**Arbitration CAS 2016/A/4675 Sporting Club Olhanense v. Gonzalo Mathias Borges Mastriani & Fédération Internationale de Football Association (FIFA), award of 7 August 2017**

Panel: Mr Lucas Anderes (Switzerland), Sole Arbitrator

*Football*
*Breach of contract of employment by a club failing to comply with its financial obligations towards a player*
*Discretion of the CAS panel to exclude evidence under Article R57.3 CAS Code*
*Condition of admissibility of a document's translation*
*Burden of proof of any effect of a plan approved by a national court on the payment term imposed on a club by FIFA*
*Competence of FIFA to impose fines on those members that have "overdue payables"*

**1.** **Article R57, para. 3, of the CAS Code grants the deciding body full discretion to exclude any evidence produced by the parties that was available to them or could reasonably have been discovered by them before the appealed decision was passed. Therefore, the exclusion of this kind of evidence is a faculty that a CAS panel has and that can be freely exercised if the circumstances of the case so require. In this regard, the panel can consider that the documents produced by the appellant (some of them dated after the date of the appealed decision) shall not be excluded from the proceedings.**

**2.** **In accordance with article R51, para. 1, of the CAS Code, with its appeal brief the appellant has to file *"all exhibits and specification of other evidence upon which it intends to rely"* and, in case of documentary evidence drafted in a language different to the one of the arbitration, it has to produce the corresponding translation (article R29 of the CAS Code). However, the non-translation of a document into the language of the procedure does not entail, *per se*, its automatic inadmissibility. It is possible to admit documents in a language different to the language of the procedure, provided that (i) the CAS panel is in a position to understand the content of the relevant document and that (ii) the non-translation of this document does not bring the other party to a disadvantage in the proceedings, or deprives the party of its right to be heard. If in a particular case, the appellant informed the CAS in its appeal brief that it could not have said translations at the time of the filing of its appeal brief and therefore requested the CAS to be allowed to file these documents *"as soon as* [the appellant] *receive them",* it has acted with good faith, giving the respondents the opportunity to raise any objection on its request. With regard to article R56, para. 1, of the CAS Code, the late translations produced by the appellant should not be considered as *"new exhibits"* or *"further evidence"*, but rather as the amendment, by supplementing the documentation and evidence already brought to the procedure that could not be made at an earlier stage, due to justifiable time-constraints.**

**3. The burden of proving the alleged impossibility to comply with the FIFA Dispute Resolution Chamber (DRC) decision ordering a payment term and default interests due to the existence of a plan binding for all its creditors approved by a national court lies on the appellant/club making the related allegations.**

**4. Para. 4 of article 12bis of the FIFA Regulations on the Status and Transfer of Players (RSTP) provides the FIFA DRC with a wide discretion regarding the choice of the sanction to be imposed in cases in which clubs fail to meet their contractual financial obligations towards players or other clubs. In this regard, for the determination of the relevant sanction, the FIFA DRC does not only consider the amount of the overdue payables at stake, but also the particular circumstances of each case, as well as the conduct of the debtor. In particular, pursuant to para. 6 of article 12bis RSTP, a repeated offence will be considered as an aggravating circumstance and lead to more severe penalty.**

## I. PARTIES

1. Sporting Clube Olhanense, Futebol S.A.D. (hereinafter the "Club" or the "Appellant") is a Portuguese football club with its registered office in Olhão. It is a member of the *Federação Portuguesa de Futebol* (hereinafter "FPF"), which in turn is affiliated to the *Fédération Internationale de Football Association*.

2. Mr. Gonzalo Mathias Borges Mastriani (hereinafter the "Player" or the "First Respondent") is a Uruguayan professional football player born on 28 April 1993.

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

## II. FACTUAL BACKGROUND

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

5. On 26 August 2014, the Club and the Player entered into an employment contract valid for the season 2014/2015 (hereinafter the "Contract"). Pursuant to the Contract, the Player was entitled to receive from the Club the total amount of EUR 40,000, payable in 10 monthly salaries of EUR 4,000 each.

6. On the same day 26 August 2014, the Club and the Player signed an annexe to the Contract (hereinafter the "Annexe") pursuant to which the Player was entitled, *inter alia*, to receive the following bonuses:

   i. EUR 10,000, in the event the Player participated in 5 matches of the Portuguese Championship for at least 45 minutes and,

   ii. EUR 2,500 in the event the Player participated in 20 matches of the Portuguese Championship for at least 45 minutes.

7. On 5 February 2016, the Player sent a letter to the Appellant putting the Club in default of payment in the amount of EUR 25,500 and giving the latter a 10-day term to settle the claimed debt.

## III. PROCEEDINGS BEFORE THE DISPUTE RESOLUTION CHAMBER OF FIFA

8. On 21 March 2016, the Player filed a claim before the Dispute Resolution Chamber of FIFA (hereinafter "FIFA DRC") against the Club requesting the payment of overdue payables in the amount of EUR 25,000, plus interest of 5% *p.a.*

9. Even though the Appellant was duly notified of the Player's claim and duly invited to file its position before the FIFA DRC, the Club did not file any answer to the claim lodged by the First Respondent.

10. On 4 May 2016, the Judge of the FIFA DRC partially accepted the Appellant's claim and passed the following decision (hereinafter the "Appealed Decision"):

*1. "The claim of the Claimant, Gonzalo Mathías Borges Mastriani, is partially accepted.*

*2. The Respondent, Sporting Clube Olhanense, has to pay to the Claimant,* ***within 30 days*** *as from the date of notification of this decision, overdue payables in the amount of EUR 13,000, plus interest at the rate of 5% p.a. until the date of effective payment as follows:*

   *a. 5% p.a. on the amount of EUR 1,000 as from 1 April 2015;*
   *b. 5% p.a. on the amount of EUR 4,000 as from 1 May 2015;*
   *c. 5% p.a. on the amount of EUR 4,000 as from 1 June 2015;*
   *d. 5% p.a. on the amount of EUR 4,000 as from 1 July 2015.*

*3. In the event that the amount and interest due to the Claimant is not paid by the Respondent within the stated time limit, the present matter shall be submitted, upon request, to the FIFA Disciplinary Committee for consideration and a formal decision.*

4. *Any further request filed by the Claimant is rejected.*

5. *The Claimant is directed to inform the Respondent immediately and directly of the account number to which the remittance is to be made and to notify the DRC judge of every payment received.*

6. *The Respondent is ordered to pay a fine in the amount of CHF 6,000. The fine is to be paid **within 30 days** of notification of the present decision to FIFA (…)".*

11. On 2 June 2016, the reasoned Decision was notified to the parties.

## IV. PROCEEDINGS BEFORE THE COURT OF ARBITRATION FOR SPORT

12. On 23 June 2016, the Club filed a Statement of Appeal before the Court of Arbitration for Sport (hereinafter the "CAS") against the Player and FIFA with respect to the Appealed Decision, with the following requests for relief:

*"A) The Appellant respectfully requests that the Court of Arbitration for Sport shall declare that:*

1. *The Appellant may legally pay to the First Respondent the overdue payables in the amount of EUR 13,000 in the terms, conditions and schedule approved in the "Especial Revitalization Process" nº 38/16.6T8OLH from the Judicial District of Faro, Olhão, Central Instance, Sec. Commerce – J2 and as imposed by art. 17º-F nº 6 of the Portuguese "Code of Insolvency and Recuperation of Companies" (hereinafter "PER");*

2. *According to the art. 61, par. 1 point (a) and 62 of the FIFA Statutes, arts. 76 and 77, par. (d) of the FIFA Disciplinary Code and arts. 22 to 24 of the FIFA Regulations, the FIFA DRC had no competence to apply any decision of disciplinary nature and specifically to sentence the Appellant to pay a fine of CHF 6.000, as it was done in the appealed decision;*

3. *The above mentioned sanction was decided in violation of the judicial principle "nulla poena sine lege", since at the date of the original debt and specifically at the date of the Appellant's payment defaults (1 of April, 1 of May, 1 of June and 1 of July 2015) the norms of the art. 12bis par. 2 and 4 of FIFA Regulations were not yet approved by the FIFA Executive Committee, nor even in force;*

4. *At the date of the First Respondent correspondence (5 February 2016) the Appellant was subject to the above mentioned PER and obliged to comply with its terms;*

5. *There is a notorious and inadmissible disproportion between the fine applied (CHF 6.000) and the alleged financial infraction in the amount of EUR 13.000;*

*B) And consequently the Appellant respectfully requests that the Court of Arbitration shall decide:*

- *The revocation of the decision rendered by the FIFA DRC on 4 of May 2016 in the case with the reference no. 16-00578/mfl, in the part that sentenced the Appellant to make the payment to the Respondent, within 30 days as from the date of its notification, plus interest at the rate of 5% p.a. until the date of effective payment*

- *The revocation of the decision rendered by the FIFA DRC on 4 of May 2016 in the case with the reference no. 16-00578/mfl, in the part that sentenced Olhanense SAD to pay a fine of CHF 6.000 within 30 days of its notification, in accordance with art. 12bis par. 2 and 4 of FIFA Regulations;"*

13. On 29 June 2016, the Appellant requested the CAS Court Office an extension of five days for the filing its Appeal Brief.

14. On 30 June 2016, the CAS Court Office informed the parties that the Appellant's request for a five-day extension to file its appeal brief had been granted.

15. On 8 July 2016, the Appellant filed its Appeal Brief with the following requests for relief:

*1. "That the Appellant may legally pay to the First Respondent the overdue payables in the amount of EUR 13,000 in the terms, conditions and schedule approved in the "Especial Revitalization Process" nº 38/16.6T8OLH as imposed by art. 17º-F nº 6 of the CIRE and sentenced by the Court in that case;*

*2. To declare that the FIFA DRC had no competence to apply any decision of disciplinary nature and specifically to sentence the Appellant to pay a fine of CHF 6.000, as it was done in the appealed decision;*

*3. To declare void the norms of the art. 12bis par. 2 and 4 of FIFA Regulation on Status and transfer of Players, for being in contradiction and violation with the articles 54, 61, par. 1 point (a) and 62 of the FIFA Statutes, as well as with the arts. 10, point (c), 15, 76, 77, par. d) and 111º and seq. of the FIFA Disciplinary Code and with arts. 22 to 24 of the FIFA Regulation on Status and transfer of Players.*

*4. To declare that the appealed sanction was decided in violation of the juridical principle "nulla poena sine lege";*

*5. To declare that at the date of the First Respondent correspondence (5 February 2016) the Appellant was subject to the above mentioned PER and obliged to comply with its terms and that fine in question is totally disproportionate considering the default amount;*

*And consequently the Appellant respectfully ask for:*

*A) The revocation of the appealed decision, in the part that sentenced Olhanense SAD to make the payment to the Respondent, within 30 days as from the date of its notification, plus interest at the rate of 5% p.a. until the date of effective payment; and*

*B) The revocation of the appealed decision in the part that sentenced Olhanense SAD to pay a fine of CHF 6,000 within 30 days of its notification, in accordance with art. 12bis par. 2 and 4 of FIFA Regulations on Status and Transfer of Players,*

*C) Or, in alternative, the reduction of the fine to an amount proportional to the alleged infraction, In question".*

16. In its Appeal Brief, the Appellant also requested the CAS to be allowed to produce the translations into English of two documents enclosed to its Appeal Brief (documents number 3 and 4) at a later stage, *"because the judicial decision and notice in question are dated of 1 and 5 of July, until the present date (and despite its request) the Appellant has not yet received those translations"*.

17. On 15 July 2016, the Second Respondent sent a letter to the CAS requesting the latter that the time limit for the filing of its Answer to the Appeal was fixed after the payment of the advance of costs by the Appellant.

18. On 18 July 2016, the CAS Court Office informed the parties that the deadline for the Second Respondent to file its Answer would be fixed upon receipt by the CAS of the Appellant's payment of its share of advance of costs.

19. On 22 July 2016, the CAS Court Office notified the parties that the President of the CAS Appeals Division had decided to submit the present dispute to a Sole Arbitrator.

20. On 9 August 2016, the Appellant filed with the CAS the translations into English of documents 3 and 4 of its Appeal Brief.

21. On 30 August 2016, the CAS Court Office acknowledged receipt of the Appellant's payment of its share of the advance of costs and informed the parties that, pursuant to Article R54 of the Code of Sports-related Arbitration (hereinafter the "CAS Code"), Mr. Lucas Anderes, attorney-at-law in Zurich (Switzerland), had been appointed as the Sole Arbitrator in the present case. No objections were raised by the Parties as to the appointment of the referred arbitrator.

22. Also on this same day 30 August 2016, the CAS Court Office granted to the Second Respondent a 20-day time limit to file its Answer to the Appeal. In addition, in this correspondence the CAS Court Office also informed the parties that the First Respondent had not filed his answer nor any communication within the deadline given, notwithstanding which, pursuant to Article R55 of the CAS Code, the Sole Arbitrator would nevertheless proceed with the arbitration and deliver an award in the present case.

23. On 19 September 2016, the Second Respondent filed its Answer before the CAS, requesting the following relief:

*1. "That the CAS rejects the appeal at stake and confirms the presently challenged decision passed by the Dispute Resolution Chamber judge (hereinafter; the DRC judge) on 4 May 2016 in its entirety.*

*2. That the CAS orders the Appellant to bear all the costs of the present procedure.*

*3. That the CAS orders the Appellant to cover all legal expenses of FIFA related to the proceedings at hand".*

24. On 22 September 2016, the CAS Court Office acknowledged receipt of the Second Respondent's Answer and it also invited the parties to state by 29 September 2016 whether they preferred a hearing to be held in the present procedure or not.

25. On 26 September 2016, the CAS Court Office, in view of the fact that the First Respondent was not participating in the proceedings and had not filed his answer or sent any correspondence to the CAS Court Office, requested the Appellant to confirm that any submission and correspondence to the First Respondent would have to be addressed to his counsel or, alternatively, to provide different contact details for the First Respondent.

26. On 28 September 2016, the Appellant confirmed the CAS that all the correspondence in connection with this arbitration proceedings would have to be sent to the counsel for the First Respondent, as he was the one who represented the Player in the previous instance, at the address already provided by the Appellant.

27. On 27 September 2016, the Appellant informed the CAS Court Office that it preferred that the award was rendered on the sole basis of the parties' written submissions.

28. On 28 September 2016, the Second Respondent informed the CAS Court Office that it did consider that a hearing was not necessary in the present case.

29. On 5 October 2016, the CAS Court Office informed the parties that, in the absence of any communication of the First Respondent, pursuant to Article R57 of the CAS Code the Sole Arbitrator would decide whether to hold a hearing in the present case or not.

30. On 6 December 2016, the CAS Court Office informed the Parties that the Sole Arbitrator had decided to render an award based solely on the parties' written submissions, without the need to hold a hearing.

31. On 11 January 2017, the CAS Court Office sent the Order of Procedure to the parties, which was duly signed and returned by the Appellant and the Second Respondent. By the signature of the Order of Procedure, the Appellant and the Second Respondent expressly confirmed that their right to be heard had been respected and their agreement with the Sole Arbitrator to issue an award on the basis of the written submission, without the need to hold a hearing.

32. On 20 January 2017, in view that the Fist Respondent had failed to return a signed copy of the Order of Procedure, the CAS Court Office invited him again to file such signed copy by 24 January 2017. Notwithstanding this, the First Respondent failed to return a signed copy of the Order of Procedure or otherwise to object to its content.

33. On 3 May 2017, the CAS informed the parties that Mr. Yago Vázquez Moraga, Attorney-at-law in Barcelona (Spain), had been appointed *ad hoc* Clerk in this matter.

34. The First Respondent did not submit an Answer to the Appeal Brief, nor otherwise participated in the present proceedings. The Sole Arbitrator is satisfied to confirm that although the First Respondent was duly summoned to join in this procedure he has wilfully declined to participate.

## V. SUMMARY OF THE PARTIES' SUBMISSIONS

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

### A. The Appellant

#### *a) The Appellant's "Processo Especial de Revitalizaçao"*

36. The Appellant does not contest its debt (EUR 13,000) towards the Player, which corresponds to part of the salary of March 2015, and to the full salaries of April, May and June 2015. However, the Appellant disputes (i) the payment period established by the Appealed Decision and (ii) the payment of interests at a rate of 5% *p.a.*

37. The Appellant grounds these submissions on the fact that it has undergone a *"Special Revitalization Process" ("Processo Especial de Revitalizaçao")* before a Portuguese Court (Central Court 2 - Commercial Section - of the Judicial District of Faro, Olhão), in which it was approved a *"Recuperation Plan"* (hereinafter the "Recuperation Plan") for the Appellant *("Plano de Pagamento da Dívida")* that is binding for all its creditors.

38. In particular, pursuant to the Appellant's Recuperation Plan:

- all labour credits shall be paid in 32 equal and consecutive quarterly instalments, starting after a 6 months grace period as from the date of the judicial homologation of the Recuperation Plan (i.e. 1 July 2016);
- due or overdue default interests are cancelled and not payable.

39. The Appellant's Recuperation Plan was approved by the Portuguese Court on 1 July 2016 and published next 5 July 2016. In this regard, even though the Appellant's *"Processo Especial de Revitalizaçao"* (hereinafter "PER") was initiated on 27 January 2016 (i.e. before the Player had lodged his claim before the FIFA DRC), the uncertainty about the viability of getting a Recuperation Plan approved within the PER (which ultimately happened on 1 July 2016) prevented the Appellant to invoke this circumstance in the FIFA proceedings.

40. However, pursuant to art. 17-º-E, para. 1 and 2, of the Portuguese Insolvency and Corporate Recovery Code – *Código da Insolvência e da Recuperão de Empresas* – (hereinafter "CIRE"), while the PER proceedings are being conducted it is not possible to initiate or continue any judicial action against the debtor for debt collection.

41. In addition, the Appellant states that, pursuant to this same provision of the CIRE, during the PER proceedings the debtor is prevented for making *"any relevant acts"* without the previous authorization of the PER's provisional trustee. For this reason, the Appellant states that it

could not answer to the Player's letter of claim of 5 February 2016, because at that time it was already under the PER proceedings, and thus it could not make any payment towards the Player as this would constitute an infringement of the CIRE regulations.

42. On the other hand, in accordance with article 17°-F para. 6 of the CIRE, when a Recuperation Plan is approved and homologated by the Court, it is binding for all the creditors at stake, even if they have not participated in the negotiations held within the PER proceedings. Consequently, in accordance with the *"equality principle"* the terms and conditions established in the Recuperation Plan are mandatory for the Appellant who is obliged to respect it and to not benefit any creditor in detriment of other creditors.

43. Therefore, the Appellant claims that its debt towards the Player shall be paid in accordance with the terms, conditions and the schedule established in the Recuperation Plan approved within the PER proceedings.

***b) With regard to the fine imposed by the FIFA DRC Judge***

44. The Appellant sustains that the FIFA DRC had no competence or power to impose a sanction on it. Pursuant to article 64, para. 1, point (a) and article 62 of the FIFA Statutes, the FIFA Judicial Bodies are exclusively (i) the Disciplinary Committee, (ii) the Ethics Committee and (iii) the Appeal Committee. In addition, the FIFA Disciplinary Committee is the sole competent body to impose the sanctions envisaged by the FIFA Statutes or in the FIFA Disciplinary Code, as established by article 62, Para. 2 of the FIFA Statutes.

45. Moreover, in accordance with article 1 of the FIFA Disciplinary Code, any infringement of the FIFA Regulations with disciplinary relevance and its corresponding sanctions shall be established by the FIFA Disciplinary Code. In this regard, the Appellant states that the fine imposed on it by the Appealed Decision is one of the sanctions set forth in article 10, para. c), of the FIFA Disciplinary Code, as well as in articles 15 and 77, para. d). Therefore, the Appellant considers that the FIFA DRC had no competence to impose a fine on it.

46. Furthermore, the Appellant sustains that the imposition of a fine on it violates the legal principle *"nulla poena sine lege",* because at the date of the Appellant's payment defaults (i.e. 1 April 2015, 1 May 2015, 1 June 2015 and 1 July 2015), the provisions under Article 12bis para. 2 of the FIFA Regulations on the Status and Transfer of Players (hereinafter the "FIFA Regulations") were not in force, since the FIFA Executive Committee had not approved them yet.

47. In any case, taking into account the amount of the debt (EUR 13,000), the Appellant claims that the sanction imposed (i.e. CHF 6,000) is clearly disproportionate and thus, in case the Sole Arbitrator decides not to revoke it, the amount of the fine would have to be reduced in proportion to the amount of the debt.

## B. The First Respondent

48. The Sole Arbitrator is satisfied to confirm that all communications and submissions were sent to the Player's address and that those were indeed delivered to him.

49. However, the First Respondent decided not to submit any Answer to the Appeal and not to file its position or requests for relief in the present procedure. The First Respondent, indeed, adopted a passive stance and did not participate in these proceedings.

## C. The Second Respondent

### *a) The inadmissibility of the documentation produced by the Appellant*

50. The Second Respondent considers that, pursuant to article R57, para. 3, of the CAS Code, the new evidence produced by the Appellant in the present procedure (in particular documents 1, 2, 5 and 6 of the Appeal Brief) should not be admissible, as it was available to the Appellant in the previous instance.

51. In addition, the Second Respondent claims that the translations that the Appellant produced on 9 August 2016 of documents 3 and 4 of its Appeal Brief are not admissible, as they were submitted long after the deadline to file its Appeal Brief (i.e. 8 July 2016). In line with this, the Second Respondent holds that the inadmissibility of the translations of these documents would entail the inadmissibility of the original Portuguese version of these documents (i.e. documents 3 and 4), as they were not filed in the language of this arbitration procedure.

### *b) The competence of the FIFA DRC to impose a disciplinary sanction on the Appellant*

52. The Second Respondent notes that the Appellant does not dispute that the conditions entailing for the imposition of a sanction envisaged by article 12bis of the FIFA Regulations on the Status and Transfer of Players (i.e. a payment due for more than 30 days and having been put in default by the creditor) were met in the present case.

53. In addition, with regard to the alleged lack of competence of the FIFA DRC to impose sanctions, the Second Respondent holds that article 62, para. 2, of the FIFA Statutes does not provide that the FIFA Disciplinary Committee is the sole body of FIFA with the capacity to impose disciplinary sanctions, but rather that it may impose the sanctions established in the FIFA Statutes and in the FIFA Disciplinary Code.

54. In the Second Respondent's opinion, the faculties and powers of the FIFA DRC are not regulated in the FIFA Disciplinary Code, but in the FIFA Regulations. In this regard, article 12bis of these Regulations clearly provides that the FIFA DRC may impose disciplinary sanctions on any club that is found to have overdue payables towards players or other clubs.

55. In addition, considering that in the first instance proceedings the Appellant was clearly informed (by means of a letter) of the fact that, in the event that it was found to be in violation of article 12bis of the FIFA Regulations, a potential sanction could be imposed on it, the

Second Respondent submits that, by not raising any objection to this within the first instance proceedings, the Appellant implicitly accepted the competence of FIFA's deciding bodies to impose a disciplinary sanction on it. Therefore, pursuant to the CAS jurisprudence, the Appellant cannot challenge at this stage the competence of the FIFA DRC to impose a fine on it.

56. Finally, with regard to the Appellant's request to declare the provisions of the aforementioned article 12bis of the FIFA Regulations null and void, such request should be declared inadmissible since the CAS is not competent to make a declaration of that kind.

***c) As to the sanction imposed***

57. Pursuant to article 12bis of the FIFA Regulations, in order to determine that a payment is overdue it is required that the payment has been due for more than 30 days without a *prima facie* contractual basis. In this regard, taking into account that the salary of March 2015 accrued on the last day of this month (i.e. 31 March 2015), it was due on 1 April 2015 and thus it became "overdue" on 1 May 2015 (i.e. 30 days after the due date). Therefore, the Second Respondent concludes that in any case, in both cases (at the times when the debt became due and overdue) article 12bis of the FIFA Regulations was already in force (i.e. 1 April 2015).

58. In line with this, the Second Respondent holds that, pursuant to article 26, para. 1 and 2, of the FIFA Regulations, any case that had been brought to FIFA after 1 April 2015 would have to be assessed according to the 2015 Edition of the FIFA Regulations. In the present case, taking into account that the First Respondent's claim was filed before FIFA on 21 March 2016, article 12bis of the FIFA Regulations is applicable.

59. With regard to the proportionality of the sanction imposed on the Appellant, when sanctioning clubs, article 12bis of the FIFA Regulations grants the deciding bodies of FIFA a wide discretion. Moreover, to determine this kind of fines, the deciding body does not only take into consideration the amount of the debt, but also other relevant factors such as (i) the specific circumstances at stake, (ii) the attitude of the parties during the investigation procedure, (iv) the amount awarded, (v) the importance of the infringement and (vi) whether the debtor had previously been found responsible of having overdue payables or not.

60. In the present case, the FIFA DRC considered that a fine of CHF 6,000 was appropriate taking into account that, during the whole FIFA proceedings, the Appellant neither replied nor submitted any statement, and that it was the second time that it had been found to be in violation of article 12bis of the FIFA Regulations (which was considered as an aggravating circumstance in accordance with para. 6 of article 12bis of the FIFA Regulations). Therefore, the Second Respondents considers that the sanction imposed is appropriate.

***d) As to the Appellant's alleged Special Revitalization Process (PER)***

61. In the Second Respondent's view, the Appellant has the burden to prove that it is prevented to comply with the Appealed Decision due to the alleged PER. In this regard, the Second

Respondent considers that, if admissible, the limited documentation produced by the Appellant does not prove that it cannot pay the overdue payables within the term established by the Appealed Decision.

62. In this regard, the Second Respondent notes that the Appellant has only produced two of the thirteen pages that compose the entire Recuperation Plan. In addition, the translation provided of this document is even more limited since it only covers the part on which the Appellant grounds its allegations (i.e. point 8 of the Recuperation Plan). In the Second Respondent's view, this clearly demonstrates the Appellant's *"cherry-picking"*, and that it has only translated the parts of the Recuperation Plan that may support its statements.

63. Moreover, for the Second Respondent, the fact that the creditors that had not *"participated in the negotiations"* are bound by the Recuperation Plan, means that the Recuperation Plan is binding for all the creditors that are included in the list of creditors, regardless of its participation in its negotiations. However, this *"Recuperation Plan"* cannot be binding for those creditors that are not included in the PER's list of creditors, as it is the case of the First Respondent.

64. In any case, the Second Respondent holds that, with the extremely limited documentation provided by the Appellant, it is impossible to assess, to a reasonable degree of certainty, whether it is prevented from complying with the Appealed Decision, or not. In this regard, taking into account that the Appellant has the burden of the proof, the Second Respondent considers that this uncertainty should ultimately play against the Appellant's position.

## VI. JURISDICTION

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

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

*[…]".*

66. In the present case, the jurisdiction of the CAS, which has not been disputed by any party, arises out of articles 66 and 67 of the FIFA Statutes (Edition 2015), in connection with the abovementioned article R47 of the CAS Code.

67. Therefore, the Sole Arbitrator considers that the CAS has jurisdiction to rule on this case.

## VII. ADMISSIBILITY

68. Pursuant to article 67, para. 1 of the FIFA Statutes, in connection with article R49 of the CAS Code, the Appellant had 21 days from the notification of the Appealed Decision to file its Statement of Appeal before the CAS.

69. The grounds of the Appealed Decision were communicated to the Appellant on 2 June 2016, and the Statement of Appeal was filed by the Appellant on 23 June 2016, i.e. within the time limit required both by the FIFA Statutes and article R49 of the CAS Code.

70. Consequently, the Appeal filed by the Appellant is admissible.

## VIII. APPLICABLE LAW

71. Article R58 of the CAS Code reads as follows:

> *"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".*

72. In addition, article 66, para. 2 of the FIFA Statutes establishes the following:

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

73. In the present case, the rules to be considered as the "applicable regulations" are the FIFA Regulations (i.e. the FIFA Regulations on the Status and Transfer of Players), Edition 2015.

74. Notwithstanding this, the Sole Arbitrator notes that in support of its arguments and submissions, in addition to the FIFA Regulations the Appellant has invoked some provisions of the Portuguese CIRE (i.e. *"Código da Insolvência e Recuperação de Empresas"*. In this regard, the Sole Arbitrator considers that, even though Portuguese Law does not have the status of applicable law in the present dispute, taking into account that Appellant underwent the PER (i.e. the *"Proceso Especial de Revitalização"* in Portugal, the Sole Arbitrator should consider some of the extracts of the CIRE that the Appellant has produced as documentary evidence to the file. Therefore, even though the Sole Arbitrator would not make any declaration or pass any decision on the basis of Portuguese Law, to rule the present dispute some considerations with regard to the CIRE will be made, if appropriate.

75. Taking the foregoing into account, the Sole Arbitrator finds that it shall decide the present dispute in accordance with the FIFA Regulations and, subsidiarily, Swiss Law.

## IX. PRELIMINARY ISSUES

### A. Decision on the admissibility of documents 1, 2, 5 and 6 of the Appeal Brief

76. The Second Respondent claims that some of the documents that the Appellant filed with its Appeal Brief (i.e. documents 1, 2, 5 and 6) should be excluded from the present appeal procedure pursuant to article R57 para. 3 of the CAS Code, which provides as follows:

*"The Panel has discretion to exclude evidence presented by the parties if it was available to them or could reasonably have been discovered by them before the challenged decision was rendered. Articles R44.2 and R44.3 shall also apply".*

77. In this regard, the Sole Arbitrator notes that article R57, para. 3, of the CAS Code grants the deciding body full discretion to exclude any evidence produced by the parties that was available to them or could reasonably have been discovered by them before the Appealed Decision was passed. Therefore, the exclusion of this kind of evidence is a faculty that the Sole Arbitrator has and that can freely exercise if the circumstances of the case so require.

78. In the present case, the Sole Arbitrator considers that the documents produced by the Appellant (some of them dated after the date of the Appealed Decision) shall not be excluded from this proceedings. The Sole Arbitrator is aware that the Appellant, who was duly summoned by the FIFA DRC wilfully decided not to take part within the FIFA proceedings. However, at the same time the Sole Arbitrator notes that in this appeal procedure, the Appellant is not challenging the facts that were in dispute in the first instance (the existence of the debt, which was the scope of the FIFA DRC procedure) but, on the contrary, on a principal basis it is trying to prove that the Recuperation Plan, which was approved after the conclusion of the FIFA DRC procedure, prevents the Appellant to comply with the Appealed Decision.

79. In this regard, with this evidence the Appellant intends to prove that as the homologation and publication of its Recuperation Plan did not take place until 1 and 5 July 2016 (i.e. after the Appealed Decision was passed), *"due to its supervening nature, only now it is possible for the Appellant to invoke those relevant juridical facts and its effects"*. Furthermore, with this evidence the Appellant also intends to prove that due to its Recuperation Plan *"it is prevented to pay the First Respondent the amount in debt in the terms and deadline declared in the appealed decision"*.

80. Consequently, and regardless of its evidentiary weight, the Sole Arbitrator considers that the evidence produced by the Appellant that has been challenged by the Second Respondent may not only be relevant for the resolution of the present appeal but also that its non-admission could violate the Appellant's right to be heard and right of defence and, in turn, its right to a fair trial.

81. As a result, since the Sole Arbitrator is empowered to discretionally decide on the admissibility of this evidence, the documentary evidence produced by the Appellant with its Appeal Brief as documents number 1, 2, 5 and 6, is admitted.

## B. Decision on the admissibility of the translations into English of documents 3 and 4 of the Appeal Brief

82. The Second Respondent also challenges the admissibility of the translations into English produced by the Appellant on 9 August 2016 of documents 3 ("*Sentença*") and 4 ("*Publicidade de homologação e citação de credores e outros interessados")* of its Appeal Brief, because they were filed with the CAS after the Appellant's deadline to file its Appeal Brief had expired. In addition, this leads the Second Respondent to maintain that the non-admission of these documents should, in turn, result in the inadmissibility of the corresponding original documents that the Appellant filed with its Appeal Brief in Portuguese.

83. In accordance with article R51, para. 1, of the CAS Code, with its Appeal Brief the Appellant had to file *"all exhibits and specification of other evidence upon which it intends to rely"* and, in case of documentary evidence drafted in a language different to the one of the arbitration, it had to produce the corresponding translation (article R29 of the CAS Code). In line with this, the Sole Arbitrator may decline to consider those documents that have been produced by one party in a language different to the language of the procedure.

84. However, pursuant to the CAS jurisprudence, (i.a. CAS 2007/A/1207 and CAS 2006/A/1057) the non-translation of a document into the language of the procedure does not entail, *per se*, its automatic inadmissibility. In this regard, the Sole Arbitrator observes that, pursuant to this CAS jurisprudence, it is even possible for him to admit documents in a language different to the language of the procedure, provided that (i) he is in a position to understand the content of the relevant document and that (ii) the non-translation of this document does not bring the other party to a disadvantage in the proceedings, or deprives the party of its right to be heard. In line with this, the Scholars interpret this jurisprudence in the sense that *"According to Article R29 CAS Code, the Panel has the possibility (but is not obliged) to request the production of certified translations of all documents that are not in the language of the procedure"* (MAVROMATI/REEB, The Code of the Court of Arbitration for Sport: Commentary, Cases and Materials, Kluwer Law International, 2015, p. 83).

85. In addition, to complete the analysis of this legal framework, the Sole Arbitrator shall also take into account that, pursuant to article R56, para. 1, of the CAS Code, he has authority to order the admissibility of late submissions (such as the filing of translations of documents that it had previously filed with its Appeal Brief), provided that *"exceptional circumstances"* concur.

86. In the present case, the Sole Arbitrator observes that with its Appeal Brief the Appellant filed two documents in Portuguese (numbers 3 and 4) that were not accompanied by the relevant translations into English. However, in its Appeal Brief, the Appellant requested the CAS *"to be allowed to attach the translation into English of the Docs. 3 and 4, as soon as receive them"*. The Appellant justified the impossibility of having produced the relevant translations with its Appeal Brief, arguing that *"because the judicial decision and notice in question are dated of 1 and 5 of July, until the present date (and despite its request) the Appellant has not yet received those translations)"*.

87. The Sole Arbitrator does not consider the late translations produced by the Appellant as *"new exhibits"* or *"further evidence"* on which it intends to rely, but rather as the amendment, by

supplementing the documentation and evidence that it had already brought to this procedure, and that it could not be made at an earlier stage, due to justifiable time-constraints. In this regard, taking into account that these two documents were filed on 9 August 2016, *i.e.* more than one month before the date on which the Second Respondent filed its Answer to the Appeal (i.e. 19 September 2016), the Sole Arbitrator considers that the admission of these translations after the filing of the Appeal Brief does not put the Second Respondent in disadvantage in this procedure, or violates or restricts its rights of defence and to be heard.

88. On the other hand, the Sole Arbitrator notes that these documents were published some days before (i.e. 1 and 5 July 2016) the Appellant's deadline to file its Appeal Brief would expire. Therefore, it seems reasonable to think that it had problems to obtain the relevant translations into English in due time. Furthermore, the Sole Arbitrator observes that in its Appeal Brief, the Appellant already informed the CAS that it could not have these translations at the time of the filing of its Appeal Brief and, therefore, requested the CAS to be allowed to file these documents *"as soon as* [the Appellant] *receive them"*. In this regard, the Sole Arbitrator considers that, even though the Appellant could not "reserve" any right that is not envisaged by the CAS Code, by doing this the Appellant acted with good faith, giving the Respondents the opportunity to raise any objection on its request.

89. Finally, the Sole Arbitrator has also noticed that these two documents (the judgment approving the Recuperation Plan of the Appellant and its later publication) are important for the Appellant's position, which is mainly basing its Appeal on the impossibility to fulfil with the Appealed Decision due to the legal effects of the Recuperation Plan approved within the PER procedure and it intends to prove it with this documentary evidence. Therefore, the Sole Arbitrator considers that the non-admission of these translations would violate the Appellant's right to be heard.

90. For all these reasons, the Sole Arbitrator considers that in the present case there are *"exceptional circumstances"* that justify the admission of the translations into English of documents 3 and 4 of the Appeal Brief produced after the expiry of the time limit for the filing of the Appeal Brief. Therefore, the Second Respondent's objection is dismissed and the aforementioned documents are admitted to the file.

## X. MERITS

### A. The potential effects that the "Recuperation Plan" may have on the present dispute

91. The Sole Arbitrator notes that the Appellant recognizes, and thus it is undisputed, that the First Respondent is entitled to receive the amount of EUR 13,000, which corresponds to Player's salaries of the months of part of March, April, May and June 2015. However, the Appellant disputes (i) the maximum payment term (30 days) established by the Appealed Decision and (ii) the payment of interests at a rate of 5% *p.a.* imposed by the FIFA DRC judge.

92. The Appellant grounds these submissions on the fact that it has undergone a *"Special Revitalization Process" ("Processo Especial de Revitalizaçao")* before a Portuguese Court in which it was approved a *"Recuperation Plan"* that is allegedly binding for all its creditors, and that prevents the Appellant to (i) pay any interest to the First Respondent and (ii) to fulfill with the payment term granted by the Appealed Decision.

93. In particular, the Appellant argues that all its debts shall be paid to its creditors in accordance with the terms provided in its Recuperation Plan and, in particular, with its section 8.1 and 8.2.3, which (in the translation provided by the Appellant) reads as follows:

*"8. Debt payment plan*

*8.1. General terms applicable to all credits (except for the credits of the Tax Authority and Customs and I.G.F.S.S.)*

- *Total forgiveness of interests due and falling due.*
- *Total forgiveness of expenses, costs, damages and penal clauses.*

*[…]*

*8.2.3 Payment of privileged credits*

- *Payment: full capital amortization*
- *6 month grace period, counted from the date of transit in judged of PER's homologation;*
- *Full capital payment through 32 (thirty-two) quarterly instalments, equal and successive;*
- *In case of promotion to the 1st League, the quarterly amount payable to creditors will be increased by 40% (forty percent) increase that will remain in force while the SCO SAD's team is playing in this competition. In case of subsequent relegation to a lower division, the value that is in debt in that date, will be paid in the remaining term.*
- *The payment plan will be suspended during the sportive seasons in which the football team of the SAD does not play in the Second League (by eventual relegation to the Senior National Championships or other competition replacing it), resuming, without any forgiveness of capital or interest increase, the first subsequent time when the team return to play in the Second League; this suspension may not extend for more than three sportive season, consecutive or interpolated;"*

94. In support of its arguments, the Appellant stresses that:

- pursuant to article 17-E, paragraphs 1 and 2 of the CIRE, *"during the PER there is no possibility of initiating or continuing any judicial action against the debtor for charging of credits, and the debtor is also prevented of making any relevant acts, without the previous authorization of the provisional trustee"*;
- with regard to the Recuperation Plan, pursuant to article 17-F of the CIRE, *"the judge decision is binding on creditors, even that have not participated in the negotiations"*.

95. In this regard, the Sole Arbitrator firstly notes that, as the Appellant decided not to participate in the first instance procedure, the FIFA DRC could not consider any of the arguments that the Appellant has brought in the present appeal. For this reason, from a formal point of view

the decision passed by the FIFA DRC could not be deemed to be incorrect at that time, as it ruled the parties' submissions *"secundum allegata et probata partium"*. However, considering the scope of the present appeal procedure, pursuant to article R57 of the CAS Code, the Sole Arbitrator *"has full power to review the facts and the law"*, and he *"may issue a new decision which replaæs the decision challenged"* by the Appellant. Therefore, even though the FIFA DRC had not the opportunity to assess the arguments and evidence that the Appellant filed within the CAS procedure, in the present instance the Sole Arbitrator is empowered to review the facts and the law and hence to pass a new decision that settles the present dispute.

96. To this purpose, the Sole Arbitrator shall bear in mind that, in accordance with the principles of the *onus probandi* (which is enshrined by article 8 of the Swiss Civil Code), each party bears the burden of proving its own facts and allegations, including but not limited to the submissions on the PER and the Recuperation Plan, and their consequences (see para. 74 above in relation to the law applicable).

97. As a result, the burden of proving the alleged impossibility to comply with the Appealed Decision due to the PER procedure and the Recuperation Plan with respect to the payment term and the order to pay default interests lies on the Appellant. In this regard, the Sole Arbitrator considers that in order to discharge its burden of proof, the Appellant should have ascertained the full contents of the Recuperation Plan, the PER procedure as well as of the CIRE to the necessary extent to support these submissions, which it did not.

98. Therefore, due to the inconclusive evidence produced by the Appellant in the present procedure with regard to the significance and effects of the PER procedure and of the consequent Recuperation Plan, the Sole Arbitrator cannot corroborate the allegations filed by the Appellant in this regard.

99. The Appellant, in particular, has neither explained not proved which are the faculties and powers that such "administrator" has under Portuguese Law, and how does this appointment affects to the Appellant's governance and activity. It also failed to prove which is the scope of the alleged creditor's Recuperation Plan, and how all its provisions, terms and conditions could affect to the present dispute and the legal consequences that this Recuperation Plan may have to the present dispute. In addition, the Sole Arbitrator notes that the First Respondent is not included within the Appellant's list of creditors which, in turn, gives even more uncertainty to the potential effects or consequences that the Recuperation Plan might have to the present dispute. Moreover, considering the few provisions included in the original Portuguese version of the CIRE produced by the Appellant, and that in the English translation produced the Appellant has only translated of 3 isolated paragraphs of these articles, it is not possible for the Sole Arbitrator to consider how the PER procedure and the Recuperation Plan may affect to the present dispute. Finally, the absence of the complete regulations and any further explanation by the Appellant, prevents the Sole Arbitrator to confirm whether the principle of *"equal treatment"* alleged by the Appellant applies to all the creditors of the Appellant or just to those creditors that are included in the list of creditors of the PER procedure and/or that have participated in the negotiation of the Recuperation Plan.

100. Summarizing, the Appellant has failed to produce convincing evidence in order to support its allegations and thus it has failed to prove before the CAS the consequences that the Recuperation Plan allegedly have to the present dispute.

101. Finally and most important, the Sole Arbitrator deems it necessary to recall that, the potential effects that the Recuperation Plan may have to the fulfillment of the operative part of this award, would ultimately affect to its enforceability or execution, but not to its validity, that shall be assessed under Swiss Law. This circumstance is also reflected in the different regulations enacted by FIFA pursuant to which, while the eventual insolvency proceedings that could be undergoing the debtor may lead to the closure of the corresponding enforcement proceedings followed before the FIFA Disciplinary Committee (i.e. art. 107 of the FIFA Disciplinary Code, proceedings may be closed if *"a party declares bankruptcy"*), this provision is not envisaged in the FIFA Regulations, nor in the FIFA Rules governing the procedures of the Players' Status Committee and the Dispute Resolution Chamber. Therefore, the Sole Arbitrator concludes that the PER and the Recuperation Plan are not relevant to the resolution of the present dispute, without prejudice to the eventual effect that it may have with regard to the enforcement of this award.

102. For all these reasons, the Sole Arbitrator rules that the prayer for relief filed by the Appellant under section "A" of its Appeal Brief *("The revocation of the appealed decision, in the part that sentenced Olhanense SAD to make the payment to the Respondent, within 30 days as from the date of its notification, plus interest at the rate of 5% p.a. until the date of effective payment")* is dismissed.

## B. With regard to the fine imposed by the FIFA DRC

103. The Appellant requests the revocation of the sanction that the Appealed Decision imposed (a fine of CHF 6,000), on the basis that, allegedly:

i. the FIFA DRC had no competence or power to impose such a sanction;

ii. in any case, at the date of the Appellant's payment defaults (i.e. 1 April 2015, 1 May 2015, 1 June 2015 and 1 July 2015), the provisions under article 12bis para. 2 of the FIFA Regulations were not in force.

104. In this regard, the Sole Arbitrator notes that pursuant to Article 12bis of the FIFA Regulations (Edition 2015):

*"[…]*

*2. Any club found to have delayed a due payment for more than 30 days without a prima facie contractual basis may be sanctioned in accordance with paragraph 4 below.*

*3. In order for a club to be considered to have overdue payables in the sense of the present article, the creditor (player or club) must have put the debtor club in default in writing and have granted a deadline of at least ten days for the debtor club to comply with its financial obligation(s).*

*4. Within the scope of their respective jurisdiction (cf. article 22 in conjunction with articles 23 and 24), the Players' Status Committee, the Dispute Resolution Chamber, the single judge or the DRC judge may impose the following sanctions:*

*a) a warning;*

*b) a reprimand;*

*c) a fine;*

*d) a ban from registering any new players, either nationally or internationally, for one or two entire and consecutive registration periods;*

*5. The sanctions provided for in paragraph 4 above may be applied cumulatively.*

*6. A repeated offence will be considered as an aggravating circumstance and lead to more severe penalty".*

105. In addition, the Sole Arbitrator observes that the Appellant does not dispute that it was put on default by the First Respondent by means of the written correspondence that the latter sent to the former on 5 February 2016. Therefore, the Appellant is not disputing that in the present case the procedural prerequisites stipulated in Article 12bis of the FIFA Regulations were fulfilled. Therefore, the Appellant restricts its submissions to argue that (i) the FIFA DRC is not competent to impose sanctions and that, ultimately, (ii) article 12bis of the FIFA Regulations is not applicable at the present case, as it had not entered into force at the time of the facts of the dispute.

106. In this regard and in first place, the Sole Arbitrator finds that, contrary to what the Appellant sustains, article 62, para. 2 of the FIFA Statutes does not establish that the FIFA Disciplinary Committee is the sole body of FIFA with capacity to impose sanctions on its members, but rather that it is the FIFA body that *"may pronounce the sanctions described in these Statutes and the FIFA Disciplinary Code"*.

107. In addition, and as it has been noted by the Second Respondent, the Sole Arbitrator observes that the powers and faculties of the FIFA DRC are not regulated in the FIFA Disciplinary Code, but in the FIFA Regulations, that are approved by the FIFA Executive Committee. In this regard, as it has been referred before, article 12bis of the FIFA Regulations foresees that the FIFA DRC can impose sanctions to those members that have "*overdue payables*" in the sense of having delayed a due payment for more than 30 days without a *prima facie* contractual basis. In light of the foregoing, the Sole Arbitrator finds that, undoubtedly and for obvious reasons, the FIFA DRC is fully competent to impose the fine envisaged in article 12bis of the FIFA Regulations.

108. On the other hand, with regard to the applicability of article 12bis of the FIFA Regulations to the present case, the Sole Arbitrator notes that, pursuant to article 29 of the FIFA Regulations (Edition 2015), *"These regulations were approved by the FIFA Executive Committee on 20 and 21 March 2014, respectively 18 and 19 December 2014 and* ***come into force on 1 April 2015****"* (emphasis added). Therefore, when the first salary claimed (part of the March salary of 2015) become due (i.e. 1 April 2015, as it has been recognized by the Appellant) the 2015 Edition of the FIFA Regulations (which enacted article 12bis), was already in force. Equally, when the

Appellant was put on default by the First Respondent, article 12bis of the FIFA Regulations were already in force.

109. Therefore, the Sole Arbitrator concludes that the default notice that the First Respondent sent to the Appellant on 5 February 2016, met all the necessary requirements envisaged by article 12bis of the FIFA Regulations to entail, in case of non-payment, the imposition of the appropriate sanction from those established by this provision. Therefore, the submissions filed by the Appellant in this regard are dismissed.

110. In this respect, concerning the Appellant's request to *"declare void the norms of the art. 12bis par. 2 and 4 of the FIFA Regulation on the Status and transfer of Players"*, as it has been previously declared by the CAS (see *inter alia CAS 2009/A/1944*), the Sole Arbitrator *"has no competence and powers to change, amend or abolish any regulations of the FIFA or any sports federation for that matter. Rather, the strict duty of the CAS is to implement, interpret and/or apply the regulations of the said sports federation as they are […]"*. Therefore, this request of the Appellant is dismissed.

111. Finally, with regard to the proportionality of the fine, which has been questioned by the Appellant, the Sole Arbitrator notes that para. 4 of article 12bis of the FIFA Regulations provides the FIFA DRC a wide discretion regarding the choice of the sanction to be imposed in cases in which clubs fail to meet their contractual financial obligations towards players or other clubs.

112. In this regard, for the determination of the relevant sanction, the FIFA DRC does not only consider the amount of the overdue payables at stake, but also the particular circumstances of each case, as well as the conduct of the debtor. In particular, pursuant to para. 6 of article 12bis of the FIFA Regulations, *"A repeated offence will be considered as an aggravating circumstance and lead to more severe penalty"*.

113. Bearing in mind the aforementioned, the Sole Arbitrator observes that the Appellant did not even reply to the First Respondent's correspondence dated 5 February 2016 by means of which the latter put the former in default of payment and by which it granted the Appellant a ten-day deadline in order to remedy its default. In addition, the Sole Arbitrator observes that during the FIFA proceedings the Appellant, in spite of having been granted the opportunity to answer the claim lodged by the First Respondent, it decided not to participate in the proceedings.

114. Equally, as submitted by the Second Respondent and not contested by the Appellant, the Sole Arbitrator notes that this is the second time that the Appellant is involved in a case of overdue payables in a short period of time and hence that it has been found in violation of article 12bis of the FIFA Regulations in several occasions. In addition, in both cases, the Appellant has failed to participate in the FIFA proceedings.

115. As a consequence, and taking into account that article 12bis para. 6 of the FIFA Regulations establishes that a repeated offence will be considered as an aggravating circumstance, the Sole Arbitrator is satisfied with the decision passed by the FIFA DRC, and considers that a fine of CHF 6,000 is appropriate in the present case, taking into consideration the Appellant's

conduct during the first instance proceedings and that this has been the second time in which the Appellant has been found to be in violation of article 12bis of the FIFA Regulations.

116. In addition, the Sole Arbitrator wishes to emphasize that, taking into account the amount in dispute (EUR 13,000), in proportion the fine imposed on the Appellant (CHF 6,000) may seem high. However, it must be taken into consideration that, in this case, the amount of the overdue payables is very low and thus any fine imposed on the Appellant might in proportion seem very high. However, the Sole Arbitrator finds that if a lower fine was to be imposed, the preventive and deterrent effect of article 12bis of the FIFA Regulations would not have any practical effect, as all fines imposed in such cases (debts of small amounts) would be insignificant. Therefore, it is logical that, in proportion, fines imposed for short overdue payables seems higher to those fines imposed in cases of big debts, which does not mean that they are disproportionate.

117. Consequently, for all these reasons and taking into account the circumstances at stake, the Sole Arbitrator rejects the Appellant's request to reduce its fine, and thus confirms the amount established by the Appealed Decision.

## ON THESE GROUNDS

**The Court of Arbitration for Sport rules that:**

1. The appeal filed by Sporting Clube Olhanense Futebol, S.A.D. on 23 June 2016 against the Decision rendered by the Dispute Resolution Chamber Judge of the *Fédération Internationale de Football Association (*FIFA*)* on 4 May 2016 is dismissed.

2. The Decision rendered on 4 May 2016 by the Dispute Resolution Chamber Judge of the *Fédération Internationale de Football Association* (FIFA) is confirmed.

3. (…).

4. (…).

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