is to ensure the integrity of the Liga 1 National Championship and to guarantee a level playing field among the competitors.

71. The Sole Arbitrator finds that the Club was, or should have been, aware of these provisions when it applied to the RFF to be granted a license to participate in the Liga 1 National Championship. Different from ordinary businesses, football clubs are in general not automatically entitled to participate in the market (competition) they would like to participate in. Rather, participation may be made subject to certain preconditions. In order to participate in the Romanian Liga 1 National Championship football clubs need to qualify on the basis of sporting merit, but football clubs also need to comply with other preconditions, such as compliance with the RFF Licensing Regulations. The consequences for non-observance of such preconditions may obviously not contravene national law, but are in itself legitimate since football clubs accept to be bound by such limitations by applying for a license to participate.

72. As such, the Sole Arbitrator considers the present proceedings to be detached from the disciplinary proceeding in respect of the enforcement of the individual cases that were suspended in CAS 2015/A/3963-3968, as they have a different legal nature. What is relevant here is that the Club had debts towards clubs and employees on 30 April 2015 that already existed on 31 December 2014. Because of this fact and because of the fact that there was no certainty about the conclusion of a debt rescheduling agreement with the creditors before the relevant date, sporting sanctions were imposed on the Club in order to ensure the integrity of the competition and to guarantee a level playing field among the competitors.

73. Consequently, the Sole Arbitrator finds that the nature of the present proceedings is to be qualified as disciplinary proceedings within the admission process for being granted a license to participate in the Liga 1 National Championship and does therefore not contravene Romanian bankruptcy law.

ii. *Did the Club violate the RFF Licensing Regulations by not having paid outstanding debts towards football clubs and/or employees on 30 April 2015?*

74. The Sole Arbitrator observes that it remained undisputed between the parties that the Club had debts towards other clubs and employees before it entered into insolvency on 4 February 2015. It is also not disputed that the Club did not pay its debts that arose before 31 December 2014 towards other clubs and employees before 30 April 2015.

75. The Sole Arbitrator observes that it remained undisputed that the Club did not comply with its payment obligations as per the contracts with other clubs and employees. The question to be answered is therefore whether the insolvency proceedings entail that the debts of the Club cannot be considered as outstanding within the context of the RFF Licensing Regulations, more specifically if the debts of the Club can be qualified as outstanding payables on 30 April 2015 or whether the entering into insolvency entails that the Club did not have overdue payables by such date.

76. The Club does not dispute that it violated the RFF Licensing Regulations but rather argues that the RFF Licensing Regulations are invalid because they violate Romanian bankruptcy law as the RFF Licensing Regulations disregard the fact that it was legally prevented from paying its debts and because the RFF Licensing Regulations make an impermissible distinction between an "observation period" and the moment when a "restructuring plan" has been agreed upon within insolvency proceedings.

77. The Sole Arbitrator observes that article 46(2) and 47(2) of the RFF Licensing Regulations determine the following:

> *"The applicant for the First League licence must prove that any overdue payables as at 31 March (as defined in Annex VI) that refer to transfer activities that occurred prior to 31 December of the year preceding the licence season were paid by 30 April or that by said date the creditors accepted, in writing, the extension of the due date of such payables".*
>
> *"The applicant for the First League licence must prove that any overdue payables (as defined in Annex VI) towards its employees as at 31 March, that arose as a result of contractual and legal obligations towards its employees, prior to 31 December of the year preceding the licence season, were paid by 30 April preceding the licence season or that by said date the creditors accepted, in writing, the extension of the due date of such payables beyond 30 April".*

78. The Sole Arbitrator observes that Annex VI to the RFF Licensing Regulations is titled "Notion of "Outstanding Financial Debts"" and determines the following:

> *"1. Financial debts are deemed outstanding if not paid upon the agreed terms, as per the agreements or obligations set-forth by the legal provisions in force.*
>
> *2. Financial debts are not deemed outstanding, in the sense of the present regulation if the license applicant (debtor club) is able to prove until March 31st (as per articles 46 and 47), respectively if the Liga 1 licensed club is able to prove until June 30th and September 30th (as per articles 54 and 55) that:*

[…]

b) it has concluded a settlement with the creditor whereby the latter accepted in writing the extension of the payment term until after the expiration of the applicable term stipulated herein, respectively March 31st (as per articles 46 and 47), or June 30th and September 30th (as per articles 54 and 55), as the case may be, (note: the creditor not requesting the payment does not constitute an extension of the term), or

b1) it has received protection from creditors as per the applicable legislation on the matter of insolvency and the syndic judge has confirmed the restructuring plan of the debtor club issuing to this end an award before March 31st (as per articles 46 and 47) or June 30th and September 30th (as per articles 54 and 55), as the case may be. Starting on the date of issuance of the award, the activity of the debtor club is adequately restructured. Receivables and the entitlements of creditors are amended as foreseen in the plan and matured amounts should be paid until the applicable term set-forth herein. The exception is valid for license applicants requesting the license to participate in the Liga 1 national championship but not to those requesting the license to participate in UEFA club competitions (see Appendix VII B and E), or

c) it has filed, within the legal term, an action before justice which was registered by the competent authority as per the national legislation or has initiated, within the regulatory term, a procedure before the national or international football authorities or before the competent arbitration court, whereby challenging the obligation to pay the outstanding financial debts. Nevertheless, during the licensing procedure, if the jurisdictional bodies of the national clubs' licensing system deem that the action was filed or the procedure initiated only with the purpose to avoid the applicable term set-forth herein (in order to gain time), the amount at stake will be deemed as outstanding financial debt, or

[…]".

79. In view of the above, the Sole Arbitrator finds that the RFF Licensing Regulations have clearly defined the concept of "outstanding debts", *i.e.* pursuant to para. 2(b)(1) of Annex VI to the RFF Licensing Regulations, a financial debt is not considered outstanding if a club is protected by insolvency **and** the syndic judge has confirmed a restructuring plan before 31 March. *A contrario,* based on the RFF Licensing Regulations, a financial debt should be considered as outstanding if no restructuring plan has been concluded before 31 March, despite the fact that a club is in insolvency.

80. Finally, and for the avoidance of doubt, the Sole Arbitrator finds that para. 2(c) of Annex VI to the RFF Licensing Regulations is not applicable in the matter at hand. First of all, because the relevant debts became final and binding. As such, the Sole Arbitrator finds that the Club's motion for the initiation of an insolvency procedure was only filed with the purpose to gain time, with the consequence that this paragraph is not applicable. Second, the Club did not request for such exception to be applied in the matter hand.

81. Consequently, the Sole Arbitrator finds that, based on the RFF Licensing Regulation, the Club had not paid its outstanding debts that were registered before 31 December 2014 towards

football clubs and employees by 30 April 2015 and thereby violated the RFF Licensing Regulations.

iii. *Is there any reason why the Club should not be sanctioned for violating the RFF Licensing Regulations?*

82. Having established that the Club violated the RFF Licensing Regulations and that the proceedings regarding such violation did not have to be suspended because the Club entered into insolvency, the Sole Arbitrator will now examine whether the RFF Licensing Regulations violate Romanian bankruptcy law and if this should entail that the Club should not be sanctioned on the basis of the RFF Licensing Regulations.

(a) Was the Club legally prevented from paying its debts?

83. The Club purports that pursuant to article 75 of Law 85/2014, the opening of an insolvency proceeding imposes a directly effective automatic stay of the claims of creditors with claims arising prior to the date of the opening of insolvency. When the court order for the initiation of such an insolvency proceeding becomes final, which is the case in the matter at hand, the stay as a provisional protective measure metamorphoses into a proper termination for the future of all the actions and enforcements of creditors. These are terminated once and for all and would never resume.

84. With reference to article 75(1) of Law 85/2014, the Club argues that it is clear that if debts are not paid pursuant to legal provisions, the debts cannot be considered to be "outstanding" or overdue. Thus, where a Club is legally prevented from paying its debts, because of insolvency law for instance, its debts cannot fall within the remit of articles 46 and 47 of the RFF Licensing Regulations.

85. The Club maintains that an insolvent company must undergo an observation period during which the insolvency practitioner and the special administrator are civilly and criminally liable for any payment made during the observation period. There is no legal competence for the court to approve payments to some creditors and not others.

86. Finally, the Club maintains that, pursuant to article 150(4) of Law 85/2014, *"payables against the debtor's estate are considered due at the date of opening of bankruptcy procedure"*. According to the Club, this means that claims against an insolvent club in the observation period or reorganization should not be considered as due until the opening of the bankruptcy procedure, respectively until the confirmation of a reorganisation plan by the judge.

87. The RFF argues that by opening insolvency proceedings, even in the observation phase, overdue payables are in no way eliminated. The overdue payables are merely considered "frozen" in the sense that the penalties and interest rates will be suspended.

88. The RFF finds that the Club's filing for bankruptcy was filed in serious violation of the principle of *"nemo auditur propriam turpitudinem allegans"*, under which the jurisprudence and

doctrine have allegedly constantly emphasised that one cannot obtain benefits invoking his own fault, unfairness and dishonesty nor can it defend itself by invoking such grounds.

89. The RFF further states that the Club's debts continue to exist, despite the insolvency proceedings. The mere opening of insolvency proceedings in front of a court of law, cannot create an advantage for the Club in comparison to other clubs that also have overdue payables, but that have not entered into insolvency and that have borne the consequences of violating the RFF Licensing Regulations, or other clubs that have made and are still making substantial financial efforts to pay its contractual obligations to date.

90. The RFF maintains that there is no legal norm or regulatory provision that prevented the Club from honouring its financial obligations before it entered into insolvency on 4 February 2015. In any event, the fact that the Club had no possibility to comply with its financial obligations due to the insolvency cannot be interpreted as a lack of any financial obligations. The debts continue to exist. The Club's argument that it cannot pay the debts due to the insolvency cannot be accepted because there is no evidence to substantiate the existence of any legal impediment that would prevent the payment of overdue payables before entering into the insolvency proceedings. Moreover, the Club did not prove in any way that it attempted to seek the approval of the syndic judge to pay its debts that were relevant for the RFF Licensing Regulations. The RFF specifies that, based on article 45(2) of Law 85/2014, the syndic judge is authorised to approve the payment of any debt, if such request is filed and if it can be proven that such a measure would lead to a "protection" of the assets of the Club.

91. The Sole Arbitrator observes that article 75(1) and 79 of Law 85/2014 determine the following:

> *"As of the opening of the proceeding, all court actions, out of court actions, or forced execution procedures for the recovery of claims against the debtor's estate shall be suspended. The creditors' rights may be recovered only through the insolvency proceeding, by lodging proofs of debt.* […]"
>
> *"The opening of the proceedings suspends any period of limitations applicable to the actions referred to in article 75, par (1)".*

92. As set out *supra*, the Sole Arbitrator finds that the present proceedings are not related to the recovery of claims against the Club's estate, but rather are intended to preserve a level playing field in the Liga 1 and are related to the imposition of sporting sanctions. However, it appears that the Club makes another argument in this respect, which is that the Club was legally prevented from paying its debts and that, pursuant to Romanian bankruptcy law, it therefore did not have overdue payables on 30 April 2015 and should not be sanctioned on the basis of the RFF Licensing Regulations as such.

93. As to the status of the debts upon entering into insolvency, the Sole Arbitrator observes that the CAS panel in CAS 2013/A/3194 reasoned as follows in respect of article 36 of the Romanian Insolvency Law (*i.e.* the predecessor of article 75 of Law 85/2014, the wording of which is not materially different):

> *"The Panel interprets these regulations in the sense that the Insolvency Law, once an insolvency proceeding is formally opened, modifies and respectively defers the due date of all the debts of the obligor and thus intervenes in contractually defined stipulations between the debtor and its creditors. In consequence, the statute of limitations period gets suspended due to the fact that the statute of limitations period only runs while a claim is mature. Considering these interpretations, the Panel holds the point of view that the NCLR has to be interpreted in the light of the Insolvency Law in order to ensure the uniformity of the Romanian legal system. If the Insolvency Law therefore determines that, once an insolvency proceeding is opened, all the debts of the requesting entity would be deferred, this matter of fact also has to be taken into account with respect to the NCLR. In consequence, a club over whom an insolvency procedure in the sense of the Insolvency Law was opened does not have overdue payables in the sense of Art. 1 of Annex VI of the NCLR in conjunction with Art. 2 lit. c of Annex VI of the NCLR, due to the fact that the Panel considers an insolvency procedure as a procedure in the sense of Art. 2 lit. c of Annex VI of the NCLR"* (CAS 2013/A/3194, §56).

94. Another CAS panel reasoned as follows:

> *"Second, the fact that as a result of measures taken in September 2009* [beginning of the insolvency procedure and the entering into the observation period] *the Club was immunized from liability to discharge those debts did not mean that the debts were not due. The very premise for involvement of the Court in the affairs of the Club was that it was – and remained – a debtor. The Provision of the Insolvency Law relied on by the Club consistently used the vocabulary of debt"* (CAS 2011/A/2486, §11).

95. The Sole Arbitrator finds that the mere fact that the Club entered into insolvency did not entail that its debts were no longer due. Indeed, as rightly mentioned in CAS 2011/A/2486, *"[t]he very premise for involvement of the Court in the affairs of the Club was that it was – and remained – a debtor"*.

96. Similarly, the mere fact that the Club entered into insolvency did not automatically defer the due dates of the debts, these due dates would only be deferred upon the conclusion of a reorganisation plan, approved by the syndic judge. Until the moment such reorganisation plan is approved, the due dates remain unchanged, with the particularity that the creditors are prevented from enforcing their claims against the debtor. This is in accordance with the expert report of Reff Associates, determining that *"article 75 and 79 of Insolvency Law only regulate the impossibility of creditors to enforce their receivable against the debtor but such articles do not automatically modify and defer the due date of the receivable"* and that *"[t]he specific moment when, in accordance with Insolvency Law, the due date of the receivables of an insolvent company may be modified and consequently, the due date deferred is after the approval of reorganization plan by creditors and confirmation by the syndic judge provided that such deferral is mentioned under the plan"*.

97. The Sole Arbitrator is not convinced by the argument of Prof. Catană that an obligation is payable when it arrives at its deadline of payment and could be enforced by the creditor, as this definition is derived from a dictionary rather than from Law 85/2014. As such, the Sole Arbitrator is not convinced that an impermissible contradiction exists between the RFF Licensing Regulations and Law 85/2014 that would render the RFF Licensing Regulations ineffective in this respect.

98. Consequently, the Sole Arbitrator finds that the Club was indeed prevented from paying its debts upon entering into insolvency, but that this did not entail that its debts ceased to exist or that the due dates were automatically deferred.

99. The Sole Arbitrator further observes that article 45(2) of Law 85/2014 determines as follows:

> *"The duties of the syndic judge are limited to judicial control of the activity of the judicial administrator and/or the judicial liquidator and to trials and judicial petitions associated with the insolvency proceeding. The management duties fall on the judicial administrator or the judicial liquidator or, exceptionally, on the debtor provided that its right to administer its estate was not removed. The management decisions of the judicial administrator, of the judicial liquidator or of the debtor who was permitted to administer its estate may be controlled in terms of adequacy by the creditors, through their own bodies".*

100. The issue of whether the Club should or could have asked the syndic judge for approval to pay its debts towards football clubs and/or employees in order to avoid the sporting sanctions enshrined in the RFF Licensing Regulations was discussed at length at the hearing. Whereas the RFF, and Ms Grigoras, were of the view that this would have been possible, the Club, and Prof. Catană, argued that this was not possible.

101. Whereas Prof. Catană admitted that *"[d]uring the observation phase, the insolvent company, under the supervision or even under the management of the designated insolvency practitioner may engage in operation and payments resulting from current activities, meaning the ones generated by the continuation of its activity after the court order opening the insolvency* […]*"* and that *"[w]hen such operations exceed the regular course of business (e.g. contracting loans, concluding labour contracts) the insolvency practitioner must ask for approval from the creditors committee"*, he argued that asking permission to pay its debts to football clubs and employees in order to avoid sporting sanctions being imposed on it was not a realistic option for the Club.

102. Having studied the respective expert reports, the parties' submissions and the arguments advanced by both the Club and the RFF at the hearing, the Sole Arbitrator is not convinced that it was practically impossible for the Club to obtain permission from the syndic judge to pay the relevant creditors. Such request may indeed have been denied because the approval might have led to a violation of the *paritas creditorum* principle, pursuant to which all creditors have an equal right to payment and that proceeds of the bankrupt's estate shall be distributed in proportion to the size of their claims. Nevertheless, the Sole Arbitrator finds that the fact that a legal avenue was available to the Club (regardless of the fact that this avenue is rarely or never used) is important as this possibility should have been explored by the Club if it now in good faith wants to advance the argument that it was legally prevented from paying the amounts due.

103. The Sole Arbitrator finds that it might well be that the syndic judge would be more flexible in respect of giving permission to football clubs to pay debts to certain creditors, as opposed to ordinary businesses not related to football. Although such permission would on first sight appear to violate the *paritas creditorum* principle, this is not necessarily the case. For example, if the Club would obtain a higher sponsor fee because of a higher ranking in the league, it might well be more favourable to the financial situation of the Club as a whole, and indeed to all

creditors, if the Club would only pay its debts towards certain creditors, in order to avoid sporting sanctions and the negative financial consequences deriving therefrom, as long as the Club is able to prove to the syndic judge that its financial situation as a whole would improve.

104. In any event, and importantly, the Sole Arbitrator finds that nothing prevented the Club from paying the amounts due before it was subjected to insolvency proceedings. The Club is therefore the sole entity responsible for having overdue payables in the first place. As established in consistent CAS jurisprudence, lack of financial means, even though caused by sporting conditions, to satisfy an obligation of payment does not excuse the failure to make the required payment (CAS 2006/A/1008, §19 of abstract on CAS website).

105. Consequently, the Sole Arbitrator finds that the Club was not necessarily legally prevented from paying its debts.

(b) Do the RFF Licensing Regulations make an impermissible distinction between an "observation period" and the moment when a "restructuring plan" has been agreed upon?

106. The Club argues that the exception established in para. 2(b) of Annex VI to the RFF Licensing Regulations is discretionary and even arbitrary when related to Romanian insolvency law. As long as the observation period is compulsory and precedes both administration and liquidation under Law 85/2014, the insolvent applicant club being under an observation period should not have a distinct regime when compared to an applicant in reorganisation based on a confirmed recovery plan. The insolvent company is under protection from creditors and has the chance of rescue without being in compulsory liquidation, regardless of whether it is in the observation period or whether it has a recovery plan confirmed. To do otherwise is not only contrary to Romanian insolvency law, but also to the principle stated at para. 1 of Annex VI, pursuant to which financial debts are deemed outstanding if not paid as per legal obligations stipulated by the legal provisions in force.

107. The Club argues that there is no super-priority that benefits the claims of players, trainers and other clubs. The Annex to the RFF Licensing Regulations does not comply with the requirements of a transparent, accessible, precise and foreseeable regulation to ensure legal security. Such a provision could not be presented to a Romanian insolvency court as a ground for a super-priority for some pre-petition claims. Thus, para. 2(b) of Annex VI to the RFF Licensing Regulations is legally inefficient and unenforceable.

108. The RFF did not put forward any specific arguments in this respect but considers the RFF Licensing Regulations to be in compliance with both the UEFA regulations and Romanian bankruptcy law.

109. The Sole Arbitrator observes that there is no provision in Law 85/2014 prohibiting to make a distinction between an "observation period" and the period following the conclusion of a restructuring plan. The argument that making such distinction is illegal merely follows from the Club's position that no such distinction is made in Law 85/2014.

110. The Sole Arbitrator does not find the distinction between the "observation period" and the period following the conclusion of a restructuring plan to be arbitrary, but that this distinction indeed serves a purpose. With the RFF Licensing Regulations, the RFF attempted to enhance the financial viability of clubs in Romanian football. As per these regulations, clubs applying for a license to participate in the Liga 1 are not allowed to have outstanding payables towards football clubs and/or employees on 30 April that were already registered on 31 December. The RFF Licensing Regulations enumerate a specific list of exceptions to this general rule.

111. Obviously debts are no longer outstanding if the amounts have been paid in full, but also if certain amounts have been deposited on an escrow account of the RFF, if a settlement has been reached with a creditor whereby the latter accepted in writing the extension of the payment term until after the expiration of the applicable term or if court proceedings have been initiated whereby the obligation to pay is being challenged. The exception relevant to this case is if *"the syndic judge has confirmed the restructuring plan of the debtor club issuing to this end an award before March 31st"* as set out in para. 2(b)(1) of Annex VI to the RFF Licensing Regulations.

112. The Sole Arbitrator first of all finds, as determined *supra*, that it is not in dispute that these exceptions are not complied with in the matter at hand.

113. Furthermore, the Sole Arbitrator considers this exception to be similar to the exception whereby an individual settlement has been reached with a creditor whereby the latter accepted in writing the extension of the payment term until after the expiration of the applicable term, since the conclusion of a restructuring in fact also entails the deferral of payment obligations until a later date.

114. The Sole Arbitrator finds that the distinction between an "observation period" and the period following the conclusion of a restructuring plan does not discriminate between insolvent companies in the observation period and insolvent companies under judicial reorganisation, as argued by the Club. Indeed, in both situations the debtor remains protected against enforcement from its creditors. As set out *supra*, the present proceedings are however no debt enforcement proceedings but disciplinary proceedings related to the issuance of a license to participate in a football competition, resulting in the imposition of sporting sanctions.

115. The Sole Arbitrator does not consider the distinction to be discriminatory in the sense that it would lead to an unequal treatment of the creditors. All creditors are treated the same and would in principle have to apply for being officially listed as a creditor of the Club in the insolvency proceedings. It is true that not all debts of the Club would entail the imposition of sporting sanctions, as in the present matter, and that this might have lead the Club to satisfy these debts first before entering into insolvency, however, what is relevant here is that no differentiation is made between creditors as soon as the insolvency proceedings have commenced and this is not the case.

116. Consequently, the Sole Arbitrator finds that no impermissible distinction between an "observation period" and the moment when a restructuring plan has been agreed upon is made.

(c) Conclusion

117. The Sole Arbitrator finds that there is no reason why the Club should not be sanctioned for violating the RFF Licensing Regulations.

iv. *If not, what are the consequences of having overdue payables towards football clubs and/or employees?*

118. In view of all the above, the Sole Arbitrator is satisfied that the Club violated article 46 and 47 of the RFF Licensing Regulations due to the fact that the overdue payables that existed on 31 December 2014 towards other football clubs and employees were not paid within the deadline of 30 April 2015. These facts are not contested by the Club.

119. Consequently, in view of all the above, the Sole Arbitrator finds that the imposition of sporting sanctions is warranted.

120. The Sole Arbitrator observes that article 15(3) and Annex II of the RFF Licensing Regulations determine the following:

> *"Non-fulfilment of the licensing criteria for the granting of the First League license does not lead to the refusal of the license but to a sanction defined by the club licensing jurisdictional bodies according to the list of sanctions set out in Annex II. The point deductions applied to the rankings of the season for which the license was granted with sanctions and/or the fines are only enforced against clubs participating in the First League, in that season".*
>
> "[…] *Violation of Article 46 – No overdue payables towards football clubs: three-point deduction applied to the ranking of the First League club in the licence season;*
>
> *Violation of Article 47 – No overdue payables towards employees: three-point deduction applied to the ranking of the First League club in the licence season;* […]".

121. The Sole Arbitrator observes that for both violations (article 46 and 47 of the RFF Licensing Regulations) three points were deducted from the official ranking of the 2015/2016 football season in the Liga I National Championship and that the Club did not advance any arguments as to why these sanctions would not be proportionate.

122. Consequently, the Sole Arbitrator finds that the Club shall be sanctioned with two three-point deductions to be applied to the ranking of the Liga I National Championship in the 2015/2016 football season.

B. Conclusion

123. Based on the foregoing, and after taking into due consideration all the evidence produced and all arguments made, the Sole Arbitrator finds that:

i. The nature of the present proceedings is to be qualified as disciplinary proceedings within the admission process for being granted a license to participate in the Liga 1 National Championship and does therefore not contravene Romanian bankruptcy law.

ii. Based on the RFF Licensing Regulation, the Club had not paid its outstanding debts that were registered before 31 December 2014 towards football clubs and employees by 30 April 2015 and thereby violated the RFF Licensing Regulations.

iii. There is no reason why the Club should not be sanctioned for violating the RFF Licensing Regulations.

iv. The Club shall be sanctioned with two three-point deductions to be applied to the ranking of the Liga I National Championship in the 2015/2016 football season.

124. Any further claims or requests for relief are dismissed.

ON THESE GROUNDS

The Court of Arbitration for Sport rules:

1. The appeal filed on 12 June 2015 by Fotbal Club CFR 1907 Cluj S.A. against the decision issued on 22 May 2015 by the Board of Appeal for Clubs' Licensing of the Romanian Football Federation is dismissed.

2. The decision issued on 22 May 2015 by the Board of Appeal for Clubs' Licensing of the Romanian Football Federation is confirmed.

3. (…).

4. (…).

5. All other prayers or requests for relief are dismissed.