Arbitration CAS 2012/A/2763 International Association of Athletics Federations (IAAF) v. Athletics Federation of India (AFI) & Akkunji Ashwini, Priyanka Panwar, Tiana Mary Thomas & Sini Jose, award of 30 November 2012 (operative part of 17 July 2012)

Panel: Mr Mark Hovell (United Kingdom), Sole Arbitrator

Athletics
Doping (methandienone; stanozolol)
CAS scope of review
Standard of proof of establishing how the prohibited substance entered the athletes' system
Reduction of sanction based on no significant fault or negligence
Personal responsibility of the athlete
Duty of care to establish no significant fault or negligence
Starting date of the sanction

1. **According to Article R57 of the CAS Code, the CAS has full power to review the facts and law of the case. However, prayers for relief challenging an appealed decision must be part of an appeal against that decision, not a part of the response to an appellant's appeal, as they are otherwise beyond the scope of review of the CAS.**

2. **The standard of proof of establishing how the prohibited substance(s) entered the athletes' systems, in accordance with Rule 33.2 of the IAAF Rules, is a balance of probability, a standard that has been held to mean that an athlete alleged to have committed a doping violation bears the burden of persuading the judging body that the occurrence of a specified substance is more probable than its none occurrence; alternatively that the innocent explanation provided is more likely than not the correct explanation.**

3. **A reduction of sanction based on no significant fault or negligence may be appropriate in cases where the athlete clearly establishes that the cause of the positive test was the contamination in a common multiple vitamin purchased from a source with no connection to prohibited substances, but only where the athlete otherwise exercised due care in not taking other nutritional supplements.**

4. **CAS jurisprudence is clear that athletes cannot shift their responsibility on to third parties simply by claiming that they were acting under instruction or that they were doing what they were told. That would be all too simple and would completely frustrate all the efforts being made in the fight against doping.**

5. **Even in the case where athletes may not be deemed informed athletes due to a lack of anti-doping education, they must be aware of the basic risks of contamination of nutritional supplements. If athletes have been taking a cocktail of supplements despite**

the numerous warnings in place about taking supplements, have failed to contact the manufacturers directly or arrange for the supplements to be tested before using them, did not seek advice from a qualified doctor or nutritionist, have failed to conduct a basic review of the packaging of the supplements and any basic Internet research about the supplements, they cannot be deemed to have taken any of the reasonable steps expected of them and cannot establish on the facts that they bear no significant fault or negligence.

6. **According to Rule 42.22 of the IAAF Rules, the CAS is bound by the IAAF Rules. Therefore, even if the first instance body has applied other rules regarding the starting date of the sanction, the CAS has to apply Rule 40.10 of the IAAF Rules which provides that the period of ineligibility shall start on the date of the hearing decision except where the athlete promptly admits the anti-doping violation. If the athletes have not provided any evidence that they accepted the anti-doping violation on a timely basis in writing, then the period of ineligibility shall start on the date of the decision.**

1. THE PARTIES

1.1 The International Association of Athletics Federations (hereinafter referred to as the "Appellant" or the "IAAF") is the international federation governing the sport of Athletics worldwide. It has its registered office in Monaco.

1.2 The Athletics Federation of India (hereinafter referred to as the "First Respondent" or "AFI") is the national governing body for the sport of Athletics in India. The AFI has its registered office in New Delhi, India, and is the member federation of the IAAF for the country of India.

1.3 Ms. Akkunji Ashwini (hereinafter referred to as the "Second Respondent" or "Ms. Ashwini") is an Indian athlete. Ms. Aswini mainly competes in the 400 meters and has competed as part of the Indian 4x400 m relay event. Ms. Ashwini also competes in the 400 metres hurdles and is an elite level athlete.

1.4 Ms. Priyanka Panwar (hereinafter referred to as the "Third Respondent" of "Ms. Panwar") is an Indian athlete. Ms. Panwar is an elite level athlete.

1.5 Ms. Tiana Mary Thomas (hereinafter referred to as the "Fourth Respondent" of "Ms. Thomas") is an Indian athlete. Ms. Thomas is an elite level athlete.

1.6 Ms. Sini Jose (hereinafter referred to as the "Fifth Respondent" of "Ms. Jose") is an Indian athlete. Ms. Jose mainly specialises in the 400 meters and is an elite level athlete.

1.7 Ms. Ashwini, Ms. Panwar, Ms. Thomas and Ms. Jose (hereinafter referred to as the "Athletes") are subject to the disciplinary jurisdiction of the AFI and the IAAF.

2. FACTUAL BACKGROUND

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

2.2 On 2 September 2010, the World Anti-Doping Agency (hereinafter referred to as "WADA") received a tip-off that the Athletes may be engaged in doping.

2.3 On 10 and 11 September 2010, a doping officer visited Yalto in the Ukraine with the aim of testing the Athletes, amongst others. No doping tests were carried out.

2.4 In late 2010 the Athletes' coach, Yuri Ogorodnik (hereinafter referred to as the "Coach"), claims to have purchased Ginseng Kianpi pills (hereinafter referred to as "Kianpi Pills") from the Athletes Village at Guangzhou at the Asian Games.

2.5 On approximately 10 May 2011, the Athletes' claim the Coach gave them Kianpi Pills to take.

2.6 On 10 May 2011, the Athletes and others collected about Rs 5,000-6,000 together and either they or the Coach bought food supplements from M/s. Hind Medical Stores, a medical shop situated near Ayurvedic college outside the National Institute of Sport (hereinafter referred to as the "NIS") training centre, in Patiala, India.

2.7 On 8 June 2011, the IAAF was informed by the New Delhi Laboratory that the analysis of the samples provided by the Athletes team mates, Ms. Mandeep Kaur and Ms. Jauna Murmu, revealed the presence of metabolites of methandienone and stanozol in Ms. Kaur's sample and the presence of methandienone metabolites in Ms. Murmu's sample. Both methandienone and stanozolol are exogenous anabolic steroids under class S1(a) of the 2011 WADA Prohibited List. Following the reported adverse analytical findings of their teammates the National Anti-Doping Agency (hereinafter referred to as the "NADA") tested the Athletes.

2.8 On 12 June 2011, the NADA tested Ms. Thomas and Ms. Jose in-competition at the National Senior Inter State Athletics Championships. Thomas disclosed the following medication/supplements on the doping control form: "Amino, Vitamin C, protein". Ms. Jose disclosed the following medication/supplements on the doping control form: "Amino, multivitamin, protein".

2.9 On 27 June 2011, the NADA tested Ms. Ashwini and Ms. Panwar out-of-competition at the AFI Training Centre in Patiala. Ms. Ashwini disclosed the following medication/supplements on the doping control form: "protein, Amino, Tribolex, Ginseng, Glutamin, Glucosamin, Sea Cod, and Multivitamin". Ms. Panwar disclosed the following medication/supplements on the doping control form: "Amino, Protein, Tribulus, Ginseng, Glutamine, Glucosamine, Multivitamin, Creatine, Antibiotics, Antidiaxxtice, Fever".

2.10 On 29 June 2011, the IAAF was notified that Ms. Thomas' sample had revealed the presence of methandienone and stanozolol and that Ms. Jose's sample had revealed the presence of methandienone.

2.11 On 30 June 2011, Ms. Thomas and Ms. Jose were notified of the adverse analytical findings. Both requested the analysis of their B sample which was carried out at the NDTL in their presence.

2.12 On 4 July 2011, the IAAF was notified that Ms. Ashwini's and Ms. Panwar's samples both revealed the presence of methandienone. Both Ms. Ashwini and Ms. Panwar requested the analysis of their B samples which was carried out at the NDTL in their presence.

2.13 On 6 July 2011, the IAAF received a letter from NADA advising that in future all cases relating to Indian athletes were to be entrusted to a hearing before the Anti-Doping Disciplinary Panel (hereinafter referred to as the "ADDP").

2.14 On 7 July 2011, the IAAF replied to the NADA confirming that it had no objection to cases being heard by the ADDP provided that the IAAF rules were respected, including referring any determination on exceptional circumstances to the IAAF Doping Review Board.

2.15 On 7 July 2011, Ms. Thomas and Ms. Jose's B sample analysis confirmed the findings of the A samples.

2.16 On 8 July 2011, Ms. Ashwini's and Ms. Panwar's B sample analysis confirmed the findings of the A samples.

2.17 On 20 July 2011, the NADA replied to the IAAF to confirm the transfer of the cases to the ADDP and that the IAAF rules would be respected.

2.18 The cases of the Athletes were heard together with the cases of two of their teammates in a consolidated procedure before the ADDP and a decision was handed down on 23 December 2011 (hereinafter referred to as the "First Decision"). The ADDP found the Athletes guilty of anti-doping rule violations but found that they had established "no significant fault or negligence" and imposed a reduced suspension of 1 year's ineligibility in each case such period

commencing on the date of their respective provisional suspensions. The relevant paragraphs of the First Decision dealing with the Athletes sanction states:

"in assessing the athletes' degree of fault, the circumstances considered have to be specific and relevant to explain the Athlete or other Person's departure from the expected standard of behaviour.

In the instant cases the athletes were training at NIS Patiala. The Coach Mr Iurii Ogorodnik gave them a written food supplement program. The Coach Mr Iurii Ogorodnik had been appointed by the SAI and was not a coach selected or appointed by the athlete. Ordinarily the athlete is responsible for what they ingest and for the conduct of those persons to whom they entrust access to their food. However, in the context of the circumstances of these athletes it has to be borne in mind that SAI used to provide them with food supplements. The athletes could not be expected to verify such supplements provided to them by the authority responsible for sports in the country. Mr Iurii Ogorodnik had been appointed by SAI and had been working in India since 1999. He was thus a part of the SAI and the athletes had been training under his guidance for several years. There had never been any complaint against Mr Iurii Ogorodnik and he was a world-renowned coach. He had taken these athletes to great heights. Each of these athletes had won several medals training under this coach and had been tested for dope several times. In such circumstances, Mr Anand would argue that Mr Iurii Ogorodnik was like a father figure to these athletes. It was not the athletes who had entrusted Mr Iurii Ogorodonik with the task of coaching them. In fact SAI had entrusted these athletes to Mr Iurii Ogorodnik for training. To the athletes Mr Iurii Ogorodnik was a part of SAI. It was natural for the athletes to have unflinching faith and confidence in the coach. It has been shown that the athletes had been taking ginseng as a food supplement under earlier programs given to them by Mr Iurii Ogorodnik. Ginseng was not a new supplement. When Mr Iurii Ogorodnik gave the bottles of Ginseng Kinapi Pill to the athletes they had no occasion to suspect that these could be contaminated as they had been purchased by their coach. It may be said that since the athletes knew that the supplement had been purchased from the open market it was their duty to verify the same from the manufacturer. However, the athletes would argue that they believe that such an experienced coach would have purchased the supplements from an authorized vendor and would have duly verified the genuineness of the product.

We are therefore of the view that the athletes have been able to establish how the prohibited substance entered their body and that they bear no significant fault or negligence and are entitled a reduction in the period of ineligibility under article 10.5.2 of the rules. We also find that the two athletes Miss Jauna Murmu and Tiana Mary Thomas who were tested twice during May and June 2011 cannot be held guilty of two violations as the adverse and analytical findings in both the tests conducted on them were the result of the ingestion of the same supplement.

Under article 10.2 read with 10.5.2 ineligibility of one (1) year is imposed on the athletes […] for the violation of article 2.1 of Anti-Doping Rules, NADA. The period of ineligibility shall commence from the date of this order. Any period of Provisional Suspension shall be credited against the total period of ineligibility to be served by each athlete. This decision may be advised to the parties to the proceedings, WADA and relevant International Federation, the National Olympic Committee and National Sports Federation in accordance with rule 8.5.4 of the National Anti-Doping Rules".

2.19 The Athletes and WADA appealed the First Decision to the Anti-Doping Appeal Panel (hereinafter referred to as the "ADAP") which dealt with the matter by way of a consolidated procedure.

2.20 On 16 January 2012, the First Decision was notified to the IAAF.

2.21 On 29 February 2012, the ADAP held a hearing following which the ADAP upheld the sanction of 1 year's ineligibility that had been imposed by the First Decision but ruled that the start date of the sanction should be backdated in each case to the date of the sample collection. The relevant provisions of the ADAP decision dealing with the Athletes sanctions stated (hereinafter referred to as the "Appealed Decision"):

*"**Analysis of the Panel***

At the outset the Panel holds that the athletes have been able to establish beyond reasonable doubt that the prohibited substance entered their body through the Ginseng Kianpi Pil administered by the coach appointed by the Government of India. The Ginseng Kianpi Pil were found to be contaminated. Therefore it has to be seen as to what was the position as on the date of the consumption of Ginseng Kianpi Pil and the date of sample collection of the athlete. Were the athletes negligent and careless?

It already stands established that the ingestion of Ginseng Kianpi Pil has resulted in the presence of prohibited substances in the samples of the Athletes. Now the question that needs to be addressed is that when ginseng was not a prohibited substance and had been ingested by the Athletes since past several years, whether the Athletes were negligent or at fault while ingesting Ginseng Kianpi Pil provided by the Coach. If yes, then whether the fault or negligence of the Athletes were significant or ordinary.

The Panel is of the view that in light of the submissions of the Athletes that at the relevant time when Ginseng Kianpi Pil was given to them by Coach they did not know or suspect that the Ginseng Kianpi Pil was purchased by the Coach himself. Since Ginseng had been provided to them by AFI/SAI since years, the Athletes, in good faith, accepted the Ginseng Kianpi Pill as the part of food schedule as being done by them earlier. The Athletes had absolutely no reason to believe that ginseng provided to them would be contaminated or could reasonably be expected to be contaminated because ginseng being a food supplement has regularly been administered and provided by AFI from time to time. Therefore, the Ginseng Kianpi Pil consumed by the Athletes was presumed to be safe, acceptable and permitted and it was not necessary to warrant an investigation about the safety and purity of Ginseng Kianpi Pil. The reliance of WADA on the CAS awards is misplaced, in the facts and circumstances of the present case. There was no occasion for the Athletes to reasonably know or suspect that Ginseng Kianpi Pil would turn out to be contaminated, more so when tests were conducted in the last week of April 2011 and the Athletes tested negative. It is a fallacious argument to suggest that the Athletes were negligent as this Panel is of the view that it was not necessary on the part of the Athletes to enquire about the source or assurances of medical professional regarding purity of the Ginseng Kianpi Pil. It is only when the Athlete suspects or has reason to believe that the supplement might contain a prohibited substance would it be mandatory for them to take steps in terms of the Rules to exercise upmost caution. It is only when the Coach made a statement in the press that he had purchased the Ginseng Kianpi Pil from Asian Games Village in Guangzhou that the Athletes were enlightened about the source. The ingestion of Ginseng Kianpi Pill under the bona fide presumption that it was provided by AFI cannot be taken to be negligent or fault on the part of the Athletes whatever the post statements may contain.

The Athletes in the facts and circumstances were not required to do any comprehensive enquiry and it would be stretching the rules to the limit if it were to hold that every time Ginseng is consumed it was to be tested, this is not the case of WADA. The present case is not a typical case of Doping, it cannot be expected Athletes who

has taken Ginseng till the test provided positive were bound to get a test done on each occasion when supplement was provided by SAI/AFI. It is in fact the duty of the SAI/AFI to have done the exercise if they know or suspected that the coach would give the contaminated supplement.

The Panel feels that the matter has to be objectively seen and the fault or negligence of the Athletes has to be determined in the light of the Rules and the facts and circumstances of the case as existed at the time of ingestion of supplements and at the time of sample collection. There is no reason for the Panel to assume that every time a supplement/ginseng is given by AFI/SAI in a routine manner it has to be tested. It is only after the testing of Ginseng Kianpi Pil it was discovered that it was contaminated. Therefore it follows that the Athletes were not at fault or negligent at any stage. However had the test results of the supplements tested by NDTL revealed the source of the prohibited substance in the sample of the athletes was something other than Ginseng Kianpi Pil, the case would have certainly taken a different complexion. The facts of the case are so glaring that to hold that the Athletes are guilty of not exercising upmost caution and care would be doing injustice to the Athletes. Further the Panel cannot lose sight of the fact that the Athletes made no attempt to gain any unfair advantage over other athletes or to enhance their performance.

The Panel in light of the aforesaid discussion has arrived at the conclusion that the Athletes could not have reasonably known or suspected in the facts and circumstances of the present case that Ginseng Kianpi Pil would be contaminated and detailed reasoning has been set out above in support of the conclusion.

Taking into account the factors identified above and all of the facts of the case, the Panel holds that the present case is substantially different from the typical doping cases which characterize the previous jurisprudence of CAS and in contrast be considered to be truly exceptional and unique. The said case constitutes the rarest of the rare circumstances and is truly exceptional. The Panel is satisfied that the Athletes' ingestion of the prohibited substance was in good faith and there was no fault on the part of the Athletes. The Athletes had no reason to know or suspect that the Ginseng supplement they were taking over the years would be contaminated. The Athletes had no knowledge whatsoever at the time of consuming it that it was purchased by Coach from China. As on early occasions Ginseng made in Korea was purchased and provided to the Athletes through Coaches. Likewise, in the camp that commenced in March 2011, Ginseng was given by the Coach which apparently had been purchased from china. The only difference was that on earlier occasions the Korean Ginseng was supplied and in the present case the Chinese Ginseng was supplied. Where was thus the occasion for the Athletes to know or suspect that the Ginseng would be contaminated. It is established from the NDTL Report that Ginseng Kianpi Pil was the only substance found to be contaminated with Methandienone and Stanozolol. Ginseng was taken on good faith as before and on all earlier occasions prior to the present case the Athletes whenever tested the results proved negative. They were also taking Ginseng then. However, in the circumstances of the present case even if the Panel concludes that the Athletes committed some fault the Panel considers that a degree of fault or negligence that they exhibited was so negligible as almost to amount to No Fault or Negligence. In the typical facts and circumstances of the present case the Athletes cannot be said to have deviated from their expected standard of behaviour. The Panel is of the view that it is in the category of these exceptional cases where the extremely strict interpretation of the Rules will produce a result that is neither just nor proportionate in that the totality of the facts and circumstances of the present case and the conditions prevailing in India.

We are satisfied when viewed in the totality of the circumstances of the case and taking into account the criteria for no fault or negligence, the Athletes have shown that they were not at significant fault in view of the Anti-Doping violations. The period of ineligibility can be reduced. The Athletes are open and frank and were only abiding the food programme chartered by SAI/AFI/Coach. The fact that the Ginseng was purchased from

china by the Coach was not within the knowledge of the athletes nor did they suspect authenticity of the Ginseng until the NDTL proved the Ginseng Kianpi Pils to be contaminated. It is only thereafter the Athletes came to know about the source of prohibited substances in their body.

This finding is not meant to absolve all competitors from a duty of care when they are in their sports venue environment and being cared for by their coach or sport's medical personnel. The current applicable rules do allow for examination of the "totality of the circumstances" and in circumstances such as those which the Panel has found in the present case, the Athletes were not at fault or negligent even though he bears no fault. The Panel views that each case is to be judged from the peculiar facts and circumstances of the case".

3. PROCEEDINGS BEFORE THE COURT OF ARBITRATION FOR SPORT

3.1 On 5 April 2012, the Appellant lodged a Statement of Appeal with the Court of Arbitration for Sport (hereinafter referred to as the "CAS") against the Appealed Decision. It submitted the following requests for relief:

"The IAAF hereby respectfully requests CAS to rule the following, that:

1. *The IAAF's appeal is admissible;*
2. *The decision of the Appeal Panel of 17 March 2012 be set aside;*
3. *There are no grounds in any of the four cases for a reduction of the applicable sanction under IAAF Rule 40.5;*
4. *There are no grounds in any of the four cases to start the date of the applicable sanctions from the date of sample collection, in breach of IAAF Rule 40.10;*
5. *Consequently, Ms. Ashwini, Ms. Panwar, Ms. Mary Thomas and Ms. Jose must serve the period of Ineligibility prescribed under IAAF Rule 40.2, namely, 2 years' Ineligibility, such period to start on the date of the CAS decision, with any period of provisional suspension and/or Ineligibility previously served to be credited against the total period of Ineligibility to be imposed;*
6. *All competitive results obtained by Ms. Ashwini, Ms. Panwar, Ms. Mary Thomas and Ms. Jose, from the date of commission of their respective anti-doping rule violations through to the commencement of their provisional suspension shall be disqualified, with all resulting consequences, in accordance with IAAF Rule 40.8 and 41.3.*
7. *The IAAF be granted its costs in the appeal (including CAS costs), such costs to be assessed".*

3.2 On 29 June 2012, the Appellant filed its Appeal Brief with the CAS with the following amended prayers for relief:

"In all the circumstances, the IAAF respectfully seeks the Sole Arbitrator to rule as follows, that:

1. *The IAAF appeals are admissible;*
2. *The decision of the ADAP dated 17 March 2012 to reduce the Athletes' respective 2 year sanctions by 1 year on account of exceptional circumstances be set aside;*

3. *The decision of the ADAP dated 17 March 2012 to commence the start date of the Athletes 1 year sanctions on the date of their respective sample collections be set aside;*

4. *The Athletes are all required to serve the full 2 year period of Ineligibility for a breach of IAAF Rule 32.2(a) commencing on the date of their respective provisional suspensions;*

5. *All competitive results obtained by the Athletes from the date of commission of the anti-doping rule violations through to the commencement of this CAS award be disqualified, with all resulting consequences in accordance with IAAF Rule 40.8 and 41.3; and*

6. *The IAAF be awarded its full costs in the appeal (including CAS arbitration costs), such costs to be confirmed following conclusion of the appeal".*

3.3 On 6 July 2012, the First Respondent submitted its Answer, together with various exhibits, seeking the following requests for relief:

"The Respondent respectfully requests that the CAS grant the following relief:-

a. waive the cost imposed on AFI of CHF 1,000 as per CAS order;

b. any other decision that the Hon'ble Sole Arbitrator may deem fit".

3.4 On 7 July 2012 the Athletes filed their joint Answer, together with numerous exhibits, seeking the following request for relief:

"It prayed that the appeal filed by IAAF may be dismissed and the prayer made by the athletes may be accepted and the decision given by the ADDA and ADAP may be substituted by CAS Award fully exonerating the respondents in view of Rule 42.20 and 42.21 applicable to the facts and circumstances of the present case".

4. THE CONSTITUTION OF THE PANEL AND HEARING

4.1 By letter dated 21 June 2012, the CAS informed the parties that the panel to consider the appeal had been constituted as follows: Mr Mark Hovell, Sole Arbitrator.

4.2 A hearing was held on 16 July 2012 at the CAS premises in Lausanne, Switzerland. The parties did not raise any objection as to the appointment of the Sole Arbitrator. In addition, Mr Matthew Chantler, ad hoc clerk, and Ms Andrea Zimmermann, Counsel to the CAS, were in attendance.

4.3 The attorneys for the parties attended the hearing with the attorneys for the First Respondent present via video conferencing facilities. Only Ms. Panwar attended the hearing to give oral evidence to the Sole Arbitrator.

4.4 Ms. Panwar was examined by the Sole Arbitrator and the Appellant. Unfortunately the Athletes' attorney did not procure the services of a translator and parts of Ms. Panwar's evidence was unclear. Fortunately the attorneys for the Appellant and the Athletes agreed to the attorney of

the First Respondent assisting with some translation. However, Ms. Panwar confirmed that they had taken the Kianpi Pills, that the Coach had given them those supplement, amongst others, and that they were aware that some of the supplements had been purchased from the open market by the Coach on their behalf and given to them. Some of her testimony regarding the availability of internet facilities at the NIS and the Athletes ability to use the internet was less clear.

4.5 The Appellant called Mr Thomas Capdevielle, results manager at the IAAF Medical and Anti-Doping Department, by way of telephone, as a witness. Mr Capdevielle assisted the Sole Arbitrator by explaining that Rules 6.6 to 6.13 of the IAAF Anti-Doping Regulations (2011 Edition) (hereinafter referral to as the "Doping Regulations") are specific to athletes biological passport profiles and that the review undertaken under Rule 37 of the IAAF Competition Rules 2010-2011 (hereinafter referred to as the "IAAF Rules") are the preliminary checks undertaken by the IAAF and that no written records of an internal review exist.

4.6 The parties were given the opportunity to present their cases, submit their arguments and to answer the questions posed by the Sole Arbitrator. A summary of the submissions is detailed below. After the parties' final, closing submissions, the hearing was closed and the Sole Arbitrator reserved his detailed decision to his written award, although in accordance with the expedited procedure, the operative part of the award was communicated to the parties within the next couple of days. Upon closing the hearing, the parties expressly stated that they had no objections in relation to their right to be heard and to have been treated equally in these arbitration proceedings. The Sole Arbitrator heard carefully and took into account in his subsequent deliberation all the evidence and the arguments presented by the parties both in their written submissions and at the hearing, even if they have not been summarised in the present award.

5. THE PARTIES' SUBMISSIONS

A. Appellant's Submissions

5.1 In summary, the Appellant submitted the following in support of its appeal:

5.2 By way of context, the IAAF stated that its official statistics would indicate that India is a country that has long since had a serious doping problem. In the last 3 years since 2009, there had been 80 doping cases in athletics alone, of which 64 had been for hard-core steroids. Since April 2012, there had been no fewer than 20 new cases notified to the IAAF, the vast majority of which (16) were for steroids. In the face of such overwhelming evidence, it is difficult, if not impossible to deny that there is a serious doping problem in India. When the Athletes tested positive for steroids, they blame the Coach, NIS and the National Federation for running out of nutritional supplements. The Athletes blamed everyone except themselves, yet bear the responsibility of anti-doping offences.

5.3 The Athletes were guilty of anti-doping rule violations under IAAF Rules is not in doubt in this appeal. The ADDP which heard the case at first instance found as much, as did the ADAP.

5.4 The Athletes completely failed in their duty to ensure that no prohibited substance entered their system. They took none of the precautions that were expected of them as athletes competing on the international stage and they were negligent in the extreme.

5.5 The Athletes had not established how the prohibited substance(s) entered their systems to the requisite standard of proof. The IAAF's position was that there are a number of just as likely, if not more likely, reasons for the Athletes' adverse analytical findings.

5.6 Neither the Coach nor the Athletes had been able to produce any evidence of the Coach's purchase of the Kianpi Pills in Guangzhou. The company that operated the shop at the Athletes Village in Guangzhou confirmed in a signed written statement that Kianpi Pills was not available for sale at the shop at any time during the Asian games from 12 October to 21 December 2010.

5.7 There was no evidence that the Athletes were taking the Kianpi Pills at the time of their doping control tests resulting in them testing positive. The Athletes were meticulous in listing out the names of supplements that they had been taking and the declaration of medications/supplements over the past 7 days in the section of their respective doping control forms however neither of them disclosed having taken the Kianpi Pills by name.

5.8 The only evidence that was before the Sole Arbitrator that the Kianpi Pills tested by the New Delhi laboratory contained stanozolol and methandienone was a one page certificate issued by the National Dope Testing Laboratory (hereinafter referred to as the "NDTL"). The IAAF's request for disclosure of the underlying analytical material had never been forthcoming.

5.9 To the contrary, there was evidence before the Sole Arbitrator from two of the World's most respected WADA accredited laboratories (in Los Angeles and Montreal) that different batches of the same brand of the Kianpi Pills (tested at the IAAF's request) contained no presence of stanozolol or methandienone.

5.10 The Coach himself had gone on record as doubting that the Kianpi Pills was the real source of the Athletes' adverse finding.

5.11 The IAAF believed that the Coach had devised a separate sophisticated doping regimen for his athletes, including administering the type of steroids for which the Athletes tested positive. That doping regimen was put before the CAS. The IAAF also put forward expert evidence from Dr Audrey Giles which provided that the author of that separate doping regimen was the same person who wrote the food supplement program for the Athletes for the period May to June 2011, a document that the Athletes had specifically testified to as being in the handwriting of

the Coach. The IAAF's submission was that the Coach was prescribing the direct administration steroids – these did not get into the Athletes' system by contamination.

5.12 It was the IAAF's position that the Athletes have not met their burden of proving on the balance of probability that the Kianpi Pills were the source of their adverse analytical findings.

5.13 In the alternative, should the Sole Arbitrator determine the source of the Athletes' adverse findings over the Kianpi Pills, then, in accordance with IAAF Rule 38.15, a finding of "no significant fault or negligence" under the heading of exceptional circumstances will exist only in cases where the circumstances are truly exceptional and not in the vast majority of cases. IAAF Rule 38.15 expressly states that "*an allegation of prohibited substance was due to the taking of a contaminated food supplement*" will not normally constitute an exceptional circumstance.

5.14 The Coach cannot be said to have a clean track record. The expert evidence provided by the Appellant was quite clear that the separate doping regimen was prepared by the Coach and included an instruction by him to his athletes to consume various hard-core steroids. Further, the IAAF stated that previous investigations into doping related instances in India had involved the Coach.

5.15 The Athletes rarely, if ever, took the pre-tested supplements on offer to them at the NIS and instead went out and spent thousands of Rupees on buying a variety of supplements from a local chemist outside of the NIS that was openly selling steroids. They considered the vitamins that were on offer from the NIS to its resident athletes to be insufficient for their purposes.

5.16 The Athletes were well educated and were all in paid employment with different Government services in India: Ashwini with a national bank, Jose and Panwar with the Indian Railways and Thomas with the Oil and Natural Gas Corporation (Oil India Limited). Further they had travelled internationally and had earned substantial sums from both the Indian Government and sponsors. They had also admitted to having access to the Internet.

5.17 CAS jurisprudence is clear that athletes cannot shift their responsibility onto third parties simply by claiming that they were acting under instruction or that they were doing what they were told. The Athletes did not make good faith efforts to leave no reasonable stone unturned before they ingested the supplements.

5.18 The IAAF submitted that the Athletes were significantly at fault or negligent in at least the following ways:

a. they failed to heed the numerous warnings about supplements;

b. they failed to seek advice from a specialist doctor before taking the supplements;

c. they failed to conduct a basic review of the packaging of the supplements;

d. they failed to conduct any basic internet search about the supplements;

e. they failed to make enquiry of the manufacture or arrange for the supplement to be tested before using them;

f. they failed to exercise due care in not taking other supplements; and

g. the fact of the matter is that the Athletes took no steps at all.

5.19 The IAAF submitted that the Athletes cannot establish on the facts that they bear no significant fault or negligence for their actions and are thus entitled to a reduction in the otherwise applicable 2 year sanction. The IAAF submitted that the Athletes were guilty in a number of respects of serious fault or negligence in their conduct and they must now serve the full 2 year period of sanction.

5.20 That the ADAP embarked upon a "*legal abracadabra*" to find justification for the Athletes serving a 1 year sanction and yet still be able to qualify and compete for India at the London 2012 Olympic Games in complete disregard of the IAAF Rules. In accordance with Rule 40.10 of the IAAF Rules an athlete can only derive the benefit of an earlier start date to a sanction where he or she has admitted the anti-doping rule violation on a timely basis; the Athletes did not admit their anti-doping rule violations and have defended themselves through two contested procedures before this appeal to the CAS. Therefore, the Athletes' 2 year ineligibility should start on the date of the CAS award less any provisional suspension.

B. First Respondent's Submissions

5.21 In summary, the First Respondent submitted the following in its defence:

5.22 It complied with the IAAF Rules and as per Rule 38.11 of the IAAF Rules delegated it powers to conduct the anti-doping hearing to the ADDP. The AFI had, in accordance with Rule 38.18 of the Competition Rules, been regularly keeping the IAAF updated of the suspensions imposed.

5.23 The AFI had been made the First Respondent in the present appeal due to mere procedural requirements, even though AFI has complied with the duties imposed on it by the IAAF under its rules and regulations. Rule 65.2 of the CAS Code of Sports related Arbitration (hereinafter referred to as the "CAS Code") applies to this matter and as a result, the proceedings should be free. The AFI also relied upon the case CAS 2009/A/1870. As such, it should not bear any costs during this procedure.

C. Second, Third, Fourth & Fifth Respondent's Submissions

5.24 In summary, the Second, Third, Fourth and Fifth Respondents submitted the following in their defence:

5.25 During the proceedings before the ADDP and ADAP, the stance taken by the IAAF had been that it was not disputed that the prohibited substance entered the body of the Respondents through the Kianpi Pills. The Athletes did not understand this change of stance by the IAAF.

5.26 In accordance with Rule 37.3 of the IAAF Rules, the IAAF Anti-Doping Administrator should conduct "a review" to see if there has been any departure from the IAAF Rules. In the present matter there were no documents made available by the IAAF to the Athletes regarding this "review" namely: about the chain of custody; how the transportation of the sample was done; and the complete analysis report and the method of detection. Further, there was no order of official review as contemplated in Rule 37.3. No expert body was constituted to question the internal and external chain of custody and in relation to the facts as to whether there was any apparent departure from the international standard for laboratory. As such, the whole proceedings initiated by the IAAF and AFI transferred to NADA were illegal and without jurisdiction.

5.27 The Athletes had been tested before, on numerous occasions, and every time the result was found to be clear. Further, these tests were within the period of the Commonwealth and Asian Games.

5.28 The Athletes had no knowledge of computers. They had only completed their schooling and the Athletes did not have access to an internet facility at the NIS and they were not allowed to go out of the camp at Patiala.

5.29 Whilst there was a Scientific Officer, Dr Bhattacharjee, present at the NIS training centre, he was not officially assigned as a doctor for the athletes. A recovery expert should have been present at NIS to deal with the prescription of the supplements, but no recovery expert was in office at the training centre during the Athlete's period there.

5.30 In response to the IAAF's claims that there are widespread doping issues in India, the Athletes expressed their doubt that the NDTL procedures used to carry out the anti-doping tests were in order and the machines which they were using and the methods adopted for finding the prohibited substances were also defective in some cases.

5.31 The Athletes submitted, by way of context, that the system in India is different from other parts of the world. The coaching camps are organized by the Government of India's Ministry of Sports and the athletes are sent to coaching camps. One such camp is the NIS training centre at Patiala. It is the duty of the Government to provide all the facilities, food, medicines and supplements for the athletes. Sometimes they receive help from the AFI for providing additional supplements, depending upon the requirement of each discipline. The AFI have given Ginseng procured from various sources before.

5.32 Until the detection of the prohibited substance(s), the Athletes that the prohibited substance came from the Kianpi Pills or that it was procured by the Coach. After the detection, the

Government of India appointed a one man commission who ordered officials to go to the NIS camp at Patiala to investigate. The Athletes provided the officials with one partially consumed bottle of the Kianpi Pills and at a later date one sealed bottle too. They handed over the other supplements they had been taking in accordance with the plan given to them by the Coach. If the Athletes had been cheating then they would not have provided Kianpi Pills to the High Court Judge who investigated the matter. The NDTL reported that it was those Kianpi Pills that contained the prohibited substance that matched with the prohibited substances found in the bodies of the Athletes.

5.33 The NDTL tested the other supplements that the Athletes were taking too, and confirmed that only the Kianpi Pills contained the prohibited substances. There is corroborative evidence that the Athletes were taking the Kianpi Pills, including the bottle as provided to the High Court Judge, the Coach's statement, the finding of the High Court Judge in his report and supplement programmes as provided to the Athletes by the Coach.

5.34 The Athletes noted that one laboratory report (the High Court Judge's) confirmed that the batch of Kianpi Pills the Athletes were using contained the prohibited substances, whilst another report (the one produced by the IAAF) on another batch of Kianpi Pills does not. Therefore not all of the bottles of Kianpi Pills contain steroids, only the contaminated batches. Does that mean that every bottle of Kianpi Pills should be tested before use?

5.35 In response to the IAAF's claim that the owners of the shop at the Athlete's Village at the Asian Games denied selling Kianpi Pills - no one would admit that they were selling contaminated Kianpi Pills as they could be prosecuted in China.

5.36 Further, Ginseng is a herb and not a medicine. There would therefore be no mention of steroids on the website for the Kianpi Pills nor on the list of ingredients. No website search could have revealed the prohibited substances, as they would only have been there by contamination.

5.37 The Athletes were not intentionally doping. There are truly exceptional circumstances which apply to the facts of the present case which the Athletes have been able to demonstrate by way of satisfactory evidence before the ADDP and ADAP; that the prohibited substance entered the body by virtue of the Kianpi Pills.

5.38 The Athletes were under the impression that the supplements, including the Kianpi Pills Pills, in particular Ginseng were supplied by the AFI via their Coach. Therefore they would not expect to be given something they should not take. It cannot be expected that the Athletes would disbelieve the Government and/or federation. Further, had they failed to follow the Coach's instructions then they would have been kicked off the team.

5.39 The Athletes have never failed to submit to doping tests and have always been available to WADA. Further, the Athletes submitted that if they were in the habit of taking prohibited

substances then they would have taken them during the Asian and Commonwealth Games however their tests around this period came back clear.

5.40 The CAS jurisprudence that the Appellant has submitted does not apply to the facts of this case. There has not been any case involving supplements provided by the athlete's Government.

5.41 Further, if the Coach knew that the supplement was contaminated then would he write a chart for the Athletes to take the same? The Athletes' also questioned the expert evidence of Dr Giles for the same reason. If the Coach was cheating, why produce with evidence?

5.42 The Athletes did not cheat to win their gold medals in the commonwealth and Asian Games, so why should they cheat now?

5.43 Finally that the Appellant relies upon various decisions to support that a discriminatory treatment is being given to Asian athletes which is contrary to the International Convention *"on the human rights"*.

6. JURISDICTION OF THE CAS

6.1 CAS has jurisdiction to decide the present dispute between the parties. This jurisdiction is not disputed by the parties and has been confirmed by the signing of the Order of Procedure. In addition, it is contemplated by Article R47 of the CAS Code which provides as follows:

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

6.2 The Sole Arbitrator noted that the Rule 38.11 of the IAAF Rules provides:

"The Athlete's hearing shall take place before the relevant tribunal constituted by or otherwise authorised by the Member. Where a Member delegates conduct of a hearing to any body, committee or tribunal (whether within or outside the Member), or where for any other reason, any national body, committee or tribunal outside of the Member is responsible for affording an athlete a hearing under these Rules, the decision of that body, committee or tribunal shall be deemed, for the purposes of Rule 42, to be the decision of the Member and the word "Member" in such rule shall be construed".

6.3 Rule 42.4 of the IAAF Rules provides:

"1. Appeals which do not involve International-Level Athletes: in cases which do not involve International-Level Athletes or their Athlete Support Personnel, the decision of the relevant body of the Member may (unless 42.8 applies) be appealed to an independent and impartial body in accordance with the Rules established by the Member. The Rules for such appeal shall respect the following principles:

- *A timely hearing;*

- *A fair, impartial and independent hearing panel;*
- *The right to be represented by Counsel at the persons own expense;*
- *The right to have an interpreter at the hearing at the person's own expense; and*
- *A timely, written, reason decision.*

The decision of the National Level Appeal body may be appealed in accordance with Rule 42.7".

6.4 Rule 42.6 of the IAAF Rules provides:

"In any case which does not involve an International-Level Athlete or his Athlete Support Personnel, the following parties shall have the right to appeal the decision to the national level appeal body;

a. The Athlete or other Person who is subject to the decision being appealed;

b. The other party to the case in which the decision was rendered;

c. The Member;

d. The National Anti-Doping Organisation of the Athlete or other Person's country of residence of where the Athlete or the Person is a national or licence holder; and

e. WADA.

The IAAF shall not have the right to appeal a decision to the national level appeal body but shall be entitled to attend any hearing before the national level appeal body as an observer. The IAAF's attendance at a hearing in such capacity shall not affect its right to appeal the decision of the national level appeal body to CAS in accordance with Rule 42.7".

6.5 Rule 42.7 of the IAAF Rules provides:

"In any case which does not involve an International-Level Athlete or his Athlete Support Personnel, the following parties shall have the right to appeal the decision of the national level appeal body to CAS:

a. The IAAF".

6.6 The Sole Arbitrator noted that the Athletes are not "international-level athletes" under the IAAF Rules. In accordance with Rule 38.11 of the IAAF Rules, the Appealed Decision is deemed to be a decision of the First Respondent and the Appellant has the right to appeal the same to CAS in accordance with Rule 42.7 of the IAAF Rules. For the avoidance of doubt, the First Decision was appealed by the Athletes to the ADAP in accordance with Rule 42.6 of the IAAF Rules. The IAAF did not have the right of appeal against the First Decision to the ADAP but could appeal the Appealed Decision under Rule 42.7. The Athletes disputed the jurisdiction of the CAS to hear the appeal as they stated that the Appellant had not taken part in the proceedings before the ADDP and ADAP. The Sole Arbitrator is satisfied that the CAS does have jurisdiction and that the IAAF has followed the applicable rules and could only become involved in this matter after the Appealed Decision.

6.7 Finally, the Statement of Appeal was filed within the deadline set in IAAF Rule 42.15 i.e. 45 days of the notification of the Appealed Decision. Accordingly the Appeal was filed with the prescribed timelines.

7. SCOPE OF THE PANEL'S REVIEW

7.1 IAAF Rule 42.20 of the IAAF Rules provides:-

"the CAS Appeal

20. all appeals before CAS (save as set out in Rule 42.21) shall take the form of a rehearing de novo of the issues raised by the case and the CAS panel shall be able to substitute its decision with the decision of the relevant tribunal of the Member or the IAAF where it considers the decision to be erroneous or procedurally unsound. The CAS Panel may in any case add to or increase the Consequences that were imposed in the contested decision".

7.2 Further, according to Article R57 of the CAS Code the Sole Arbitrator has full power to review the facts and law of the case. However, the Sole Arbitrator is unable to enter into counterclaims by the Respondents. Any prayers for relief challenging the Appealed Decision must be part of an appeal against that decision, not a part of the response to an appellant's appeal.

7.3 The Athletes, by way of their Answer, submitted that in accordance with IAAF Rule 37.3 there has to be a "review" to determine whether the adverse analytical finding is consistent with an applicable TUE or if there is any apparent departure from the anti- doping regulations or the International Standard for Laboratories that caused the adverse analytical finding. The Sole Arbitrator queried at the hearing whether the Athletes had raised the argument at the previous hearing as the Athletes had not appealed the Appealed Decision. The Athletes explained that their position was that as the hearing was *"totally de novo"* the Sole Arbitrator was able now to hear their submissions on the issue.

7.4 The Appellant noted that it would be difficult for the Sole Arbitrator to deal with the issue as he only had limited information before him on the file and no laboratory packaging. Further, there is a presumption in favour of the laboratory unless the Athletes bring to the Sole Arbitrator's attention evidence that there has been a deviation in the rules, but moreover, the Appellant also submitted that the matter was a *de novo* hearing solely of the issues on appeal i.e. its appeal. The Appellant stressed that the Athletes had not raised the argument before the ADDP and the ADAP and that the Athletes had not appealed to the CAS. Therefore as the IAAF had appealed the appeal is limited to the sanction as the matter is limited to the issues raised by the IAAF in its appeal documents. The Appellant submitted that the Sole Arbitrator did not have jurisdiction to hear this particular issue.

7.5 The Athletes confirmed that it was correct that the presumption is in favour of the laboratory but that they believed that this was only the case once the expert body had completed the necessary "review". If there was no review then there can be no presumption.

7.6 The Sole Arbitrator agreed with the Appellant that the hearing shall take the form of a re-hearing *de novo* of the issues on appeal. As the Athletes had failed to raise such arguments before the ADDP and the ADAP and as they had not appealed the Appealed Decision the arguments were beyond the scope of the Sole Arbitrator.

7.7 However, the Sole Arbitrator notes that Mr Capdevielle explained in detail the position of the IAAF and this is set out here purely to assist any parties to such proceedings in the future. He stated that the Athletes had requested the disclosure of the results management of their biological passport programme and that this programme did not apply to the Athletes and therefore no evaluation was required by independent experts. Further, the Athletes are not in the registered testing pool for the purpose of the athlete biological passport. Mr Capdevielle confirmed that regulations 6.7 to 6.13 of the Doping Regulations are specific to athlete's biological passport profiles. He further explained in detail the steps taken when the IAAF, in accordance with Rule 37.3 of the IAAF Rules, receive a laboratory report. These steps included matching forms with the report, checking the laboratory report, verifying that the prohibited substance is in fact a prohibited substance, if the prohibited substance is prohibited above a certain threshold then clarifying that the threshold had been exceeded, reviewing any comments from the laboratory, checking the comments from the Athletes on the forms, checking the external chain of custody in particular with respect to long delays and any incidents were the sample may have been compromised, checking for a TUE, and making sure that there had been no departure from the applicable regulations. He confirmed that there is no written records of the review and that they are the preliminary checks that the Appellant undertakes. Further, in accordance with the IAAF Rules the Athletes could have requested the documents however no request was made. It would then be for the Athletes to raise any challenges of their own with regard as they saw fit.

7.8 Finally, with regard to the scope of the matter at hand, the Sole Arbitrator noted the Athletes' view on the Appellant "now" challenging how the prohibited substances entered their bodies, when no challenge was raised at the ADDP and ADAP hearings. The Sole Arbitrator, in addition to dealing with this *de novo* and this being an important aspect of the Appellant's Appeal, notes that the IAAF does not participate at national level on such matters. That was left to the ADDP on behalf of the AFI, however, the IAAF had ensured that that body respected the IAAF Rules, to ensure its right of appeal, should the same be necessary. In the matter at hand, the IAAF is first raising its challenge to how the prohibited substance(s) entered the Athletes' bodies and this is very much in the scope of this hearing.

8 APPLICABLE LAW

8.1 Article R58 of the CAS Code provides as follows:

"The Panel shall decide the dispute according to the applicable regulations and the rules of law chosen by the parties or, in the absence of such a choice, according to the law of the country in which the federation, association

or sports-related body which has issued the challenged decision is domiciled or according to the rules of law, the application of which the Panel deems appropriate. In the latter case, the Panel shall give reasons for its decision".

8.2 Rule 42.2 of the IAAF Rules provides:

"In all CAS appeals involving the IAAF, CAS and the CAS Panel shall be bound by the IAAF Constitution, Rules and Regulations (including anti-doping regulations)".

8.3 Rule 42.23 of the IAAF Rules provides:

"In all CAS appeals involving the IAAF, the governing law shall be Monegasque and the arbitration shall be conducted in English, unless the parties agree otherwise".

8.4 The Sole Arbitrator noted that the Appellant stated that the IAAF rules and regulations are to apply primarily to this matter and that Monegasque law on a subsidiary basis. Further, that the First Respondent and the Athletes referred to the IAAF rules and regulations. Therefore the Sole Arbitrator ruled that the IAAF rules and regulations, the IAAF Rules, Doping Regulations and Competition Rules, should apply primarily, with Monegasque law applicable in the alternative.

8.5 The provisions, as set out in the IAAF Rules which appear relevant to this arbitration are set out below.

8.6 Rule 32.2 of the IAAF Rules provides:

"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:

a) Presence of a Prohibited Substance or its Metabolites or Markers in an Athlete's Sample:

i) it is each Athlete's personal duty to ensure that no Prohibited Substance enters his body. Athletes are responsible for any Prohibited Substance or its Metabolites or Markers found to be present in their Samples…".

8.7 Rule 40.2 of the IAAF Rules provides:

"Ineligibility for Presence, Use or Attempted Use or Possession of Prohibited Substance and Prohibited Methods.

The period of Ineligibility imposed for a violation of Rules 32.2(a) (presence of a Prohibited Substance or its Metabolites or Markers), 32.2(b) (Use or Attempted Use of a Prohibited Substance or Prohibited Method) or 32.2(f) (Possession of Prohibited Substances and Prohibited Methods), unless the conditions for eliminating or reducing the period of Ineligibility is provided in Rules 40.4 and 40.5, or the conditions for increasing the period of Ineligibility as provided in Rule 40.6 are met, shall be as follows:-

First violation: Two (2) years Ineligibility".

8.8 Rule 38.15 of the IAAF Rules sets out the very limited circumstances arising in doping cases in athletics which the IAAF considers may be considered as exceptional thereby warranting a reduced sanction. The Rule provides as follows:

"All decisions taken under these Anti-Doping Rules regarding exceptional/special circumstances must be harmonised so that the same legal conditions can be guaranteed for all Athletes, regardless of their nationality, domicile, level or experience. Consequently, in considering the question of exceptional/special circumstances, the following principles shall be applied:-

(a) it is each Athlete's personal duty to ensure that no Prohibited Substance enters his body tissues or fluids. Athletes are warned that they shall be held responsible for any Prohibited Substance found to be present in their bodies (see Rule 32.2(a)(i)).

(b) exceptional circumstances will exist only in cases where the circumstances are truly exceptional and not in the vast majority of cases.

(c) taking into consideration the Athlete's personal duty in Rule 38.15(a), the following will not normally be regarded as cases which are truly exceptional; an allegation that the Prohibited Substance or Prohibited Method was given to an Athlete by another Person without his knowledge; an allegation that the Prohibited Substance was taken by mistake; an allegation that the Prohibited Substance was due to the taking of contaminated food supplement's or an allegation that medication was prescribed by Athlete Support Personnel in ignorance of the fact that it contained a Prohibited Substance …".

8.9 Rule 38.16 of the IAAF Rules provides:

"The determination of exceptional/special circumstances in cases involving International Level Athletes should be made by the Doping Review Board …".

8.10 Rule 40.5(b) of the IAAF Rules states as follows:

"(b) No Significant Fault or Negligence: if an Athlete or other Person establishes in an individual case that he bears No Significant Fault or Negligence, then the otherwise applicable period of Ineligibility may be reduced, but the reduced period of Ineligibility may not be less than one half of the period of Ineligibility otherwise applicable. If the otherwise applicable period of Ineligibility is a lifetime, the reduced period under this Rule may be no less than eight (8) years. When a Prohibited Substance or its Markers or Metabolites is detected in an Athlete's Sample in violation of Rule 32.2(a) (Presence of a Prohibited Substance), the Athlete must establish how the Prohibited Substance entered his body in order to have the period of Ineligibility reduced".

8.11 Rule 40.10 of the IAAF Rules provides:

"Commencement of the Period of Ineligibility

10. Except as provided below, the period of Ineligibility shall start on the date of the hearing decision providing for Ineligibility or, if the hearing is waived, on the date the Ineligibility is accepted or otherwise imposed. Any period of Provisional Suspension (whether imposed or voluntarily accepted) shall be credited against the total period of Ineligibility served".

9 MERITS OF THE APPEAL

9.1 In these present proceedings, the Sole Arbitrator noted that both Athletes had a prohibited substance or substances in their bodies in breach of Rule 32.2(a) of the IAAF Rules and as such were facing a 2 year period of ineligibility in accordance with Rule 40.2 of the IAAF Rules. The Sole Arbitrator therefore had to determine the following:

A. In accordance with Rule 40.5 of the IAAF Rules, in order for exceptional circumstances to apply, have the Athletes established how the prohibited substance(s) entered their systems?

B. If the answer to (a) is yes, have the Athletes established that they bear "No Significant Fault or Negligence" entitling them to any reduction in the otherwise applicable 2 year sanction?

C. If the answer to (b) is yes, what is the appropriate length of suspension to be imposed?

D. In accordance with Rule 40.10, what is the correct start date for the Athletes' period of Ineligibility?

A. Have the Athletes established how the prohibited substance(s) entered their systems?

9.2 In order for the Athletes to be able to argue that exceptional circumstances apply in their cases, they must first, in accordance with Rule 40.5(b), satisfy the threshold test of establishing how the prohibited substance(s) entered their systems. The standard of proof, in accordance with Rule 33.2 of the IAAF Rules, is a balance of probability, a standard that has been held to mean that an athlete alleged to have committed a doping violation bears the burden of persuading the judging body that the occurrence of a specified substance is more probable than its none occurrence (CAS 2006/A/1067 paragraph 6.4); alternatively that the innocent explanation provided is more likely than not the correct explanation.

9.3 In other words, in order to invoke exceptional circumstances, the Athletes must persuade the Sole Arbitrator that their adverse findings for Stanozolol and Methandienone (in the case of Ms. Thomas) and for Methandienone (in the case of Ms. Jose, Ms. Ashwini and Ms. Panwar) are attributable to the taking of a supplement by the name of Kianpi Pills.

9.4 The Sole Arbitrator noted that the Athletes had provided affidavits before the ADDP and ADAP submitting a number of documents, one of which being a food supplement program from 15 October to 15 November 2010 given to them by the Coach and also a copy of a food supplement program from 10 May until 20 June 2011, also from the Coach. The Sole Arbitrator noted that both programs provided that the Athletes should consume "ginseng". Further, the Sole Arbitrator noted that the remaining supplements from the packets of the Kianpi Pills provided by the Coach were analysed by the New Delhi Laboratory and found to contain both Stanozolol and Methandienone. Further, the Athletes relied on the fact that the analysis by the

New Delhi Laboratory of the various other supplements that they were taking at the time did not disclose the presence of any prohibited substances.

9.5 The First Decision held:

"the bottles of Ginseng Kianpi Pil given by the Coach Mr Iurii Ogorodnik were contaminated and contained Methandienone and Stanozolol. The adverse analytical findings in the samples of the athletes were a result of the contaminated food supplement namely Ginseng Kianpi Pil given to them by the Coach Mr Iurii Ogorodnik".

9.6 The Appealed Decision held:

"This Panel is thus of the view that the athletes have been clearly able to establish, by balance of probabilities, that the source of the prohibited substance in the body of the athletes is Ginseng Gianpi Pil only ….

Analysis of the Panel

At the outset the Panel holds that the athletes have been able to establish beyond reasonable doubt that the prohibited substance entered their body through the Ginseng Kianpi Pil administered by the Coach appointed by the Government of India. The Ginseng Kianpi Pill were found to be contaminated ….

The Athletes in the present case have given the explanation which the Panel accepts and which WADA does not challenge. Therefore how the prohibited substance entered the body of the athletes is established".

9.7 The Appellant submitted that the Athletes have not established how the prohibited substance(s) entered their system to the requisite standard of proof, i.e. they had not demonstrated that the source of their adverse analytical findings is more likely to have been the Kianpi Pills than not to have been. Further, the Appellant believes that the evidence before the ADDP and ADAP was insufficient to establish how the prohibited substance(s) entered their systems. To the contrary, the IAAF alleged a number of "just as likely, if not more likely, reasons" for the Athletes adverse findings and the Sole Arbitrator addresses these below along with the Athletes' replies.

a. The evidence that the Athletes were taking the Kianpi Pills purchased by the Coach in the Athletes village store at the Asian Games was disputed.

   i. The Appellant submitted that neither the Coach nor the Athletes have been able to produce any evidence of the Coach's purchase of the Kianpi Pills in Guagzhou. Further, the Appellant submitted that the Appellant has provided a statement from the company that operated the shop at the Athletes village in Guagzhou, which confirmed that Kianpi was not for sale at the shop at any time during the Asian Games.

   ii. The Athletes disputed the Appellant's assertions and submitted that there was no record to show that there was only one supplements shop operating during the Asian Games. Further, the Athletes argued that the declaration given by the company has no value, since nobody would admit that contaminated substances were being sold in the athletes village. Also the Athletes argued that the company clearly has a commercial interest and if they admitted selling contaminated

substances then they would not be able to operate in the future at any Games. They also relied upon the statements given by the Coach in the press during the investigation in which he explained that he purchased the Kianpi Pills at the Asian Games. Further, the Coach made the same admission to the Government of India during their investigation.

b. There was no objective evidence that the Athletes were taking Kianpi at the time of their positive test.

   i. The Appellant submitted that there was no evidence that the Athletes were taking Kianpi at the time of their doping tests. The Appellant relied upon the fact that whilst the Athletes were meticulous in listing out the names of the supplements that they have been taking, none of them disclosed having taken the Kianpi Pills. The Appellant submits that there is no objective/contemporaneous evidence to support the Athletes.

   ii. The Athletes submitted that they provided affidavits before the ADDP and ADAP which provided that they had been the consuming Kianpi Pills. The Athletes submit that because the doping control form did not mention Kianpi by its full name; that did not mean that they were not consuming Kianpi at that time. Ms. Aswini and Ms. Panwar both declared having taken "ginseng" on the form. However neither Ms. Thomas or Ms. Jose declared having taken Ginseng and did not disclose Kianpi. Further, the Athletes submit that they have provided corroborating evidence that they had been taking the Kianpi Pills by way of the Coach's food supplement plans that states that they should take Ginseng; the doping tests that had been carried out before 10 May 2011 which were all clear; their affidavits before the previous hearing; and the conclusion of the internal investigation. Further, they had provided the leftover Kianpi Pills, one sealed bottle and one partly consumed bottle, to the internal investigation.

c. There was no satisfactory analytical evidence that the Kianpi Pills tested by the New Delhi Laboratory contained Stanozolol and Methandienone.

   i. The Appellant submitted that the only evidence that Kianpi tested by the New Delhi Laboratory contained Stanozolol and Methandienone was a one page certificate issued by the NDTL. The Sole Arbitrator notes that the Appellant made a request for disclosure of the underlying analytical material upon which the NDTL Certificate was based however this was not been forthcoming. In light of the 'missing' analytical report the Appellant submits that the Athletes have not met the burden of proof in relation to how the prohibited substance(s) entered their systems.

   ii. The Athletes submitted that the NDTL was a Laboratory under the jurisdiction of WADA. Further, the NDTL was not under the control of the Athletes. No inference can be drawn against the Athletes and its findings should be accepted.

d. There was analytical evidence submitted by two WADA accredited laboratories confirming that the Kianpi Pills do not contain Stanozolol and Methandienone.

i. The Appellant submitted that two of the worlds most respected WADA accredited laboratories in Los Angeles and Montreal tested different batches of Kianpi Pills and found no presence of Stanozolol and Methandienone.

ii. The Athletes submitted that the facts clearly show that there was no difference between Kianpi and ginseng since both are not expected to contain any prohibited substance. The Sole Arbitrator notes that the New Delhi Laboratory tested, presumably, the same batch of Kianpi Pills that the Athletes had taken as the Athletes had provided the High Court Judge with two bottles; one sealed the other partly consumed. The Sole Arbitrator is aware that clearly batches of supplements can be contaminated whilst other batches can contain no prohibited substances; due to the manufacturing process. Further, Mr Capdevielle confirmed that the Appellant had not tested the same batch but the same brand of supplement.

e. The Coach's own belief is that Kianpi Pills were not the source of the Athletes adverse findings.

i. The Appellant submitted that the Coach himself has gone on record as doubting that the Kianpi Pills were the real source of the Athletes' adverse findings. The Sole Arbitrator noted the press release referred to by the Appellant.

ii. The Athletes disputed the press reports. Further, the Athletes submit that the Coach made a statement that he gave the Kianpi Pills to the Athletes and he procured it from the Asian Games village shop. The Sole Arbitrator believes that it may be irrelevant whether the Coach believed that the Kianpi Pills were in fact the source of the prohibited substance(s). The Sole Arbitrator relies upon the fact that there was evidence on the file from the New Delhi Laboratory confirming that the Kianpi Pills, as provided to the Laboratory by the Athletes did in fact contain Stanozolol and Methandienone. Therefore, whether the Coach believes that Kianpi Pills may not have been the source of the adverse findings is somewhat moot and his statements appear to contradict themselves.

f. Did the Coach devise a separate sophisticated doping regimen for the Athletes?

i. The Appellant submitted and provided evidence, by way of an expert report of Dr Audrey Giles, that the Coach prepared another sophisticated doping regimen which included the regular administration of Stanozolol and other steroids (including Winstrol, Menabol and Neurobol). The expert report concludes there was strong support for the view that the Coach wrote the sophisticated doping regimen advising on the use of steroids.

ii. The Athletes disputed the expert report in their written submissions. The Athletes submit that the doping regimen advocating the use of steroids is not in relation to them. The Athletes deny ever taking any steroids such as Winstrol, Menadol and Neurobol. The Sole Arbitrator noted that the doping regimen did not provide for which athletes should be taking such substances. Further although dated it does not provide which year the doping regimen applies.

9.8 The Sole Arbitrator notes that there is no evidence on the file that the Athletes deliberately ingested steroids. Further, the Sole Arbitrator also notes that the Athletes were in fact taking a number of supplements purchased from outside of the training centre which were not from official sources.

9.9 The Sole Arbitrator refers to the documents mentioned at paragraph 9.4 above and also noted that the Coach had provided a statement in which he stated that he had purchased the Kianpi Pills and provided the same to the Athletes. Also, the Athletes had provided the remaining Kianpi Pills to the High Court Judge during the internal investigation. Due to the fact that the Athletes provided, presumably, the same batch of the Kianpi Pills to the New Delhi Laboratory which is a WADA accredited laboratory and that that laboratory confirmed that those Kianpi Pills contained Stanozolol and Methandienone; the Sole Arbitrator finds that, on the balance of probabilities, the Kianpi Pills were the source of the Athletes' adverse analytical findings.

9.10 As the Athletes have satisfied the first condition, the Sole Arbitrator must now move on to the second issue in relation to this matter.

B. Have the Athletes established that they bear no significant fault or negligence entitling them to any reduction in the otherwise applicable 2 year sanction?

9.11 In accordance with Rule 40.5(b) of the IAAF Rules the Athletes must still establish that they bear no significant fault or negligence for their adverse analytical findings if they are to be entitled to any reduction in the otherwise applicable 2 year sanction for a first time violation under Rule 40.2 of the IAAF Rules. The maximum period of reduction under Rule 40.5(b) of the IAAF Rules is one half of the period of ineligibility otherwise applicable, in other words, 1 year.

9.12 In accordance with Rule 38.15 of the IAAF Rules, a finding of no significant fault or negligence under the heading of exceptional circumstances will exist only in cases where the circumstances are truly exceptional and not in the vast majority of cases. Further, Rule 38.15 of the IAAF Rules provides:

"taking into consideration the Athlete's personal duty in Rule 38.15(a), the following will not normally be regarded as cases which are truly exceptional: an allegation that the Prohibited Substance or Prohibited Method was given to an Athlete by another Person without his knowledge; an allegation that Prohibited Substance was taken by mistake, an allegation that the Prohibited Substance was due to the taking of contaminated food supplement; or an allegation that medication was prescribed by Athlete support personnel in ignorance of the fact that it contained a Prohibited Substance".

9.13 In the commentary of the World Anti-Doping Code, it is further suggested that a reduction of sanction based on no significant fault or negligence may be appropriate in cases where the athlete clearly establishes that the cause of the positive test was the contamination in a common

multiple vitamin purchased from a source with no connection to prohibited substances, but only where the athlete otherwise exercised due care in not taking other nutritional supplements.

9.14 The Sole Arbitrator notes that the issue of whether an athlete's negligence is "significant" has been considered many times in CAS jurisprudence which was produced by the parties in their submissions (e.g. in the cases CAS 2005/A/847; CAS 2008/A/1489 and CAS 2008/A/1510; CAS 2006/A/1025; CAS 2005/A/830; CAS 2002/A/951; CAS 2004/A/690; CAS OG04/004) which offers guidance to the Sole Arbitrator.

9.15 The Sole Arbitrator refers in detail to the CAS case CAS 2008/A/1489 and CAS 200/A/1510 which provided:

"7.8 The Panel is not suggesting that an athlete must exhaust every conceivable step to determine the safety of a nutritional supplement before qualifying for a "no significant fault or negligence" reduction. To that end, the Panel recognizes Mr. D.'s argument taking reasonable steps should be sufficient since "one can always do more". The Panel in CAS 2005/A/847 followed this logic when it determined that even though Mr. K. could have had the nutritional supplement tested for content, or simply desired not to take it altogether; "these failures give rise to ordinary fault or negligence at most, but do not fit the category of "significant fault or negligence". Similarly, the Panel distinguishes between reasonable steps Mr. D. should have taken and all the conceivable steps that he could have taken. In light of the risks involved, the Panel finds that Mr. D. did not show a good faith effort to leave no reasonable stone unturned before he ingested Kaizen HMB.

7.9 In addition to his failure to contact the manufacturer directly, the Panel finds that he failed to take the following reasonable steps before taking Kaizen HMB, and that these failures bar a finding that the Appellant exercised the standard of care meriting a "no significant fault or negligence" reduction to the mandated two year period of ineligibility.

(a) Mr. D. did not check with his doctor, the team doctor, or Mr. B. about whether Kaizen was a trustworthy brand of HMB supplement. Mr. B. testified that he told Mr. D. after their meeting about supplements to feel free to call him back to consult about specific brands. Mr. B. would have then categorized the brands from least to most risky. He knew of certain frequently used brands which he could have recommended.

(b) Mr. D. should have done more thorough research. Although the Appellant testified to having done research over the internet for "one hour", websites flagged by WADA and CCES showed that Kaizen promotes bodybuilding and sells products for muscle enhancement. While it is unclear whether these particular sites were available at the time, Mr. D.'s testament indicated that his own internet research was limited at best.

(c) Even that limited research should have provoked caution. However Mr. D. failed to ask for more information and took Kaizen HMB despite coming across information on the internet that should have triggered greater vigilance. He testified that he saw links that Kaizen sold muscle enhancers, but said "what company that sells supplements doesn't also produce this stuff as well?" He did not email or call Kaizen, even though there was a link to the company's contact information and an offer on the website to provide product information sheets if requested. Mr. D. was also aware, from information posted on the Kaizen website that the standard of testing for Kaizen products

was FDA testing, which is not the same as the WADA standard because FDA testing does not test for WADA prohibited substances. He testified that he did not make further enquiries even after the results of his internet research, because he believed "it wasn't going to make a difference. If there was a drug in the product, the company wouldn't tell you". While Mr. D. attitude reflects what may be a realistic approach to the supplement industry, it is not the attitude of someone who sincerely wishes to make sure that what he is ingesting is free of contamination. Rather, his behaviour shows that he took into account a certain margin of risk.

7.10 Mr. D.'s positive test was clearly not as a result of contamination in a common multiple vitamin purchased from a source with no connection to Prohibited Substances.

7.11 In addition, Mr. D. did not exercise due care in not taking other nutritional supplements. He testified that prior to the August 2007 test he was taking Glutamine, Glucosamine Sulfate and fish oil in addition to the HMB supplement.

7.14 The Panel finds that Mr. D's argument that he took HMB on the advice of the team nutritionist, Mr. B, to be inadequate claim for establishing "no significant fault or negligence". To hold otherwise would open a loophole for unscrupulous teams to use prohibited substances and then face reduced penalties. Moreover, Mr. D. did not check Mr. B.'s advice with a doctor or follow up on the advice by asking a doctor or Mr. B. himself about the specific brand".

9.16 The Sole Arbitrator also notes that in the case CAS 2009/A/1870 the Award provides:

"Two principles are usually underlined with respect to the possibility to find an athlete's negligence to be "non-significant": a period of ineligibility can be reduced based on no significant fault or negligence only in cases where the circumstances are truly exceptional and not in the vast majority of cases; for instance, a reduced sanction based on "no significant fault or negligence" can be applied where the athlete establishes that the cause of the positive test was contamination in a common multiple vitamin purchased from a source with no connection to prohibited substances and the athlete exercised care in not taking other nutritional supplements (cf D. Award, at 7.4, quoting from the official commentary from the WADC).

118. As a result, a point can be established: the fact that an adverse analytical finding is the result of the use of a contaminated nutritional supplement does not imply per se that the athlete's negligence was "significant"; the requirements for the reduction of the sanction under FINA DC 10.5.2 can be met also in such circumstances. It is in fact clear to this Panel that an athlete can avoid the risks associated with nutritional supplements by simply not taking them; but the use of a nutritional supplement "purchased from a source with no connection to prohibited substances, where the athlete exercised care in not taking other nutritional supplements" and the circumstances are "truly exceptional", can give rise to "ordinary" fault or negligence and do not raise their level of "significant" fault or negligence".

9.17 The Sole Arbitrator will refer to the above cases later in this award, however he considered both cases in light of the parties submissions.

9.18 The Sole Arbitrator considers the following submissions and assertions made by the Appellant along with the Athletes' replies; the Athletes' submissions to the ADDP; and the basic factual premises on which the Athletes' made submissions to the ADAP:

a. The Coach was a Government appointed Coach having a clean track record.

   i. The Appellant disputed that the Coach could be said to have had a clean track record. The Appellant relied upon the expert evidence of Dr Giles and the witness statement of Mr Capdeville which confirmed that many of the previous IAAF investigations in to doping related incidents in India have involved the Coach and/or the athletes whom he coaches.

   ii. The Athletes denied that the Coach advocated the taking of steroids. They were taking Ginseng and other supplements in accordance with his written programme. The Athletes disputed the evidence of Dr Giles and the Sole Arbitrator noted the issues in relation to the same. The Athletes also noted that no action has been taken against the Coach by the IAAF or AFI.

b. The Athletes had never even taken any supplement, medicine on their own unless it has been provided to them at the NIS. This fact has been corroborated by the SAI report and statement of the Coach.

   i. The Appellant disputed the submission. The Appellant argued that the Athletes rarely, if ever, took the pre-tested supplements on offer to them at the NIS and instead went out and spent thousands of Rupees buying a variety of supplements from a local chemist that was openly selling steroids. The Appellant further noted that this specific chemist mentioned by the Athletes as being the one from which products were purchased is one of the chemists in Patiala that has recently been closed down for selling steroids in breach of local licensing laws.

   ii. The Athletes submitted that it is absolutely false to allege that a medical store had been the supply of the contaminated supplements to the Athletes. Further, that the store was still open and operating as a chemist. The Sole Arbitrator noted that the Ms. Panwar's oral evidence at the hearing was not satisfactory in relation to the purchase of the supplements on 10 May 2011. Ms. Panwar struggled to recall whether it was in fact the Athletes or the Coach who physically purchased the supplements, before eventually confirming that it was the Coach; which contradicts evidence given before the previous panels. The Sole Arbitrator noted that in the report of the Sports Authority of India it clearly stated that:

   "Ms Priyanka Pawar informed that on 10 May, 2011, 8 girls namely Ms. Mandeep Kaur, Ms. Jauna Murmu, Ms. Ashwani Ac, Ms. Manjeet Kur, Ms. Jose, Ms. Tianna Thomas, Ms. Mridula and myself collected about Rs. 5,000/6,000 and bought the food supplements from M/S Hind Medical Stores, a Medical Shop situated near Ayurvedic College outside the NIS Campus".

   iii. Ms. Panwar did in fact confirm that the Coach asked them for money to purchase supplements and therefore it must have been clear to the Athletes that the supplements were not from the NIS/AFI training centre. She confirmed that she was unaware of where the Coach had purchased the supplements from. She also confirmed that generally the supplements came from the NIS, such as protein and iron, but sometimes they did not.

c. Nothing could have been provided to the Athletes at the NIS by anyone without the prior approval or consultation with SAI.

   i. The Appellant submitted that the claim is irrelevant since, as stated above, the evidence is that the Athletes were not relying solely on supplements that had been provided by the NIS. The Coach and the Athletes both considered the vitamins that were on offer from the NIS to its resident athletes to be insufficient for their purposes. The Appellant submitted that the Athletes therefore had their own specific program devised for them by the Coach and went out on the open market to purchase the necessary products to comply with that program, despite clear warnings from the NIS that they should not do so.

   ii. The Athletes submitted that the Coach had collected the money from all the Athletes to buy further supplements from Hind Medical Stores but in any event, the supplements were tested by a WADA accredited laboratory and were found to contain no prohibited substances. The Sole Arbitrator noted that again, at the hearing, the Athletes were not credible in whether it was in fact the Athletes or the Coach who purchased the supplements. However, clearly the issue is that the Athletes were aware that supplements were purchased either by them or for them and that these supplements were not from official sources as they had submitted to the ADDP and ADAP.

d. The Athletes belong to poor farmer families and did not have education well enough to read and comprehend English and access the Internet.

   i. The Appellant disputed this submission and relied upon the fact that there is evidence that the Athletes are well educated as Ms. Ashwini works for a National Bank, Ms. Jose and Ms. Panwar for the Indian Railways and Ms. Thomas for the Oil and Natural Gas Corporation (Oil India Limited). Further, that through their participation in sport, the Athletes have travelled internationally and they have earned substantial sums from both the Indian Government and sponsors. Further, the Athletes have admitted to having access to the internet and that they are on Facebook. The Appellant concludes the notion that the Athletes are somehow uneducated and live in remote farming areas without access to modern resources is on the evidence very far from the truth. The Appellant concluded that it was barely credible that the Athletes rely on others to use Facebook.

   ii. The Athletes submitted that when they have travelled they have remained under the control of the federation and they are not freely allowed to move outside the sports arena. Further, the access to the internet was subsequent to the detection of the adverse analytical finding. Ms. Panwar stated that the Facebook page was not in fact hers. She confirmed that she did work for the Western Railways.

   The Sole Arbitrator noted that Mr Capdevielle had explained that he had spoken to a retired official at the NIS and that he had confirmed that there was an internet facility on the NIS complex and had been for some time prior to the adverse tests. Further, he had stated that the retired official confirmed that the athletes were allowed to freely leave the campus.

9.19 The Sole Arbitrator notes that the starting point is the basic principle that underpins IAAF anti-doping rules and is so critical to the fight against doping in international sport, namely that *"it is each Athletes personal duty to ensure that no prohibited substance enters his body. Athletes are responsible for any prohibited substance or its metabolites or markers found to be present in their samples"*. The question therefore is whether the Athletes have fulfilled their basic duty. In light of the above, clearly the Athletes are responsible for their own actions including the duty personally to manage their dietary needs in a responsible manner in light of the anti-doping rules.

9.20 The Sole Arbitrator also notes the CAS case CAS 2002/A/385 which stated as follows:

> *"50. It has been a known and widely publicised fact for several years that food supplements can be – and sometimes intentionally are – contaminated with products which are prohibited in sports. An athlete who ignores this fact, does so at his/her own risk. It would be all too simple and would frustrate all the efforts being made in the fight against doping to allow athletes the defence that they took whatever the team doctor gave them, plus attempting to shift the responsibility to someone else. The athlete's negligence lies in the fact that he/she uses food supplements which include a generally known risk of contamination. The extent of the precaution taken to reduce the risk of contamination may have a bearing on the extent of the sanctions.*
>
> *51. The Panel notes that the above analysis is perfectly in line with the established CAS case law to the effect that athletes themselves are solely responsible for, inter alia any medication and nutritional supplements they take. Even medication taken on the basis of a doctor's prescription has been held not to suffice a valid excuse (CAS 92/73, CAS digest, page 153, 158; CAS 2001/A/317 award of 9 July 2001, page 23).*
>
> *52. Further support for this principle can be found in the recommendation of the first International Athletes Forum held in Lausanne on 19/20 October 2002, where the IOC Athletes Commission concluded:*
>
> *"The Athletes should assume total responsibility for the intake of any substance, including food supplements, that may result in a positive doping sample".*

9.21 The Sole Arbitrator noted that the principle of personal responsibility, in particular relating to the taking of food supplements, was further supported in a case of CAS 2006/A/1032. In this case a 15 year old tennis player who took little interest in anti-doping and relied on her father to manage her dietary and nutritional needs could not then place the blame at his door when she tested positive and escape from a finding of significant fault or negligent and a consequential 2 year suspension. The Panel at paragraph 145 of the decision held:

> *"For the above reasons, the Panel finds that in this case the player's responsibility under articles 5.1 and 5.2 of the TADP must be assessed according to the same criteria as for an adult even if she was only 15 years old and the doping offences occurred and that to the extent she was represented by her father in exercising her anti-doping duties his degree of diligence must count as her own in determining the degree of fault".*

9.22 Therefore, the CAS jurisprudence is clear that Athletes cannot shift their responsibility on to third parties simply by claiming that they were acting under instruction or that they were doing

what they were told. As the Panel in CAS 2002/A/385 held, that would be all too simple and would completely frustrate all the efforts being made in the fight against doping. The questions in this appeal are rather how the Athletes/Coach sought to discharge their duty to ensure that no prohibited substance entered the Athletes' bodies and did they make a good faith effort to leave no reasonable stone unturned before they ingested what they did?

9.23 The Sole Arbitrator refers to each submission made by the Appellant that the Athletes were significantly at fault or negligent in at least the following ways; and the replies from the Athletes:

a. The Athletes failed to heed the numerous warnings about taking supplements:

i. The Appellant submitted that the Athletes decided to take supplements despite the numerous warnings in place. The Appellant relies upon the IAAF Nutrition in Athletics Guide which is available on the IAAF website. The Athletics Guide provides a warning on taking supplements and is quite clear:

"check all supplements with the medical officer. If there is any doubt at all, don't take it".

ii. The Appellant also submitted that warning have been posted in clear terms by WADA both in the publication of its Dangers of Doping document and on its website:

"*Dietary or nutritional supplements:*

Supplement companies are not highly regulated – meaning you never know what you are taking. There could be a banned substance in your "all natural" supplement. Use at your own risk!

Can an athlete test positive from using dietary/nutritional supplements?

Extreme caution is recommended regarding supplement use.

The use of dietary supplements is a concern because in many countries the manufacturing and labelling of supplements may not follow strict rules, which may lead to a supplement containing an undeclared substance that is prohibited under Anti Doping Regulations".

iii. The Appellant further submitted that further warning were issued within India by a number of different responsible authorities, including the NADA who published advice to its athletes in its doping control handbook which provides:

"also, athletes should always make their doctor aware that they are bound by specific rules of their sport. Those who are unsure of what a product contains should not take it until they are sure it is not prohibited. Ignorance is never an excuse".

iv. The Appellant also submitted that the Athletes received warnings in the clearest terms from the NIS. The NIS coaches advised the Athletes to be extremely careful in whatever they took and that the NIS medical staff specifically advised the Athletes not to purchase supplements from outside of the NIS by quoting the NIS executive director from a press report:

"we have clear directions that no athlete should buy or get outside supplements and we do periodic checks to ensure that. We have a panel of dieticians and doctors and the supplements have been made after consultations with coaches and the respective athletes. If the athletes have some problem,

they should inform us or tell the respective federations who would act according. In any case, the athletes should not use any outside supplements".

v. The Appellant concluded that despite all of the numerous warnings, the Athletes were seemingly *"hell bent"* on using a wide range of food supplements including those purchased from China and from the local marketplace. Therefore they were significantly negligent in doing so and must now assume the consequences of their actions.

vi. In response, the Athletes highlighted that neither the AFI nor the Sports Ministry or the NADA has ever made any campaign against doping in India. Further they submitted that the IAAF has never given any guidance at any sports arena about the contamination of supplements. Further, that no reliance can be placed upon the booklet of the NADA until it was proved that it was brought to the specific knowledge of the Athletes.

vii. The Athletes submitted that no warnings regarding food supplement contamination had ever been brought to their knowledge. Further, the Athletes submitted that they have never accessed the IAAF or WADA websites. The Athletes concluded that there is no education or guidance given to athletes in India and that western principles cannot apply to Indian athletes.

viii. The Sole Arbitrator again refers to the witness statement and oral evidence of Mr Capdevielle who explained that the retired NIS official stated that he and his subsequent replacement advised athletes and coaches on all medical matters, including nutrition. He further stated that the athletes and coaches are regularly warned on the risk associated with the use of nutritional supplements purchased outside of the campus and that he and his team were available at any time to discuss issues with the athletes. He also confirmed that Dr Bhattacharjee was involved in supervising the distribution of food supplements to athletes and coaches.

ix. The Sole Arbitrator notes the risk of taking food supplements are well known in the sporting community and that cases of contaminated or mislabelled supplements have been an issue in the last 20 years. Further, the Sole Arbitrator believes that as international athletes competing at the level that the Athletes competed, it is somewhat unbelievable that the Athletes can submit that they were not aware of the risk of taking supplements and had received no education or warnings at all. Whilst the level of anti-doping education in India does not appear to be at a satisfactory level and perhaps not as developed as in many other parts of the World, there does appear to be some basic education and/or warnings given at the NIS. The Sole Arbitrator also refers to the numerous doping cases, including of that of CAS 2009/A/1870, which are well known and have been publicised throughout the World. Further, as stated in the case of CAS 2008/A/1588 *"the issue of nutritional supplements leading to positive doping tests is however well known in sport".* That said, the Sole Arbitrator was looking for some direct evidence that specific educational documents with supplement warnings were provided to the Athletes. The Sole Arbitrator notes that when the Appellant simply relies upon supplement warnings

that are contained on websites or in guides which it has no evidence that the Athletes have actually been provided with it is highlighting a major weakness in the anti-doping campaign – the lack of direct education to athletes. The Sole Arbitrator notes that again, as is often the case, governing bodies simply rely upon such documents and websites without actually providing the Athletes with sufficient education on such serious issues. At no point throughout the hearing could the Appellant provide satisfactory evidence that the Athletes had actually been provided with any education on supplements. They only sought to rely upon the general websites and handbooks etc. However, this cannot excuse the Athletes who as international athletes must surely have been aware of the basic risks of taking supplements at the very least and who, if able to maintain a Facebook presence, must have been able to make some basic enquiries. Whilst the Appellant has not provided evidence of what education the Athletes personally received, it has demonstrated some education/warnings were given at the NIS, where the Athletes were based for some time.

x. CAS case law has consistently established the principle that Athletes are significantly negligent and at fault if they take food supplements in view of the numerous warning about the risks of contamination (CAS 2003/A/484; TAS 2005/A/989; CAS 2008/A/1629; CAS 2008/A/1489; CAS 2008/A/1510 and CAS 2007/A/1445).

b. The Athletes failed to seek advice from a specialist doctor before taking the supplements;

i. The Appellant submitted that the SAI enquiry confirms that Dr Bhattacharjee was the person within the NIS training centre who was responsible for distributing pre-tested supplements to Athletes and he was therefore qualified to advise the athletes on the supplements that they were taking. Dr Bhattacharjee confirmed that the Athletes did visit him from time to time, albeit irregularly, to collect the NIS supplements on offer. The Appellant's position is that the Athletes could and should have visited Dr Bhattacharjee at the NIS before they took the Kianpi Pills and indeed the other supplements that the Coach provided.

ii. The Athletes disputed the Appellant's submission and stated that Dr Bhattacharjee was the person responsible for distributing pre-tested supplements to the Athletes. They denied that he was a qualified person on supplements. Ms. Panwar explained that she did not discuss Kianpi with a medical officer and that she only discussed that same with the Coach. She stated that she did not know Dr. Bhattacharjee and that she only visited a doctor if she was ill; in which case she would see them with the Coach. She stated that she was unaware that doctors could advise on supplements. Further the Athletes submitted that had they checked the supplement with Dr Bhattacharjee he would not have identified that it contained any prohibited substances as it should not have contained any, this is a case of contamination.

iii. The Sole Arbitrator notes that the Athletes initially submitted that they did not believe that they had to get the Kianpi Pills tested as they believed that it had been provided by AFI through their Coach. At the hearing Ms. Panwar confirmed that

supplements provided by the AFI and NIS had been provided by the Coach and therefore they were not aware that the Coach had obtained Kianpi from another source. However it became apparent at the hearing that the Athletes were aware that the Coach, or themselves, was obtaining supplements from the open market. Ms. Panwar also confirmed that no research was carried out prior to taking these supplements and/or the Kianpi Pills. The Sole Arbitrator believes that the Athletes should have proceeded with caution when presented with the Kianpi Pills as the writing on the bottle was in Chinese and it was different from the Ginseng supplements they had taken before. The Sole Arbitrator also notes that CAS jurisprudence consistently held that athletes who do not actively seek out specialist medical advice before taking medicine or supplements preclude a finding that they have exercised a standard of care meriting a no significance fault or negligence reduction (CAS 2008/A/1565; CAS 2008/A/1489 and CAS 2008/A/1510). The Sole Arbitrator agrees with the Athletes that Dr Bhattacharjee at first sight would have been unable to identify that the supplement contained prohibited substances. However the doctor may have tested the supplements and confirmed that they did contain prohibited substances. At the very least, the Sole Arbitrator believes that the doctor would have warned the Athletes that there is always a risk of contamination with supplements and that was why the NIS gave out supplements at the camp and why the Athletes at the camp had been warned about purchasing or taking supplements purchased from outside. If the Athletes had asked whether the Coach had obtained them from the NIS then, when realising that he had not, they would have been able to query the same with the doctor. If the Athletes had made the doctor aware that the Coach had purchased supplements from the open market then he would have advised them accordingly. At the end of the date, the Sole Arbitrator recognises that many athletes take supplements to aid their training and it is not practical to test every bottle or package, but the more that are taken and from more "riskier" sources, the higher the chance of contamination and the greater the need to carry out some basic checks.

c. They failed to conduct a basic review of the packaging of the supplements.

i. The Appellant submitted that the Athletes should in any event have closely examined the packaging of the supplements that they were being told to take. The Appellant notes that the Kianpi Pills were different from the usual Ginseng product that they had been taking; that it was not a regular Ginseng product but Ginseng Kianpi, the addition of a potential second ingredient that should have given cause for concern. Also, the packaging indicated that the supplements had come from China and the ingredients were written in the Chinese language. The Appellant submitted that the Athletes should never have consumed supplements from a foreign country without first having been able to check the ingredients against the WADA prohibited list. Lastly the IAAF submitted that even the wording on the packaging written in English should have caused alarm as it provides *"gaining weight without accumulating excessive fat … thus leading to gradual development of strong muscles and the ideal physique"*.

ii. The Athletes dispute the Appellant's submissions and again submitted that any review of the ingredients would not have showed anything, as this is a case of contamination.

iii. The Sole Arbitrator notes that the Athletes took the Kianpi Pills, provided by the Coach and they explained that they believed that it was from the NIS. However, the Sole Arbitrator believes that on receiving Kianpi, in a bottle with Chinese language on and as a different name to the normal Ginseng that they took; the Athletes should have at the very least, queried the new supplement with the Coach. There was no evidence that they had done so.

d. They failed to conduct any basic Internet research about the supplements.

i. The Appellant submitted that the Athletes did not research Kianpi and this is again negligent conduct in the extreme. It was further explained that the most basic of Internet research should have provoked extreme caution. The Appellant submitted evidence of a Google search for Kianpi which associates the product with *"buying steroids online"* and provides a link to a bodybuilding forum.

ii. The Sole Arbitrator again notes that the Athletes did not undertake any research, as Panwar confirmed at the hearing, however that they explained that they did not believe that they needed to do so on the assumption that the Coach had received the supplements from and official source; the NIS/AFI. However, as explained above, it became apparent at the hearing, and evidence on the file, that the Athletes were well aware that the Coach, and even themselves, were purchasing supplements on the open market; why else would he ask the Athletes to give him money for the same? Further Ms. Panwar stated that she was aware that generally the supplements that the Coach gave were from the NIS however sometimes they were not. The Sole Arbitrator notes that the Athletes, by their own admission, did not take any reasonable steps before taking Kianpi and that there is no evidence on the file of the Coach taking any reasonable steps. Ms. Panwar confirmed that no internet searches were undertaken until after the adverse finding.

e. They failed to make enquiry of the manufacturer or arrange for the supplements to be tested before using them.

i. The Appellant submitted that athletes who have benefited from a no significant fault or negligence reduction in sanction from the 2 year period have always either made a specific enquiry of the manufacturer of the supplement or had the supplements tested. The Appellant further noted that whilst it may have been unreasonable for the Athletes to arrange personally for the testing of the supplements, it was certainly not unreasonable to have expected them to make such arrangements through the NIS and in particular, through Dr. Bhattacharjee.

ii. The Athletes disputed the Appellant's submission and explained that no manufacturer was stated on the supplement bottle provided to them by the Coach.

iii. The Sole Arbitrator notes that the Athletes were based at the NIS and that there were doctors and support personnel available who may have been able to advise

the Athletes on the supplement. Further, the Sole Arbitrator notes the case of CAS 2009/A/1870 and will refer to the same below.

f. They failed to exercised due care in not taking other supplements.

i. The Appellant submitted that the Athletes were not simply taking Kianpi alone. They were also taking a wide array of food supplements thereby significantly increasing the risk of ingesting a supplement that might be contaminated. The Appellant noted that some of the other supplements that the Athletes had been consuming promoted themselves as being *"building blocks of muscle mass in size", "boosting testosterone"* and *"allowing for greater muscle growth and increased strength in size"*.

ii. The Sole Arbitrator noted the decision in CAS 2008/A/1489 and CAS 2008/A/1510 in which that panel, in rejecting the athlete's claim for reduction in a 2 year sanction, made a specific point to the fact that he had been taking a number of other supplements than the one that led to him testing positive (including some of the same supplements taken by the Athletes such as BSA and Tribulus) and that he had thereby taken *"on the risk of contamination by taking not just one, but several supplements"*. Further, as provided in the commentary to the WADA Code there may only be grounds for possible reduction in the 2 year sanction if the finding is due to a contaminated vitamin, (i.e. not a supplement – although this was not a point taken by the Appellant, so need not be considered any further) and provided that the Athlete otherwise exercised due care in not taking other nutritional supplements.

g. The simple fact of the matter is the Athletes took no steps at all.

i. The Appellant submitted a number of, what it believed were, perfectly reasonable steps that the Athletes could have and should have taken before taking the Kianpi Pills and the other supplements. The Appellant submitted that the simple fact of the matter is that the Athletes took no steps at all to investigate the Kianpi Pills or indeed any of the other supplements and that they put their blind faith in others on whom they now seek firmly to place the blame.

ii. Ms. Panwar at the hearing confirmed that she did not make any checks on the supplements, including the Kianpi Pills.

9.24 The Sole Arbitrator notes the case of CAS 2003/A/484 in which the panel summed up:

"this "see no evil, hear no evil, speak no evil" attitude in the face of what rightly has been called the scourge of doping in sport – the failure to exercise the slightest caution in the circumstances – is not only unacceptable and to be condemned, it is a far cry from the attitude and conduct expected of an athlete seeking the mitigation of his sanction for a doping violation under applicable FINA Rules".

9.25 Also in the case CAS 2006/A/1067 the Panel explained that:

"Even assuming that the Respondent told the truth about the night of 19 October 2005, it is evident from the records that Mr. Kr failed to exercise any caution (let alone the utmost caution), thereby failing both the "No Fault or Negligence" test and the "No Significant Fault or Negligence" test".

9.26 The Sole Arbitrator also considered in detail the case of CAS 2009/A/1870 in which that panel agreed with the previous hearing panel that the circumstances of CAS 2009/A/1870's case were "truly exceptional". The panel relied upon the following:

"H. had personal conversations with AdvoCare about the supplements' purity prior to taking them; H. had been told by AdvoCare that its products were tested by an independent company for purity and its website confirmed that, though only with respect to one of its products; the AdvoCare website assured that its products were "formulated with quality ingredients"; H. had obtained the supplements directly from AdvoCare not from an unknown source. The supplements H. took were not labelled in a manner which might have raised suspicions; H. took the same supplements for at least 8 months prior to her positive doping control result. H. had obtained an indemnity from AdvoCare with respect to its products; H. had consulted with various swimming personnel, including the team nutritionist and the USOC sports psychologist, and her coach, about the quality of the AdvoCare products. In otherwise, H. appears to have purchased the supplements which caused the Adverse Analytical Finding from a source unrelated to prohibited substances, and exercised care in not taking other nutritional substances".

9.27 The Sole Arbitrator believes that this matter is considerably different to that of CAS 2009/A/1870 in that the Athletes in this matter did not take any of the reasonable steps expected of them before taking such a supplement and neither did the Coach. Further, the Athletes in this matter had either themselves or had the Coach purchased many other supplements for them to use from the open market. They also consumed a number of supplements and not just simply the one which, on the balance of probabilities, caused the adverse analytical finding.

9.28 The Sole Arbitrator notes that the Athletes submitted that they did not take any steps because they believed that the Coach had obtained the Kianpi Pills from an official source; either the NIS or the AFI. However, it is clearly evident from the file and from the Athletes oral evidence at the hearing that the Athletes were aware that the Coach, and even possibly themselves, were purchasing supplements from the open market and therefore (in light of the Sole Arbitrator's belief that at the very least the Athletes as International Competitors must have been aware of other doping cases in which high profile athletes have been suspended due to taking supplements which were contaminated) the Athletes should have at the very least asked the Coach from where the supplements had been purchased and taken some of the steps that H. took. Instead the Athletes took no steps at all.

9.29 The panel in CAS 2009/A/1870 recognised that H. could have taken other conceivable steps:

"for instance she could have conducted further investigations with a doctor or another reliable specialist; she could have had the supplements tested. Those circumstances actually show that H was indeed negligent, also considering that the risks associated with food supplements are well known among athletes, years after the first cases of anti-doping rule violations caused by contamination or mislabelled products were detected and considered in the CAS jurisprudence".

9.30 In the CAS 2006/A/1032 award the panel explained that *"the player's father had acted negligently and naively in handling what he perceived to be the dietary needs of his daughter … he never vetted the supplements in any manner to check for possibly prohibited substances …. That said, he is not necessarily to blame because … the Panel considers the player was capable of understanding anti-doping requirements and of discussing them with her father".*

9.31 The Sole Arbitrator notes that in this matter the Athletes may not be deemed informed athletes due to the complete lack of education that they had been provided the First Respondent and in general in India. However, as explained above, the Sole Arbitrator believes that the Athletes must have been aware of the basic risks of contamination of food supplements. As stated in the CAS 2006/A/1032 award, and other CAS jurisprudence, the Coach's degree of fault must count as the Athletes in determining their degree of fault. The Appellant has clearly set out the steps that it believes the Athletes should have taken in this matter and further the Sole Arbitrator has quoted the above CAS 2009/A/1870 case in which that panel also looked at the steps which the athlete had taken. Further, the Athletes could have taken some of the steps that CAS 2009/A/1870 in fact did not take by conducting further investigations with a doctor or specialist and the Sole Arbitrator notes that these individuals would have been available to the Athletes at the NIS. In comparison with the decision in CAS 2009/A/1870, the panel there found that the athlete had shown good faith efforts:

"The panel however finds that H. has shown good faith efforts "to leave no reasonable stone unturned" (D. award 7.8) before ingesting the AdvoCare products, she made the research and investigation which could be reasonably expected from an informed athlete wishing to avoid risks connected to the use of food supplements".

9.32 In this matter it must be stated that the Athletes have <u>not</u> shown good faith efforts to leave no reasonable stone unturned as in fact they made <u>no</u> efforts at all in relation to the Kianpi Pills and the other supplements that they were taking. Contrary to the panel in CAS 2009/A/1870, that felt that the athlete could be found to bear no significant fault or negligence the Sole Arbitrator in this matter believes that the Athletes cannot establish on the facts that they bear no significant fault or negligence for the actions, indeed where highly negligent in taking a cocktail of supplements without making any basic checks on the source or ingredients. The Sole Arbitrator believes there were sufficient facilities and personnel available at the NIS training centre which the Athletes were negligent not to use.

9.33 The Sole Arbitrator believes that this case is more akin to that of CAS 2008/A/1489 and CAS 2008/A/1510, although the athlete in such case had in fact taken more reasonable steps than the Athletes and Coach in this matter. As in the above quoted matters, the Athletes failed to contact the manufacturer directly; did not check with a doctor or nutritionist; and should have undertaken some research. The Athletes argument that they had taken the Kianpi Pills on the instruction of the Coach is an inadequate claim for establishing "no significant fault or negligence".

9.34 The Sole Arbitrator finds that the Athletes were in fact guilty in a number of respects of serious fault or negligence in their conduct and that they must now serve the full 2 year period of

suspension. However, the Sole Arbitrator would like to stress again that the Appellant and First Respondent need to take further positive action to educate Athletes in relation to the risks of taking supplements in India.

9.35 Finally, the Sole Arbitrator is comforted in his finding which follows CAS jurisprudence that athletes are significantly negligent and at fault if they take food supplements in view of the numerous warnings of the risks of contamination (CAS 2003/A/848; TAS 2005/A/989; CAS 2008/A/1629; CAS 2008/A/1489 and CAS 2005/A/1510; CAS 2007/A/1445). Further as provided by the other CAS jurisprudence (CAS 2005/A/847; CAS 2009/A/1870), athletes who have benefited from a reduction have sought assurances before taking the supplement. The Athletes did not.

D. In accordance with Rule 40.10, what is the correct start date for the Athletes' period of Ineligibility?

9.36 The Appealed Decision in relation to the start date provides:

"To our mind in the facts and circumstances of the case the Appeal Panel upholds the sanction of 1 year imposed by the ADDP, however the sanction is to commence from the date of sample collection pertaining to each Athlete/appellant. As already stated the sanction of one year seems to be harsh on the Athletes.

The Panel has chosen the date of sample collection as it enables the Athletes, who as a result of the decision of the ADDP will miss the London Olympics, to train and compete in the forthcoming Olympic trial. This event comes once in 4 (four) years".

9.37 The Sole Arbitrator notes that the Appealed Decision does not make any reference to the IAAF Rules in relation to the commencement of the sanction. The Athletes submitted that the ADAP applied their own rules regarding the start date of the sanction. The Sole Arbitrator noted that even if the ADAP applied other rules, in this appeal the CAS is bound by the IAAF Rules as provided by Rule 42.22 of the IAAF Rules. The Sole Arbitrator notes that Rule 40.10 provides that the period of ineligibility shall start on the date of the hearing decision except where the athlete promptly admits the anti-doping violation. The Athletes in the present matter have not provided any evidence that they accepted the anti-doping violation on a timely basis in writing. Therefore the Sole Arbitrator concludes that the period of ineligibility shall start on the date of the decision.

10 CONCLUSION

10.1 The Sole Arbitrator determines to accept the Appellant's Appeal and to overturn the Appealed Decision.

10.2 The Sole Arbitrator determines that the Athletes are required to serve the full 2 year period of ineligibility starting from the date of the present award, however given credit of the period of their previous period of ineligibility and subsequent provisional suspension already served.

10.3 In addition, all competitive results obtained by the Athletes from their sample dates until the commencement of previous period of ineligibility shall be disqualified with all resulting consequences, in accordance with Rule 40.8 of the IAAF Rules.

10.4 The Sole Arbitrator determines that all other claims or prayers for relief are hereby dismissed.

ON THESE GROUNDS

The Court of Arbitration for Sport rules:

1. The appeal filed on 5 April 2012 by the International Association of Athletics Federations (IAAF) against the decision of the Indian Anti-Doping Disciplinary Panel issued on 17 March 2011 is admissible and upheld;

2. The decision of the Indian Anti-Doping Disciplinary Panel of 23 December 2011 is set aside;

3. Ms. Ashwini, Ms. Panwar, Ms. Mary Thomas and Ms. Jose shall be all declared ineligible for a period of two (2) years starting from the date of the present award, given credit of the period of their previous period of ineligibility and subsequent provisional suspension already served;

4. All competitive results obtained by Ms. Ashwini and Ms. Panwar from 27 June 2011 and by Ms. Mary Thomas and Ms. Jose from 12 June 2011 until the commencement of their previous period of ineligibility shall be disqualified, with all resulting consequences, in accordance with IAAF Rule 40.8;

(…)

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