Arbitration CAS 2017/A/4946 Sports Club "Gaz Metan" Medias v. Romanian Football Federation (RFF) & Romanian Professional Football League (RPFL), award of 9 August 2017 (operative part of 15 February 2017)

Panel: Mr Bernhard Welten (Switzerland), Sole Arbitrator

Football
Disciplinary sanction due to the violation of the Romanian Club Licensing and Financial Fair Play Regulations
Late submission of new documents during appeal proceedings
Qualification of a debt as an overdue payable resulting of transfer activities

1. **New documents submitted after a CAS hearing should not be admitted to the case file if the requirements of article R56 of the CAS Code were not complied with, for instance if such documents were already available to one appellant before the filing of the appeal brief. Conversely, exceptional circumstances exist in some way in relation to the filing of a new document if it was not available to one appellant at the time of the filing of the statement of appeal, respectively the appeal brief.**

2. **With regard to the question of the qualification of a sum of money owed by one club to another as a result of the application of art. 17 para. 2 of the FIFA Regulations on the Status and Transfer of Players as overdue payables resulting of transfer activities, the interpretation made by UEFA of its own regulations regarding Licencing and Financial Fair Play led it to conclude that such type of debt cannot qualify as overdue payables. Given that the aforementioned UEFA regulations are at the basis of the Romanian Club Licensing and Financial Fair Play Regulations applicable to the matter at hand, said type of debt should also not be qualified as overdue payables resulting of transfer activities under said Romanian regulations.**

I. PARTIES

1. Sports Club "Gaz Metan" Medias (the "Appellant" or the "Club") is a professional football club with its registered office in Medias, Romania. The Club plays in the Romanian Professional Football League (the "RPFL"), the highest professional league in Romanian football and the country's primary football competition. The Club is affiliated to the Romanian Football Federation.

2. The Romanian Football Federation ("RFF") is the national governing body for football in Romania. It is an association based in Romania, with its headquarters in Bucharest. The RFF is a member of the Union of European Football Associations ("UEFA") as well as the Fédération

Internationale de Football Association ("FIFA").

3. The Romanian Professional Football League (the "RPFL") is the national football body governing the professional football league in Romania. It is independent from the RFF in its structure, acting and the leading persons.

II. FACTUAL BACKGROUND

A. Facts

4. Below is a summary of the relevant facts and allegations based on the Parties' written submissions and evidences filed. While the Sole Arbitrator has considered all the facts, allegations, legal arguments and evidence submitted by the Parties in the present proceedings, he refers in his Award only to the submissions and evidence he considers necessary to explain his reasoning.

5. On 29 January 2013, the French football player G. (the "Player") signed an employment agreement with the Bulgarian Club PSFC Chernomoretz Burgas (the "Bulgarian Club"), valid for the period of 30 January 2014 to 30 June 2016.

6. On 20 May 2014, the Bulgarian Football Federation (the "BFF") issued a notification stating that the Player unilaterally terminated the employment agreement with the Bulgarian Club on 19 May 2014.

7. On 11 December 2014, the Player started a procedure before FIFA, asking for the payment of outstanding salaries.

8. On 6 January 2015, the Appellant signed an employment contract with the Player.

9. On 29 January 2015, the RFF confirmed having received from the BFF the International Transfer Certificate, (the "ITC") for the Player.

10. On 25 May 2015, the Appellant and the Player agreed to mutually terminate the employment agreement.

11. On 18 February 2016, the Dispute Resolution Chamber of FIFA (the "DRC") decided to partially accept the claim of the Player as well as the counterclaim of PSFC Chernomoretz Burgas. The Player was ordered to pay to the Bulgarian Club an amount EUR 83,484. Further the DRC decided that the intervening party, the Appellant, shall be held jointly and severally liable for the payment of the before mentioned amount.

12. On 5 July and 10 August 2016, the Appellant sent emails to the Bulgarian Club in relation to the payment of EUR 83,484 which had been ordered by the DRC. On 28 and 29 November 2016, the Appellant also sought to contact the BFF in relation to the same matter. The Appellant

never received any reply to the above-mentioned contacts. Further, on 8 September 2016, the Appellant tried unsuccessfully to contact the Player through his players' agent.

13. On 25 October 2016, the competent Romanian court admitted the petition of several creditors (former basketball players) and ordered the opening of the insolvency procedure against the Appellant.

14. On 28 November 2016, the Appellant, through its official receiver, informed the Bulgarian Club about the opening of the general insolvency proceedings and the rights of the Bulgarian Club in the Romanian insolvency procedure against the Appellant.

15. The Appellant sent all documents related to the before mentioned facts to the RFF Club Licensing Committee ("Licensing Committee") in accordance with the Romanian Club Licensing and Financial Fair Play Regulations ("RFF Licensing Regulations").

16. On 8 December 2016, the licensing manager, Mr. Viorel Duru, requested, *inter alia*, that the Appellant be sanctioned with a three points deduction for violating Article 54 RFF Licensing Regulations.

17. On 12 December 2016, the Appellant was invited for a hearing at the headquarters of the RFF. On 16 December 2016, the Licensing Committee decided as follows:

> *"It admits the petition formulated by the licensing manager.*
>
> *According to Appendix II of RNLC&FPF, it sanctions the Sports Club "Gaz Metan" Medias by three points' deduction from the current season classification for violating the article 54.3. - absence of overdue financial debts towards football clubs.*
>
> *According to art 7.3. letter b of RPMP it sanctions the club with the financial penalty of 10 000 lei of the current season classification for the violation of art 7.1. of RPMP for exceeding the deadline for the submission of financial reports".*

18. On 20 December 2016, the Appellant appealed the decision of the Licensing Committee before the RFF Club Licensing Appeal Committee (the "Appeal Committee").

19. On 23 December 2016, the Appeal Committee decided:

> *"It rejects the exemptions invoked by the Appellant and on the merits it rejects the appeal filed against the Decision no. 3 of 16th December 2016 of the Club Licensing Committee. It totally maintains the dispositions of the Decision no. 3 of 16th December 2016 of the Club Licensing Committee".*

B. Decision of the RFF Club Licensing Appeal Committee of 23 December 2016 (the "Appealed Decision")

20. The Appealed Decision was notified to the Appellant on 23 December 2016 and its reasoning may be summarized as follows:

- In general Article 22 para. 10 of the RFF Regulations on the Club Licensing Committee's Procedure states that *"in appeals one cannot use other reasons than the ones invoked before the Licensing Committee"*. As the Appellant did not invoke the exemptions mentioned in the appeal before the first instance, they cannot be considered.

- Nevertheless, the exemptions relied upon by the Appellant are rejected as groundless, as the Licensing Committee is competent to take sanctions against licensed clubs for violating the financial monitoring requirements based on Article 6 para. 2 RFF Licensing Regulations. Further Article 13 para. 1 RFF Rules of Procedure in respect of the Financial Monitoring (the "RPMF") clarifies that the monitoring manager notifies the Licensing Committee in case a licensed club does not confirm by 30 November that it has paid all overdue payables.

- The Appeal Committee is of the opinion that the sanctions issued against the Appellant are not in relation to an enforcement procedure and therefore not formally of disciplinary nature. The Licensing Committee is competent to check if the Appellant complies with the RFF Licensing Regulations and if it fulfilled the monitoring requirements mentioned in Annex III of the RFF Licensing Regulations.

- The Law no. 85/2006 only states that with the opening of the insolvency procedure the actions or enforcement are suspended, but here, the Appellant could have paid the overdue payable to the Bulgarian Club before the opening of the insolvency procedure.

- The Appellant did not prove having no overdue financial debts towards the Bulgarian Club and it did not prove either that all the relevant actions had been taken as per Article 2 lit. b) to e) Appendix VI RFF Licensing Regulations. The cases CAS 2012/A/2750 and CAS 2015/A/3963 – 3968 are not relevant in the case at hand as the objects of the cases were disciplinary proceedings applied as a consequence of the failure to enforce certain final decisions of the juridical authority and they do not refer to sanctions applied during the financial monitoring or licensing procedures.

- For the monitoring procedure it is not relevant if the Appellant was at fault or not for violating the RFF Licensing Regulations. The Appeal Committee only considers if a regulation has been violated or not.

- The allegations that the Appellant took all reasonable actions to identify the Bulgarian Club as creditor and to pay the amount according to Article 2 lit. e) Appendix VI RFF Licensing Regulations and no contracting relation existed between the Appellant and the Bulgarian Club, are groundless. For the Appeal Committee the payment obligation has to be qualified

as financial debt resulting from a transfer activity and "transfer" in accordance to the FIFA Regulations on the Status and Transfer of Players, edition 2014 (the "FIFA RSTP") includes any change of a player belonging to a club affiliated to an association to another club affiliated to another association, regardless if this change is based or not on a transfer agreement. The Appellant had the joint obligation with the Player to pay the damages established by the DRC. The Appeal Committee is of the opinion that irrespective of the legal nature of the payment obligation (contract, offence, indemnification), the term "activity from transfer" covers any debt arising as a consequence of the transfer of a player from a national association to another national association.

- The Appellant received the DRC decision of 18 February 2016 on 16 May 2016. However, the Appellant only started the first communications to the Bulgarian club after the due date (30 days after the communication of the decision) and even after the reference date of the financial monitoring procedures of 30 June 2016. The Appeal Committee is of the opinion that the emails sent by the Appellant on 5 July and 10 August 2016 were not sent with the intent to make the payment, but to enquire about the status of the Player's payment. Until the next reference date of 30 September 2016, the Appellant has not made any step to pay the debt or postpone the payment with the written acceptance of the Bulgarian Club as creditor. All actions made by the Appellant are, therefore, considered as irrelevant as the first instance correctly assessed.

- In relation to the fine of LEI 10,000 to be paid, the Appellant did not bring forward any specific objections to the facts or the legal assessment. Therefore, the appeal against this fine is rejected.

III. PROCEEDINGS BEFORE THE CAS

21. On 12 January 2017, the Appellant filed its Statement of Appeal against the Appealed Decision, pursuant to Articles R47 and R48 of the Code of Sports-related Arbitration (the "Code"). The Appellant requested that this matter be expedited in accordance with Article R52 of the Code and heard by a sole arbitrator, based on the arbitration agreement entered into between the Appellant and RFF of 31 March 2016.

22. On 19 January 2017 and 20 January 2017, the RFF the RPFL respectively agreed to the expedited procedure and that a sole arbitrator be appointed by the President of the Appeals Arbitration Division, pursuant to Article R50 of the Code.

23. On 20 January 2017, the Appellant filed its Appeal Brief, according to Article R51 of the Code.

24. On 25 January 2017, the RFF and the Appellant stated that they consider a hearing to be necessary.

25. On 25 January 2017, the CAS Court Office confirmed the procedural calendar as follows:

- Answers to be filed on or before 6 February 2017;
- Hearing to be held either on 8 or 9 February 2017;
- Operative part of the Award to be issued on or before 15 February 2017.

26. On 2 February 2017, the CAS Court Office informed the Parties that the Panel to decide this case was constituted as follows: Bernhard Welten, attorney-at-law in Berne, Switzerland.

27. On 6 February 2017, the RFF and the RPFL filed their Answers pursuant to Article R55 of the Code.

28. On 9 February 2017, the CAS Court Office acknowledged receipt of the Orders of Procedure duly signed by each party.

29. On 9 February 2017, the hearing was held in Lausanne. The Appellant was represented by Mr. Ioan Marginean, president and special receiver and Mr. Traian Razvan Zavaleanu, official receiver, assisted by its counsel Mrs. Anca Alina Iordanescu, attorney-at-law and Mr. Alin Valentin Iordanescu as interpreter. The RFF was represented by Mr. Adrian Stangaciu, head of the legal department assisted by Mr. Paul Ciucur, attorney-at-law; the RPFL was represented by Mr. Mincu Paul Alexandru, attorney-at-law.

30. In the hearing, the Parties confirmed having no objections against the Sole Arbitrator to decide this case and at the end of the hearing they agreed that their right to be heard had been respected.

31. On 9 February 2017, after the hearing and as announced during the hearing, the Appellant sent some documents from a FIFA procedure involving the Bulgarian Club.

32. On 13 February 2017, the two Respondents sent their position to the Appellant's request that the documents sent on 9 February 2017 be accepted. The RFF objected to the acceptance as no exceptional circumstances had been provided and the information in the documents was known at the date of the Appeal Brief as well as on the hearing date. The RPFL on the other hand agreed that the documents, especially the FIFA letter of 3 February 2017, were admissible.

33. On 14 February 2017, the Parties were informed that the admissibility of the new documents would be decided by the Sole Arbitrator and the reasons set forth in the Award.

34. On 15 February 2017, the Operative Part of the Arbitral Award was notified to the Parties.

IV. SUBMISSIONS OF THE PARTIES

35. In the following summaries, the Sole Arbitrator will not include every argument put forward to support the Parties' claims. Nevertheless, the Sole Arbitrator has carefully considered and taken into account all of the evidence and arguments submitted by the Parties, but limits his explicit references to those arguments that are necessary in order to justify his decision.

A. Appellant's submissions and requests for relief

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

- The Appellant sent several emails to the Bulgarian Club and the BFF in order to clarify the situation regarding the debt which was uncertain as the Appellant was held jointly and severally responsible with the Player for the payment of the compensation and it did not know if the Bulgarian Club had already received such payment from the Player. The Bulgarian Club did not respond until today. Without any such reply it was impossible for the Appellant to pay the amount as it has no knowledge about account details of the Bulgarian Club;

- As the Appellant is under insolvency proceedings it is no longer free to behave as it wishes, as it has to respect the applicable insolvency law. Article 36 Insolvency Law states that all the judicial actions, extrajudicial or measures of forced enforcement of the performance of receivables on the debtor or his assets are suspended. Article 49 para. 1 Insolvency Law gives the debtor the right to continue to perform his current activity and make payments to the recognized creditors falling under the usual conditions of exercising the current activity. Other payments need to have the approval of the creditors' committee. The payment to be made in accordance with the DRC decision of 18 February 2016 exceeds *"the usual conditions of exercising the current activity"*. If this payment is made this could be considered as fraud towards the other creditors in the proceedings;

- Article 54 Para. 1 RFF Licensing Regulations requires a club to prove that it has no overdue payables as a consequence of the transfer activities performed by 30 June. Payables are defined in para. 4 as *"amounts due to football clubs as a result of the transfer activities, including the training/promoting compensation and solidarity contributions as defined in the FIFA/RFF Regulations on the Status and Transfer of Players, as well as any amount due upon fulfilment of certain conditions"*. In the case at hand the respective amount comes from a FIFA decision, being an indemnification and not an amount payable to football clubs as a consequence of the transfer activities;

- The Appellant sent eleven notifications to the Bulgarian Club, the BFF and other entities asking for information including the details of the Bulgarian Club. Therefore, looking at clauses 2.e) and 4. of Annexe VI RFF Licensing Regulations this amount cannot be deemed outstanding; the RFF cannot require the Appellant to distinguish the creditors between those established under the insolvency law and those who are considered as such for the purposes of the monitoring procedures. The Appellant's creditors acquired their legal status of participants in the insolvency proceedings through filing their requests for registration of their debts to the judicial receiver. The creditors conforming to the rules of the insolvency law are considered as creditors which should be valid for the club monitoring purposes as well.

37. Based on these allegations, the Appellant requested:

"1. to accept the present appeal against the Challenged Decision;

2. to set aside the Challenged Decision;

3. to condemn the Respondent to the payment in the favour of the Appellant of the legal expenses incurred;

4. to establish that the costs of the arbitration procedure shall be borne by the Respondent".

B. First Respondent's submissions and requests for relief

38. The First Respondent's (RFF) submissions, in essence, may be summarized as follows:

- The exception stated in Annexe VI RFF Licensing Regulations is no longer valid after 30 September 2016, as the debts existing on 30 September 2016 must be paid or postponed until 30 November; the eleven notifications of the Appellant were issued in November and December 2016. As the Player involved is of French nationality, it is an international case and therefore the RFF Regulations regarding the Status and Transfer of Players are not applicable. The Appellant violated Article 54 para. 2 RFF Licensing Regulations at the time when it was not under insolvency; the insolvency proceedings were opened on 25 October 2016;

- The Appellant never challenged the DRC Decision of 18 February 2016; therefore, on 30 June 2016, the Appellant correctly registered outstanding overdue payables towards the Bulgarian Club, amounting to EUR 83,484;

- Based on the FIFA Regulations it is clear that the word "transfer" refers to any movement of a player to a new club, regardless of the exact moment related to a former or an existing contract. For a player to move from one association to another, the ITC is mandatory;

- The Appellant violated Article 54 para. 1 RFF Licensing Regulations on 30 June 2016 and therefore the monitoring shall continue on 30 September 2016. On this date the Appellant violated Article 54 para. 2 RFF Licensing Regulations and the competent authority informed the Appellant that it will be sanctioned should it not prove the payment of its debt to the Bulgarian Club. Based on this violation, the Appellant was sanctioned with a three points' deduction. Further a penalty of LEI 10,000 was issued to the Appellant for violation of Article 7.1 RPMF for exceeding the deadline to submit the financial reports;

- Only a company in bankruptcy, and not insolvency, may be awarded limitations or bans of any sort. The Appellant entered into insolvency proceedings on 25 October 2016 and therefore after the reference date of 30 September 2016. Creditors filed the application for the insolvency against the Appellant. Based on the principle *"nemo auditur propriam turpitudinem allegans"* the Appellant cannot obtain benefits invoking his own fault, unfairness and dishonesty;

- The Appellant never had the intention to pay the debt to the Bulgarian Club; the insolvency judge is authorized to approve payments of any debt if a request is filed. The RFF has the policy that insolvent clubs shall still have the chance to participate in the first league based on their sporting merits; however, in case minimum requirements established by the financial criteria are not fulfilled, this club will be sanctioned with deduction of points. This is necessary to keep the equality of chances between the clubs;

- In similar cases the CAS confirmed the overdue payables and accordingly dismissed the appeals lodged by the clubs;

- Based on the UEFA Statutes and by-laws the club licensing system is treating all clubs equally; a club should not be allowed to take (unfair) advantage *i.e.* not paying amounts due to other clubs. CAS 2015/A/3963 – 3968 states that the UEFA rule in relation to overdue payables has as primary objectives the integrity and ensuring a level playing field. In the same way the RFF can issue sporting sanctions for not complying with licensing regulations. There is a clear distinction between disciplinary sanctions and sporting sanctions imposed by the licensing committees. A point deduction is therefore possible and considered as a sporting sanction. If in fact the Appellant could be not sanctioned on a sporting level because the provisions of the insolvency law prevail, this would instate a *de facto* preferential treatment of insolvent clubs in comparison with the other teams participating in the same league;

- In CAS 2015/A/4097, the sole arbitrator stated that the consequences for non-observance of certain preconditions to participate in a league may obviously not contravene national law, but are in itself legitimate since football clubs accept to be bound by such limitations by applying for a license to participate. In view of all this, the Appealed Decision is therefore lawful regarding the fine of LEI 10,000, the Appellant did not bring any arguments forward to challenge this fine.

39. Based on these allegations, the First Respondent requested:

> *"A. to dismiss the appeal lodged by the Appellant against the challenged Decision rendered by the Club Licensing Appeal Committee of the Romanian Football Federation;*
>
> *B. to maintain and consider the challenged Decision undisturbed;*
>
> *C. subsequently, to deny all the prayers for relief made by the Appellant;*
>
> *D. to order the Appellant to pay all costs, expenses and legal fees relating to the arbitration proceedings before CAS encumbered by the Respondent".*

C. Second Respondent's submissions and requests for relief

40. The Second Respondent's (RPFL) submissions, in essence, may be summarized as follows:

- The Appellant tried to identify the payment details and establish the method of payment before and after the opening of the insolvency proceedings on 25 October 2016. Even the involvement of the BFF did not help to contact the Bulgarian Club and therefore the Appellant informed FIFA about the non-compliance by the Bulgarian Club. The Appellant further informed the RFF President and the RPFL Secretary General about the impossibility to contact the Bulgarian Club. The Appellant further tried to get in touch with the Player through his agent. The Bulgarian Club was even informed about the opening of the insolvency proceedings and its duties in order to recover its claim. However, the Bulgarian Club failed to reply even to this notification and did not observe the procedural time limits to pursue the proceedings;

- In looking at Article 54 and Annexe VI RFF Licensing Regulations, the amounts to be paid as promotion or training compensation respectively solidarity contribution are not considered outstanding if the debtor club proves to have used its best efforts (at least three notifications) to obtain the data regarding the creditor club and amounts due. In the case at hand, the Bulgarian Club has two debtors being jointly and severally liable to pay the amount, on one side the Player and on the other side the Appellant. As the Bulgarian Club failed to reply to the Appellant, the amount was wrongfully considered as outstanding by the Appeal Committee;

- The Appeal Committee applied Article 4 of Annexe VI RFF Licensing Regulations in another case involving FC Rapid Bucuresti S.A. However, in the case at hand, the Appeal Committee did not take into account the attempts made by the Appellant to gather the information in order to make the payment;

- As the RPFL supports the reasoning of the Appellant's appeal, the RPFL cannot be seen as losing party if the appeal is upheld and therefore should not bear any costs of these arbitration proceedings.

41. Based on these allegations, the Second Respondent requested:

"1. We partially acquiesce to the Appellant's claims in this statement of appeal, in the sense of upholding the appeal as filed.

2. We object to the claim seeking to compel the undersigned Professional Football League to pay the costs of these proceedings (arbitration fees, share of the Appellant's legal fees)".

V. JURISDICTION

42. Article R47 of the Code provides as follows:

"An appeal against the decision of a federation, association or sports-related body may be filed with CAS if the statutes or regulations of the said body so provide or if the parties have concluded a specific arbitration

agreement and if the Appellant has exhausted the legal remedies available to him prior to the appeal, in accordance with the statutes or regulations of that body".

43. Based on the RFF Licensing Regulations, the Appellant and the First Respondent signed an arbitration agreement on 31 March 2016 (the "Arbitration Agreement"), providing that *"any litigation deriving, after following the licensing procedure/financial monitoring procedure before the decision making committee within the RFF shall be ultimately settled by the Court of Arbitration for Sports in Lausanne (TAS)".*

44. Further, Article 6 para. 7 RFF Licensing Regulations as well as Article 58 para. 3 RFF Statutes state that the CAS is competent to hear appeals against decisions of the Appeal Committee. This is further confirmed in the Appealed Decision stating: *"Right to second appeal to the Court of Arbitration for Sports in Lausanne within 21 calendar days of the notification".*

45. The jurisdiction of the CAS to hear this appeal was further confirmed by the Parties by signing the Order of Procedure.

46. In the light of the foregoing, the Sole Arbitrator, therefore, confirms that CAS has jurisdiction to hear this appeal.

VI. ADMISSIBILITY

47. The Appealed Decision was issued by the Appeal Committee on 23 December 2016 and sent to the Appellant the same day. The Appellant then filed his Statement of Appeal on 12 January 2017 and therefore, within the 21-days deadline set by Article R49 of the Code. Furthermore, the Appeal complied with all other requirements of Article R48 of the Code, including the payment of the CAS Court Office Fee.

48. Therefore, it follows that the appeal is admissible.

VII. APPLICABLE LAW

49. The law applicable in the present arbitration is identified by the Sole Arbitrator in accordance with Article R58 of the Code, which provides the following:

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

50. In the Arbitration Agreement, the Appellant and the First Respondent stipulated as follows: *"the dispute shall be decided according to the Romanian law (statutes and regulations of [RFF] and national legislation, if applicable)".* The Appellant, therefore states that beside the RFF Statutes and

Regulations, Romanian Insolvency Law shall be applicable and complementarily Swiss law. The First Respondent agrees with the application of the RFF Statutes and Regulations as well as the Romanian Insolvency law; in addition, the RFF refers to the UEFA Statutes and Regulations regarding Club Licensing and Financial Fair-Play to be applicable as well. The Second Respondent does not formally pretend what law shall be applicable but it refers in its Response mainly to the RFF Regulations and the Romanian Insolvency law.

51. The Appeal Committee as RFF authority applied the RFF Statutes and Regulations as well as Romanian Insolvency Law.

52. As this case is a national, Romanian case, involving three Romanian parties and the Appealed Decision was issued by a RFF committee, the Sole Arbitrator confirms that the case at hand shall be governed by the RFF Statutes and Regulations as the Appellant and the RFF agreed in the Arbitration Agreement.

53. In view of the above, the Sole Arbitrator sees no possibility for the Appellant's pretention that *"Swiss law shall apply complementarily"*. With the primarily applicable RFF Statutes and Regulations and subsidiarily applicable Romanian law there is no place left for another national law to be applied.

VIII. MERITS

A. Documents filed after the hearing

54. Before entering into the merits, the Sole Arbitrator is coming back to the Appellant's filing of new documents after the hearing on 9 February 2017 as announced during the hearing. As stated before, the RFF objected to the acceptance of the documents as no exceptional circumstances were invoked, while the RPFL agreed to accept these documents, especially the FIFA letter of 3 February 2017.

55. Article R56 of the Code states that additional exhibits filed after the Answer was received by the CAS are only admissible if the parties agree or the Panel orders otherwise on the basis of exceptional circumstances.

56. The Sole Arbitrator is of the opinion that the fax communication of 28 November 2016 and the returned mail sent on 29 November 2016, were already available to the Appellant before it filed the Appeal Brief. There are no exceptional circumstances and the reasoning that the First Respondent contested the sending of the documents the first time during this procedure, is certainly not sufficient to be an exceptional circumstance. Therefore, the Sole Arbitrator does not accept these documents in the file.

57. The FIFA letter of 3 February 2017 was only received by S.C.S Fotbal Club CFR1907 Cluj on 8 February 2017 and then forwarded to the RPFL, respectively the Appellant. For this reason, this is a new document which was not available when the Statement of Appeal, respectively the

Appeal Brief was filed. Therefore, for this document exceptional circumstances exist in the way that this is a real *novum*. The letter confirms the fact that the Bulgarian Club cannot be reached by fax and in general that the contact with this club is rather difficult. These are not new facts; the letter just confirms the experience made and substantiated with documents by the Appellant when trying to reach the Bulgarian Club, as the FIFA letter does only confirm a general fact already known in the present procedure, but it does not prove anything in relation the Appellant's attempts to contact the Bulgarian Club, the Sole Arbitrator considers this document as irrelevant for the present matter.

58. Summing up, the Sole Arbitrator rejects all documents filed by the Appellant after the hearing in applying Article R56 of the Code.

B. Overdue payables

59. The main point in the case at hand is that the Appeal Committee reproaches the Appellant that it had overdue payables towards the Bulgarian Club in accordance to Article 54 RFF Licensing Regulations. The full wording of the relevant part of this Article is:

> *"[1] The licensee must prove that as at 30 June of the year in which the First League competition season commences, it has no overdue payables (as specified in Annexe VI) towards other football clubs as a result of transfer activities undertaken up to 30 June.*
>
> *[2] If the licensee fails to comply with paragraph 1 above, it must prove that that as at 30 September of the year in which the First League competition season commences it has no overdue payables (as specified in Annexe VI) towards other football clubs as a result of transfer activities undertaken up to 30 June.*
>
> *[3] If the licensee fails to comply with paragraph 2 above, it must prove that the payables as at 30 September, as defined under paragraph 2, were paid by 30 November or that by said date the creditors accepted, in writing, the extension of the due date of such payables beyond 30 November.*
>
> *[4] Payables are those amounts due to a football club as a result of transfer activities, including training/promoting compensation and solidarity contributions as defined in the FIFA/RFF Regulations on the Status and Transfer of Players, as well as any amount due upon fulfilment of certain conditions".*

60. Annexe VI RFF Licensing Regulations defines the notion of "overdue payables" as follows:

> *"1. Payables are considered as overdue if they are not paid according to the agreed terms, as per the contracts or legal obligations in force (…).*
>
> *2. Payables are not considered as overdue, within the meaning of these Regulations, if the license applicant (i.e. debtor club) is able to prove by 31 March (in respect of Articles 46 and 47 and 47bis, as applicable), and the First League licensee is able to prove by 30 June and 30 September (in respect of Articles 54 and 55), respectively, that:*

(…).

b[1]) it has received protection from its creditors pursuant to the applicable laws on insolvency and the insolvency judge approved the reorganisation plan of the debtor club, by passing a judgement in this regard prior to 31 March (in respect of Articles 46 and 47), or 30 June and 30 September (in respect of Articles 54 and 55), as the case may be.

(…).

e) it is able to demonstrate to the reasonable satisfaction of the decision-making bodies of the national club licensing system that it has taken all reasonable measures to identify and pay the creditor club(s) in respect of training compensation, promoting compensation and solidarity contributions (as defined in the FIFA/RFF Regulations on the Status and Transfer of Players).

(…).

4. The decision-making bodies of the National Club Licensing System shall consider satisfactory the actions taken by the licence applicant if the latter is able to prove that it requested in writing at least three times (up to 30 days after registration of the player, by 31 December and by 31 March/30 April) the banking information for making the payment. The licence applicant must prove that it requested the national federation(s) to which the training club(s) was/were affiliated information concerning the club(s) in its/their jurisdiction and that it requested the banking information of the national federation(s) concerned, if the training club(s) was/were no longer affiliated (…)".

61. The Sole Arbitrator considers that the first issue that must be assessed is whether the hypothesis set out in the provision on which the Appealed Decision is based (54 RFF Licensing Regulations) is fulfilled or not *in casu*. Article 54.1 of the RFF Licensing Regulations provides that *"The licensee must prove that as at 30 June of the year in which the First League competition season commences, it has no overdue payables (as specified in Annexe VI) towards other football clubs as a result of transfer activities undertaken up to 30 June"* (emphasis added).

62. The Appellant argues that pursuant to Article 54 para. 1 RFF Licensing Regulations it does not have any overdue financial debts towards other football clubs as the amount due to the Bulgarian Club is not a consequence of the Appellant's transfer activities. In this case the amount due derives from a FIFA decision and it is an indemnification and not an *"amount payable to football clubs as a consequence of the transfer activities"*.

63. The First Respondent objects to the Appellant's pretention by referring to Article 20 FIFA RSTP, respectively its Annexe III, based on which it is clear that the notion of "transfer" refers to any movement of a player to a new club, regardless of the exact moment related to a former or existing contract. Therefore, the Appellant had overdue payables and the sanction issued by the Appeal Committee was therefore correct.

64. The Appellant points out to Article 19 RFF Regulations on the Status and Transfer of Players

(the "RFF RSTP") and quotes the following passage *"the transfer of football player means his passing from the club where he is registered to another club, with the player's consent and with the consent of the two clubs"*. From such transfer a certain amount of money has to be paid as fee for transfer, training, promotion etc. However, the Appellant was in the case at hand found guilty and jointly and severally liable to pay an indemnification based on the DRC decision of 18 February 2016; this cannot be seen as amount payable in the sense of Article 54 RFF Licensing Regulations.

65. The RFF states that based on Article 20 and Annexe 3, Article 1 para. 6 FIFA RSTP it is clear that the notion of transfer refers to any movement of a player to a new club, regardless of the exact moment related to a former or existing contract. For international transfers, there is further the need of the ITC issued from the former association to the new association.

66. The Sole Arbitrator notes that the subject matter of Article 17 para. 2 FIFA RSTP, based on which the DRC condemned the Appellant to be jointly and severally liable to pay an amount of EUR 83,484 to the Bulgarian Club, has been critically discussed and analysed in FIFA and CAS jurisprudence and that its application in certain circumstances has been open to some debate.

67. There is no doubt that if a club enters into a transfer agreement with another club for the transfer of a player, any unpaid amounts in connection thereto are certainly a *"consequence of transfer activities"*. These overdue payables arising from breaches of transfer agreements are, in the Sole Arbitrator's view, the aim of Article 54.1 of the RFF Licensing Regulations.

68. However, the joint and several liability of the new club provided for in Article 17 para. 2 FIFA RSTP is not a liability which arises from a contractual arrangement between two clubs. Rather, it is an obligation, imposed by regulation, which is triggered by a unilateral termination of a contract by a player without cause. In other words, the liability of the new club does not arise from any breach of contract committed by itself, but rather always from a breach of contract by the player of the employment contract with his former club. In light of the above, there can be no liability of the new club without a duly established unjustified termination by the player. As stated by the Panel in CAS 2007/A/1298, 1299 & 1300, the joint and several liability provided for in Article 17 para. 2 FIFA is aimed at *"better guaranteeing the payment of whatever amount of compensation the player is required to pay to his former club on the basis of article 17"* (CAS 2007/A/1298, 1299 & 1300, para. 162).

69. The Sole Arbitrator is therefore not convinced that the payment obligation that the Appellant has towards the Bulgarian Club pursuant to Article 17 para. 2 FIFA RSTP is an obligation undertaken as a *"consequence of transfer activities"* in the sense envisaged in Article 54.1 of the RFF Licensing Regulations.

70. The Sole Arbitrator is further comforted in his views in this respect by having examined the decision of the UEFA Club Financial Control Body of 10 December 2015 (AC-04/2015) where the competent UEFA authority itself stated:

> *"39. The CFCB investigatory chamber also considered the Euros plus interest owed to FCD (as referred to*

Paragraph 7 of this Decision) to be an overdue payable as at 30 September 2015. In this regard, the CFCB Adjudicatory Chamber notes that the Club's liability for this amount is solely the consequence of a presumption that the Club had induced a player to breach his contract (in application of the relevant FIFA rules). The obligation to pay compensation for which the Club was found to be jointly and severally liable did not relate to a transfer or transfer activities as foreseen in Articles 65 (1) and (3) of the CL & FFP Regulations. Therefore such amount cannot qualify as an overdue payable under Article 65 of the CL & FFP Regulations. Such a conclusion would be contrary to the principle of legality which prohibits the classification of facts as disciplinary infractions by analogy".

71. The interpretation by UEFA of its own licensing regulations constitute relevant authority, considering that the RFF Licensing Regulations expressly provide as follows: *"Based on Article 69 of the FRF Statutes, as well as the UEFA Club Licensing and Financial Fair Play Regulations, edition 2015, the FRF Executive Committee has adopted the following Regulations (…)"* (emphasis added).

72. Considering this last statement of a UEFA authority, interpreting the UEFA Regulations followed by the RFF Licensing Regulations, it is obvious for the Sole Arbitrator that the amount of EUR 83,484 for which the Appellant was declared as jointly and severally liable to the Bulgarian Club, together with the player, is not considered as "overdue payable" under the UEFA Regulations (CL & FFP Regulations) and should consequently also not be considered as "overdue payable" under the RFF Regulations (RFF Licensing Regulations).

73. Based on the above, the Sole Arbitrator can leave all other arguments provided by the Parties undecided. The appeal has to be upheld regarding the sanction of the three points' deduction regarding the alleged breach of Article 54 para. 3 RFF Licensing Regulations.

C. Fine for late filing

74. Regarding the fine of LEI 10,000 for the breach of Article 7 para. 1 RPMF, it is a fact that the Appellant filed its financial reports of 30 June 2016 only on 20 July 2016 and therefore five days late. Article 7 para. 3 lit. b RPMF states: *"fine of LEI 10,000 lei, if the financial reports were submitted 4 to 6 calendar days after the deadline(s) specified by art. 51 of NCL & FFPR and transposed into par. 1 above";*

75. The Appellant did not bring any material reasoning against his obvious late filing. Therefore, the Sole Arbitrator has to confirm this fine of LEI 10,000 in relation to the breach of Article 7 para. 1 RPMF.

76. The Sole Arbitrator decides, therefore, to uphold the appeal regarding the three points' deduction based on Article 54 para. 3 RFF Licensing Regulations as the amount due to the Bulgarian Club cannot be considered as "overdue payables" in the sense of the RFF Regulations. On the other hand, the appeal regarding the fine of LEI 10,000 is rejected.

ON THESE GROUNDS

The Court of Arbitration for Sports rules that:

1. The appeal of Sports Club "Gaz Metan" Medias against the decision no. 1 of the Club Licensing Appeal Committee of the Romanian Football Federation of 23 December 2016, is partially upheld.

2. The decision no. 1 of the Club Licensing Appeal Committee of the Romanian Football Federation of 23 December 2016 is corrected in the sense that the sanction of three points' deduction for violating Article 54.3 of the National Club Licensing and Financial Fair Play Regulation - absence of overdue financial debts towards football clubs - is annulled.

3. The other points of the decision no. 1 of the Club Licensing Appeal Committee of the Romanian Football Federation of 23 December 2016 are confirmed.

4. (…).

5. (…).

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