Arbitrations CAS 2016/A/4627 World Anti-Doping Agency (WADA) v. Indian National Anti-Doping Agency (Indian NADA), Geeta Rani (Case I) & CAS 2016/A/4628 WADA v. Indian NADA, Geeta Rani (Case II) & CAS 2017/A/5283 WADA v. Indian NADA, Geeta Rani (Case III), award of 7 March 2018

Panel: Prof. Martin Schimke (Germany), Sole Arbitrator

Weightlifting
Doping (methandienone metabolites)
No requirement to establish source in order to establish absence of intent
Interpretation of a rule
Degree of evidence required to establish how a sabotage occurred

1. **The 2015 World Anti-Doping Code (WADC) does not explicitly require an athlete to show the origin of the substance to establish that the anti-doping rule violation was not intentional. While the origin of the substance can be expected to represent an important, or even critical, element of the factual basis of the consideration of an athlete's level of fault, in the context of Article 10.2.3 WADC, panels are offered flexibility to examine all the objective and subjective circumstances of the case and decide if a finding that the violation was not intentional is warranted.**

2. **A fundamental principle of interpretation is that rules must be applied according to their spirit and not merely according to their letter, and that a panel must interpret the rules in question in keeping with the perceived intention of the rule maker and not in a way that frustrates it.**

3. **The mere raising of unverified hypotheses or allegations and speculations as to how the prohibited substance entered an athlete's body is in no way sufficient proof of how the substance entered such system. A third party attack like sabotage by spiking food and/or drink requires a specific and substantial amount of criminal energy and must be regarded as a serious offence comparable to corruption and match-fixing charges. Therefore, as far as the quality of evidence is concerned, the standards that have been developed by CAS panels in the areas of corruption and match-fixing must also be met. Statements based on nothing more than hearsay that another athlete spiked an athlete's drinks and based on no concrete and recognizable evidence are not enough to provide any explanation as to how and under which concrete circumstances the alleged third party attack might have happened and do not allow the athlete to discharge his/her burden to establish the way in which the prohibited substance entered his/her system.**

I. PARTIES

1. The World Anti-Doping Agency (hereinafter referred to as "WADA" or the "Appellant") is a Swiss private law foundation with its seat in Lausanne, Switzerland, and its headquarters in Montreal, Canada, whose aim is to promote and coordinate the fight against doping in international sport.

2. The Indian National Anti-Doping Agency (hereinafter referred to as the "Indian NADA" or the "First Respondent") is the agency responsible for the implementation of the World Anti-Doping Code (the "WADA Code"), for the regulation of anti-doping control programs, and for the promotion of anti-doping education and research throughout India. Its seat is in New Delhi, India.

3. Ms. Geeta Rani (hereinafter referred to as the "Athlete" or the "Second Respondent") is an Indian weightlifter.

4. The First and Second Respondent are collectively referred to as the "Respondents".

II. FACTUAL BACKGROUND

A. Background Facts

5. Below is a summary of the relevant facts and allegations based on the parties' written submissions and evidence adduced. Additional facts and allegations found in the parties' written submissions and evidence will be set out, where relevant, in connection with the legal discussion that follows. While the Sole Arbitrator has considered all the facts, allegations, legal arguments, and evidence submitted by the parties in the present proceedings, he refers in his Award only to the submissions and evidence he considers necessary to explain his reasoning.

6. On 5 February 2015, the Athlete underwent a first doping control in Thrissur, India, during the 35th National Games (hereinafter referred to as the "First Test").

7. On 5 March 2015, the Athlete underwent a second doping control in New Dehli, India, during the 63rd All India Police Weightlifting Championship (hereinafter referred to as the "Second Test").

8. The Athlete's samples resulted in Adverse Analytical Findings, showing the presence of a metabolite of methandienone (hereinafter referred to as the "Prohibited Substance"). Methandienone is an exogenous anabolic androgenic steroid prohibited under "S1.1a" of the 2015 WADA Prohibited List.

9. The Athlete requested the analysis of the B-sample of the First Test, which confirmed the finding of the A-sample. The B-sample of the Second Test was not tested, because the Athlete accepted the results of the A-sample of the Second Test.

B. Proceedings before the Anti-Doping Disciplinary Panel and the Anti-Doping Appeal Panel of the Indian NADA

10. On 13 April 2016, the Anti-Doping Disciplinary Panel of the Indian NADA rendered two decisions: a decision pertaining to the First Test (the "First Test Decision") and a decision pertaining to the Second Test (the "Second Test Decision").

- In the First Test Decision, the Anti-Doping Disciplinary Panel of the Indian NADA sanctioned the Athlete with a two-year ineligibility period starting on 10 March 2015.

- In the Second Test Decision, the Anti-Doping Disciplinary Panel of the Indian NADA sanctioned the Athlete with a two-year ineligibility period starting on 13 April 2015.

11. On 9 May 2016, the Athlete appealed the Second Test Decision to the Anti-Doping Appeal Panel of the Indian NADA.

12. On 11 May 2016, WADA was notified with certain documents of the case file existing thus far.

13. On 6 July 2017, the Anti-Doping Appeal Panel of the Indian NADA rendered its decision (the "Appeal Decision"), by which it decided to *"uphold the impugned order by which two years ineligibility had been awarded against the appellant. But as provided under the Rules, she is entitled to the credit of the period of provisional suspension already undergone by her (Article 10.11.3). The appellant was provisionally suspended on 13.4.2015"*.

14. On 20 July 2017, the *"Anti-Doping Panel India"* provided WADA with further documents *"to complete case file of Mrs. Geeta Rani"*.

III. PROCEEDINGS BEFORE THE COURT OF ARBITRATION FOR SPORT ("CAS")

15. On 1 June 2016, WADA filed its Statement of Appeal at the CAS in accordance with Articles R47 and R48 of the Code of Sports-related Arbitration ("the Code") with respect to the First and Second Test Decisions (CAS 2016/A/4627 and CAS 2016/A/4628).

16. On 9 August 2017, WADA filed its Statement of Appeal at the CAS in accordance with Articles R47 and R48 of the Code with respect to the Appeal Decision (CAS 2017/A/5283).

17. On 8 September 2017, the CAS Court Office asked the parties whether they had an objection to the appointment of Prof. Dr. Martin Schimke as Sole Arbitrator following the latter's disclosure in his declaration of independence.

18. Having received no objection to the appointment of Prof. Dr. Martin Schimke as Sole Arbitrator, the CAS Court Office informed the parties by letter dated 20 September 2017 that in accordance with Articles R33, R52, R53, and R54 of the Code, the Panel appointed to decide this appeal has been constituted as follows:

    Sole Arbitrator: Prof. Dr. Martin Schimke, Attorney-at-Law, Düsseldorf, Germany

19. On 20 September 2017, WADA filed its common Appeal Brief for all three matters in accordance with Article R51 of the Code.

20. On 17 October 2017, the Athlete's deadline to file her Answer was extended by 10 days, *i.e.* until 23 October 2017.

21. On 23 October 2017, the Athlete filed her common Answer for all three matters but only by e-mail. It was sent by courier on 27 October 2017, *i.e.* outside the prescribed deadline pursuant to Article R32 of the Code.

22. The First Respondent did not file any answer pursuant to Article R55 of the Code.

23. On 2 November 2017, WADA confirmed that it did not object to the admissibility of the Answer filed by the Athlete.

24. On 3 November 2017, after consulting the parties, the CAS Court Office informed them that, in accordance with Article R57 of the Code, the Sole Arbitrator deemed himself sufficiently well-informed to render an award on the basis of the written record, without holding a hearing.

25. Once the deadline to do so had expired and notwithstanding the decision not to hold a hearing, the Athlete indicated by the letter dated 6 November 2017, that she *"prefers a hearing to be present in this matter"*.

26. On 13 November 2017, an Order of Procedure was made. All three parties returned a signed copy of said order confirming that the Sole Arbitrator may decide all matters based on the parties' written submissions, without holding a hearing, and that their right to be heard has been respected.

IV. SUBMISSIONS OF THE PARTIES

27. WADA's submissions, in essence, may be summarized as follows:

- The analysis of the Athlete's A-samples both revealed the presence of a metabolite of methandienone. Methandienone is an exogenous anabolic androgenic steroid prohibited under S1.1a of the 2015 Prohibited List.

- The Athlete requested the analysis of the B-sample of the First Test, which confirmed the findings of the analysis of the A-sample. She waived the analysis of the B-sample of the Second Test.

- As a result, the Athlete effectively committed two anti-doping rule violations under Article 2.1. of the Indian NADA Anti-Doping Rules (the "Indian NADA ADR").

- Referring to Article 10.7.4.1 of the Indian NADA ADR, WADA accepts that the violations shall be considered together as one single first violation, and that the sanction imposed shall be based in relation to the First Test.

- Since methandienone is not a specified substance, the period of ineligibility is four years according to Article 10.2.1.1 of the Indian NADA ADR, unless the Athlete can establish that the anti-doping rule violation was not intentional.

- WADA sustains that the burden of proof with respect to intent lies with the Athlete, who thus has the duty of establishing on a balance of probability that she did not intend to cheat within the meaning of Article 10.2.3 of the Indian NADA ADR.

- For this purpose, the Athlete must first prove how the prohibited substance came to be present in her system. She has to adduce concrete evidence to demonstrate that this substance must have entered her body inadvertently. Absent such proof (which the Athlete did not provide), she cannot show that the anti-doping rule violation was not intentional.

- The Athlete's theory that the anti-doping violation was caused by the sabotage of another weightlifter ("third party attack") is mere speculation and unsupported by any cogent evidence.

- Therefore WADA concludes that the Athlete has failed to satisfy her burden of establishing the origin of the prohibited substance and, therefore, the violation must be deemed intentional.

28. In its requests for relief, WADA seeks the following:

1. The Appeals of WADA are admissible.

2. *The two decisions dated 13 April 2017 rendered by the Anti-Doping Disciplinary Panel of Indian NADA and the decision dated 6 July 2017 rendered by the Anti-Doping Appeal Panel of Indian NADA in the matter of Geeta Rani are set aside.*

3. *Geeta Rani is sanctioned with a four-year period of ineligibility starting on the date on which the CAS award enters into force. Any period of provisional suspension or ineligibility effectively served by Geeta Rani before the entry into force of the CAS award shall be credited against the total period of ineligibility to be served.*

4. *All competitive results obtained by Geeta Rani from and including 5 February 2015 are disqualified, with all resulting consequences (including forfeiture of medals, points, and prizes).*

5. *The costs of this arbitration shall be borne by NADA or, subsidiarily, by the Respondents jointly and severally.*

6. *NADA or, subsidiarily, the Respondents jointly and severally shall be ordered to pay a significant contribution to WADA's legal and other costs.*

29. The Athlete's submission, in essence, may be summarized as follows:

- The Athlete submits that for any sort of elimination/reduction of the period of ineligibility under Article 10.4 of the Indian NADA ADR (*"No Fault or Negligence"*) as well as Article 10.5 of the Indian NADA ADR (*"No significant Fault or Negligence"*), the Indian NADA ADR specifically provide under Appendix 1 (*"Definitions"*) that for both (*"No Fault or Negligence"* or *"No significant Fault or Negligence"*) the Athlete has to establish how the prohibited substance entered his or her system. However, there is no such express requirement for reducing a sanction on the basis of Article 10.2.2 of the Indian NADA ADR.

- The Athlete maintains that even WADA admits that certain CAS judgments recognize that an Athlete might be able to demonstrate a lack of intent even where he/she cannot establish the origin of the prohibited substance. Therefore, every case has to be weighed on its own facts and circumstances and *"there cannot be any straight jacket formula to ascertain the intention of an Athlete"*.

- The Athlete further advances the theory that she had been sabotaged by another weightlifter named A., who spiked her food and drinking water respectively.

- In this regard, the Athlete primarily relies on a statement made by B. (presented before the Anti-Doping Panels of the Indian NADA), who is in charge of sports at the CRPF (Central Reserve Police Force) where the Athlete *inter alia* works and trains. His statement

to the effect that he has heard about said A. spiking other athletes' drinks constitutes a *"substantial piece of evidence"* in the view of the Athlete.

- Furthermore, the Athlete refers to two witnesses who both stated that it is most likely that A. spiked other athletes' drinks. The witness C., a former coach of the team, mentioned that another athlete had already told her that she thought A. had mixed something into her protein shake. The other witness, D., another coach, mentioned that A. sometimes competes in the 69 kg, 75 kg, or +75 kg category and that the only competitors in the +75 kg category are E. and Geeta Rani, both of whom were tested positive for the same substance and in the same competition. For this reason, A. could have tried to get rid of both athletes in the +75 kg category in order to get a comfortable position on the team.

30. In her request for relief, the Athlete seeks the following:

i. Dismissal of the present appeal filed by WADA.

ii. Upholding of the two decisions of the Anti-Doping Disciplinary Panel and Anti-Doping Appeal Panel of NADA.

iii. Ordering of WADA to pay costs to Athlete.

31. As stated above, the First Respondent failed to file an answer in accordance with Article R55 of the Code.

V. JURISDICTION

32. Article R47 of the Code provides as follows:

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

33. The Appellant relies on Article 13.2.3 of the Indian NADA ADR (2015 edition) as conferring jurisdiction on the CAS.

34. The Athlete expressly consents to this jurisdiction in her Answer. Moreover, all parties confirmed CAS jurisdiction by signing the Order of Procedure.

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

VI. ADMISSIBILITY

36. Article R49 of the Code provides as follows:

> *In the absence of a time limit set in the statutes or regulations of the federation, association or sports-related body concerned, or in a previous agreement, the time limit for appeal shall be twenty-one days from the receipt of the decision appealed against. The Division President shall not initiate a procedure if the statement of appeal is, on its face, late and shall so notify the person who filed the document.*

37. The Sole Arbitrator notes that the appeals were filed within the deadline of twenty-one days set by Article 13.7.1(b) of the Indian NADA ADR. The appeal complied with all other requirements of Article R48 of the Code, including the payment of the CAS Court Office fee.

38. Finally, the Respondents did not object to the admissibility of the appeals.

39. It follows that the appeals are admissible.

VII. APPLICABLE LAW

40. WADA submits that the present dispute is governed by the Indian NADA ADR (2015 edition), which is not disputed by the parties.

41. Article R58 of the 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 that the Panel deems appropriate. In the latter case, the Panel shall give reasons for its decision".*

42. Based on the foregoing, the Sole Arbitrator is satisfied that the present appeal arbitration proceedings shall be adjudicated and decided on the basis of the Indian NADA ADR.

VIII. RELEVANT INDIAN NADA ANTI-DOPING REGULATIONS AND DEFINITIONS

43. The following provisions of the Indian NADA ADR, based on the WADA Code, are material to these appeals:

Article 2 of the Indian NADA ADR (*"Definition of Doping – Anti-Doping Rule Violation"*)

[…]

The purpose of Article 2 is to specify the circumstances and conduct which constitute anti-doping rule violations. Hearings in doping cases will proceed based on the assertion that one or more of these specific rules has been violated.

Athletes or other Persons shall be responsible for knowing what constitutes an anti-doping rule violation and the substances and methods which have been included on the Prohibited List.

The following constitute anti-doping rule violations:

2.1 Presence of a Prohibited Substance or its Metabolites or Markers in an Athlete's Sample.

[…]

Article 3.1 of the Indian NADA ADR (*"Burdens and Standards of Proof"*)

NADA shall have the burden of establishing that an anti-doping rule violation has occurred. The standard of proof shall be whether NADA has established an anti-doping rule violation to the comfortable satisfaction of the hearing panel bearing in mind the seriousness of the allegation which is made. This standard of proof in all cases is greater than a mere balance of probability but less than proof beyond a reasonable doubt. Where these Anti-Doping Rules place the burden of proof upon the Athlete or other Person alleged to have committed an anti-doping rule violation to rebut a presumption or establish specified facts or circumstances, the standard of proof shall be by a balance of probability.

Article 10.2 of the Indian NADA ADR (*"Ineligibility for Presence, Use or Attempted Use, or Possession of a Prohibited Substance or Prohibited Method"*)

The period of Ineligibility for a violation of Articles 2.1, 2.2 or 2.6 shall be as follows, subject to potential reduction or suspension of sanction pursuant to Articles 10.4, 10.5 or 10.6:

10.2.1 The period of Ineligibility shall be four years where:

> *10.2.1.1 The anti-doping rule violation does not involve a Specified Substance, unless the Athlete or other Person can establish that the anti-doping rule violation was not intentional.*
>
> *10.2.1.2 The anti-doping rule violation involves a Specified Substance and NADA can establish that the anti-doping rule violation was intentional.*

10.2.2 If Article 10.2.1 does not apply, the period of Ineligibility shall be two years.

10.2.3 As used in Articles 10.2 and 10.3, the term "intentional" is meant to identify those Athletes who cheat. The term, therefore, requires that the Athlete or other Person engaged in conduct which he or she knew constituted an anti-doping rule violation or knew that there was a significant risk that the conduct might constitute or result in an anti-doping rule violation and manifestly disregarded that risk. […].

Article 10.3 of the Indian NADA ADR (*"Ineligibility for other Anti-Doping Rule Violations"*)

The period Ineligibility for anti-doping rule violations other than as provided in Article 10.2 shall be as follows, unless Articles 10.5 or 10.6 are applicable:

10.3.1 For violations of Article 2.3 or Article 2.5, the Ineligibility period shall be four years unless, in the case of failing to submit to Sample collection, the Athlete can establish that the commission of anti-doping rule violation was not intentional (as defined in Article 10.2.3), in which case the period of Ineligibility shall be two years.

Article 10.5 of the Indian NADA ADR (*"Reduction of the Period of Ineligibility based on No Significant Fault or Negligence"*)

10.5.1.2 Contaminated Products

In cases where the Athlete or other Person can establish No Significant Fault or Negligence and that the detected Prohibited Substance came from a Contaminated Product, then the period of Ineligibility shall be, at a minimum, a reprimand and no period of Ineligibility, and at a maximum, two years Ineligibility, depending on the Athlete's or other Person's degree of Fault.

[Comment to Article 10.5.1.2: In assessing that Athlete's degree of Fault, it would, for example, be favorable for the Athlete if the Athlete had declared the product which was subsequently determined to be contaminated on his or her Doping Control form.]

10.5.2 Application of No Significant Fault or Negligence beyond the Application of Article 10.5.1

If an Athlete or other Person establishes in an individual case where Article 10.5.1 is not applicable, that he or she bears No Significant Fault or Negligence, then, subject to further reduction or elimination as provided in Article 10.6, the otherwise applicable period of Ineligibility may be reduced based on the Athlete or other Person's degree of Fault, but the reduced period of Ineligibility may not be less than one-half of the period of Ineligibility otherwise applicable […].

[Comment to Article 10.5.2: Article 10.5.2 may be applied to any anti-doping rule violation except those Articles where intent is an element of the anti-doping rule violation (e.g., Article 2.5, 2.7, 2.8 or 2.9) or an element of a particular sanction (e.g., Article 10.2.1) or a range of Ineligibility is already provided in an Article based on the Athlete or other Person's degree of Fault.]

Appendix 1 (*"Definitions"*)

No Significant Fault or Negligence: The Athlete or other Person's establishing that his or her Fault or negligence, when viewed in the totality of the circumstances and taking into account the criteria for No Fault or negligence, was not significant in relationship to the anti-doping rule violation. Except in the case of a Minor, for any violation of Article 2.1, the Athlete must also establish how the Prohibited Substance entered his or her system.

IX. MERITS

A. Common Ground between the Parties

44. It is common ground that (i) the Athlete was guilty of an ADR violation ("ADRV") under Article 2.1 of the Indian NADA ADR in that the Prohibited Substance was present in her sample, (ii) *prima facie* her period of ineligibility would be four years under Article 10.2.1 of the Indian NADA ADR, and (iii) in order for the period of ineligibility to be reduced to two years, it is up to the Athlete to establish on the balance of probabilities that her ADRV was not intentional under Article 10.2.1.1 of the Indian NADA ADR as defined in Article 10.2.3 of the Indian NADA ADR.

B. Main Issues

45. Therefore the following are the main issues to be resolved by the Sole Arbitrator:

(i) In order to establish absence of intent for the purposes of the Indian NADA ADR, is it necessary for the Athlete to establish the source of the prohibited substance present in her samples? ("Proof of Source")

(ii) Has the Athlete established her lack of intent? ("Source of Prohibited Substance and Proof of Lack of Intent")

(iii) What, if any, sanction is to be imposed on the Athlete? ("Sanction")

i. Proof of Source

46. As submitted in WADA's appeal brief, the question as to the necessity of an athlete to establish the source of the prohibited substance present in her/his sample has been the subject of various discussions and interpretations among CAS panels, national doping panels, and jurists in recent periods.

47. An overview of the debate and the conflicting arguments was included *inter alia* in the award CAS 2016/A/4534, where the panel stated the following:

> *"35. The following factors support the proposition that establishment of the source of the prohibited substance in an athlete's sample is not a sine qua non of proof of absence of intent:*
>
> *(i) The relevant provisions i.e. FINA DEC 10.2.1.1.and 10.2.3 do not refer to any need to establish such source.*
>
> *(ii) Establishment of such source is required when an athlete seeks to prove no fault or negligence (FINA DC 10.4) or no significant fault or negligence (FINA DC 10.5.1 and 10.5.2) under the definitions of No Fault or Negligence and No Significant Fault or Negligence. This engages the principle inclusio unius exclusio alterius: if such establishment is expressly required in one rule, its omission in another must be treated as deliberate and significant.*
>
> *(iii) The omission in FINA DC modelled on WADC 2015 of the need to establish source as a precondition of proof of lack of intent must be presumed to be deliberate.*
>
> *(iv) Any ambiguous provisions of a disciplinary code must in principle be construed contra proferentem and in accordance with the hallowed statement in* […] *CAS 94/129: "The fight against doping is arduous and it may require strict rules. But the rule makers and the rule appliers must begin by being strict with themselves. Regulations that may affect the careers of dedicated athletes must be predictable". (para. 34). This is especially so when on the express language of the code the purpose of the concept of intent is to identify athletes "who cheat" (sic).*
>
> *(v) In an illuminating article by four well recognized experts including Antonio Rigozzi and Ulrich Haas "Breaking Down the Process for Determining a Basic Sanction Under the 2015 World Anti-Doping Code" International Sports Law Journal, (2015) 15:3-48 the view is expressed:*
>
> *"The 2015 Code does not explicitly require an Athlete to show the origin of the substance to establish that the violation was not intentional. While the origin of the substance can be expected to represent an important, or even critical, element of the factual basis of the consideration of an Athlete's level of Fault, in the context of Article 10.2.3, panels are offered flexibility to examine all the objective and subjective circumstances of the case and decide if a finding that the violation was not intentional".*
>
> *36. The following factors support the proposition that establishment of the source of a prohibited substance in an athlete's sample is a sine qua non of proof of absence of intent:*
>
> *(i) It is difficult to see how an athlete can establish lack of intent to commit an ADRV demonstrated by presence of a prohibited substance in his sample (a fortiori though use of such substance) if s/he cannot even establish the source of such substance.*

(ii) The express need to establish lack of intent to commit an ADRV for the purposes of establishing no fault or negligence or no significant fault or negligence is because of the same degree of difficulty does not subsist in this different context. Hence it was necessary to make express what in the context referred to in (i) was necessarily implicit.

(iii) There is a consistent line of jurisprudence that establishment of source is necessary when an athlete seeks to establish absence of fault. See, e.g. […], *CAS 2013/A/3124, at para. 12.2, quoting with approval* […], *CAS 2006/A/1130, at para. 39 ("Obviously this precondition is important and necessary; otherwise an athlete's degree of diligence or absence of fault would be examined in relation to circumstances that are speculative and that could be partly or entirely made up. To allow any such speculation as to the circumstances, in which an athlete ingested a prohibited substance would undermine the strict liability rules underlying (…) the [WADC], thereby defeating their purpose").*

(iv) That jurisprudence is logically applicable mutatis mutandis to a case where the athlete needs to establish absence of intent. Indeed, it has already been applied in cases where intent rather than fault was in issue. See […] [CAS] *2016/A/4662 where the Sole Arbitrator said at para. 39 by reference to RADO 10.2.3 (adopting the same provision in 2015 WADC "The Athlete bears the burden of establishing that the violation was not intentional... and it naturally follows that the athlete must also establish how the substance entered her body;"); (see also CAS 20126/A/4377* […] *at para. 51 to same effect)) (However, in CAS 2016/A/4439* […], *the Panel did not appear to have considered it mandatory for the athlete to establish how the prohibited substance got into his system in order for him to show that the ADRV was not intentional. While noting that the athlete was unable to identify the source, the Panel nevertheless went on to consider whether the athlete could show that the ADRV was not intentional, and, in finding that he could not, relied on various reasons other than such inability (para 41. et seq.).*

37. The Panel finds the factors set out in paragraph 35 more compelling than those set out in paragraph 36. In particular, it is impressed by the fact that the FINA DC, based on WADC 2015, represents a new version of an anti-doping Code whose own language should be strictly construed without reference to case law which considered earlier versions where the versions are inconsistent. Furthermore, the Panel can envisage the theoretical possibility that it might be persuaded by an athlete's simple assertion of his innocence of intent when considering not only his demeanour, but also his character and history (it is recorded if apocryphally, that the young George Washington admitted chopping down a cherry tree because he could not tell a lie. Mutatis mutandis the Panel could find the same fidelity to the truth in the case of an athlete denying a charge of cheating). That said, such a situation would inevitably be extremely rare. Even on the persuasive analysis of Rigozzi, Haas et al., *proof of source would be "an important, even critical" first step in any exculpation of intent. Where an athlete cannot prove source it leaves the narrowest of corridors through which such athlete must pass to discharge the burden which lies upon him".*

48. After carefully weighing the various arguments, the Sole Arbitrator completely adheres to and adopts the approach taken and the conclusion drawn in the aforementioned paragraphs. First and foremost, it also complies with another fundamental principle of interpretation, namely that rules must be applied according to their spirit and not merely according to their letter, and that a panel must interpret the rules in question in keeping with the perceived intention of the rule maker and not in a way that frustrates it (see CAS 2017/A/5006 para. 187 with further references).

49. Thus, the requirement of the proof of source of a prohibited substance is not mandatory but remains an important – not to say the crucial – factor in deciding whether the athlete has succeeded in discharging her/his burden of proving lack of intent.

ii. Source of Prohibited Substance and Proof of Lack of Intent

50. The Athlete's sole explanation in this regard is that she had been sabotaged by another weightlifter named A., who spiked her food and/or drinking water with the Prohibited Substance. Such a so-called third party attack requires a specific and substantial amount of criminal energy and must be regarded as a serious offence comparable to corruption and match-fixing charges. Therefore, as far as the quality of evidence is concerned, the Sole Arbitrator would like to refer from the outset to the standards that have been developed by CAS panels in the areas of corruption and match-fixing.

51. With respect to the degree of confidence in the quality of evidence, the panel in CAS 2011/A/2490 (para. 40) – although holding that the applicable standard of proof in that case was *"a preponderance of the evidence"* – stated the following:

> *"In assessing the evidence the Panel has borne in mind that the Player has been charged with serious offences. While this does not require that a higher standard of proof should be applied than the one applicable to the UTACP, the Panel nevertheless considers that it needs to have a high degree of confidence in the quality of evidence"* (emphasis added).

52. And as correctly asserted by the Appellant, previous CAS panels have held that the mere raising of unverified hypotheses or allegations and speculations as to how the prohibited substance entered an athlete's body is in no way sufficient proof of how the substance entered such system (see for example CAS 2014/A/3615 para. 56 with numerous references). As far as the allegation "spiking and contamination" is concerned, the panel in CAS 2014/A/3615 further held:

> *"The Panel emphasises that to permit an athlete to establish how a substance came to be present in his body by little more than a denial that he took it would undermine the objectives of the Code and Rules. Spiking and contamination – two prevalent explanations often put forth by athletes to explain the presence of a banned substance – can and do occur. That said, it is an easy assertion to make, particularly if unsupported by any evidence. To be effective as a system, more must be required by way of proof, having regard to the athlete's*

general duty to ensure that no prohibited substance enters his body. If the athlete's statements of denial alone were to be considered sufficient evidence to establish how the prohibited substance entered his body, the condition precedent set forth by Articles 10.5.1 and 10.5.2 of the FIM AD Code and WADAC would be deprived of effectiveness or utility".

53. There was, however, no evidence upon which the Athlete could rely to discharge her burden of proving lack of intent.

54. The main evidence provided by the Athlete is in fact statements and declarations made by B. (presented before the Anti-Doping Panels of Indian NADA), who is in charge of sports at the CRPF (Central Reserve Police Force), where the Athlete *inter alia* works and trains and allegedly heard about A. spiking other athletes' drinks. In this regard, the Athlete seems to be trying to make her allegations credible by suggesting that official and reliable investigations were carried out by B. in his capacity as a member of said police force. However, in his written statement dated 7 March 2016, he himself admitted that *"My inquiry comprised of talking to people, doctors, and coaches. It was more of an informal verification rather than an inquiry in its literal sense"*.

55. In addition, this statement comes nowhere near explaining how the Prohibited Substance actually entered the Athlete's system. B.'s statement simply identifies one possible way or source. In any case, the statement offers no evidence nor provides any explanation as to how and under which concrete circumstances the alleged third party attack by A. might have happened.

56. It is equally evident that the reference to the other two witnesses (C. and D.), who – if they said anything at all – are said to have stated that it is most likely that A. spiked other athletes' drinks, can in no way be considered as evidence in support of the hypotheses that A. actually did spike the drink and/or food of the Athlete and that this was therefore the (only) reason why the Prohibited Substance was in her system. The Sole Arbitrator also concurs here with WADA's line of reasoning, *i.e.* that these statements are nothing more than hearsay and are based on no concrete and recognizable evidence.

57. Finally, the Sole Arbitrator observes that the Athlete has adduced no further evidence in these proceedings apart from the aforementioned statements submitted at the preceding proceedings (for example such things as more recent concrete statements and/or the naming of witnesses to be heard).

58. In this connection and in light of the Second Respondent's – albeit late – request for a hearing, the Sole Arbitrator would like to point out that he is generally in favour of granting oral hearings, particularly in doping cases, regardless of what the parties request was in this regard. But in the present case, the Sole Arbitrator cannot image how the personal presence of the Athlete, with her oral allegations only, could do anything to change the weak state of the evidence and

persuade the Sole Arbitrator that the Prohibited Substance entered her system through an alleged attack by a third party.

59. In light of the above and contrary to the findings in the Appealed Decisions, the Sole Arbitrator finds that the Athlete has failed to establish the way in which the Prohibited Substance entered her system and therefore has failed to satisfy her burden of proof with respect to the origin of the Prohibited Substance. In addition there are no other exceptional circumstances and/or evidence submitted which could justify the assumption of lack of intent. The violation of the anti-doping rule must therefore be deemed intentional.

iii. Sanction

60. As per Article 10.2 of the Indian NADA ADR, the standard ineligibility sanction is a period of ineligibility of four years. Consequently, the period of ineligibility of the Athlete shall be four years instead of the two years set out in the Appealed Decisions.

iv. Conclusion

61. For the reasons set out above, the Sole Arbitrator upholds the appeals and the Athlete is sanctioned with a four-year period of ineligibility, effective from the date of this award. Any period of provisional suspension or ineligibility effectively served by the Athlete before the entry into force of the CAS award shall be credited against the total period of ineligibility to be served. Furthermore, all competitive results obtained by the Athlete from and including 5 February 2015, date of the First Test, until 13 April 2015, start date of the provisional suspension, are disqualified, with all resulting consequences (including forfeiture of medals, points, and prizes).

ON THESE GROUNDS

The Court of Arbitration for Sport rules that:

1. The appeals filed by the World Anti-Doping Agency on 1 June 2016 against the Decisions issued on 13 April 2017 by the Anti-Doping Disciplinary Panel of the Indian National Anti-Doping Agency (CAS 2016/A/4627 and CAS 2016/A/4628) and on 9 August 2017 against the Decision issued on 6 July by the Anti-Doping Appeal Panel of the Indian National Anti-Doping Agency (CAS 2017/A/5283) are upheld.

2. The two Decisions dated 13 April 2016 rendered by the Anti-Doping Disciplinary Panel of Indian National Anti-Doping Agency and the Decision dated 6 July 2017 rendered by the Anti-Doping Appeal of Indian National Anti-Doping Agency are set aside.

3. Ms. Geeta Rani is sanctioned with a period of ineligibility of four years starting on the date of notification of the present award. Any period of provisional suspension or ineligibility effectively served by Ms. Geeta Rani before the entry into force of this award shall be credited against the total period of ineligibility to be served.

4. All competitive results obtained by Ms. Geeta Rani between 5 February 2015 and 13 April 2015 (both dates included) are disqualified, with all resulting consequences including forfeiture of medals, points, and prizes.

(…)

7. All other motions or prayers for relief are dismissed.