Arbitration CAS 2020/A/7582 Al Sadd Sports Club v. Parma Calcio 1913 srl & CAS 2020/A/7583 Parma Calcio 1913 srl v. Al Sadd Sports Club, award of 22 April 2022

Panel: Mr Hendrik Willem Kesler (The Netherlands), President; Mr José Juan Pintó (Spain); Mr Michele Bernasconi (Switzerland)

Football
Transfer
Condition precedent (Article 151 Swiss Code of Obligations)
Time periods of contract subject to a condition precedent
Obligations of parties to contract subject to a condition precedent (Article 152 Swiss Code of Obligations)
Fulfilment of condition precedent depending on one party only
Consequences of failure to fulfill conditions precedent
Invalidity of potestative condition

1. **Article 151 Swiss Code of Obligations (SCO) does not accurately describe the consequence of the condition precedent, in particular because such condition does not affect the existence of the contract itself nor the existence of the obligations of the parties, but rather only the effects of the parties' obligations, *i.e.* the effectiveness of the contract. Swiss law perceives the condition precedent as a modality of the obligation. The latter exists, but its effects are subordinated to the advent of the condition. Put differently, while the existence of the obligation is given despite the (yet unfulfilled) condition, it is the effectiveness of the parties' obligation/the performance of the contract which are subordinated to the occurrence of an uncertain event. While the contract is thus not yet effective pending the fulfilment of the condition precedent, the parties bound by it have certain obligations with respect to the condition precedent. Accordingly, the debtor of the future performance bound by the contract cannot disengage from it nor prevent the fulfilment of the condition precedent. If the condition precedent is fulfilled, the contract unfolds its effects by itself or *ipso jure*.**

2. **There are three distinctive periods when considering a contract subject to a condition precedent: i) the period before the conclusion of the contract, when the contract is not binding but only pre-contractual duties exist between the parties; ii) the period after conclusion of the contract, but before the fulfilment of the condition precedent, during which the performance of the contract is suspended but a binding expectation exists between the parties (the "Suspension Period"); iii) the period after the fulfilment (or not) of the condition, when the contract becomes (or not) fully effective and when the parties may or not claim its performance.**

3. **Article 152(1) SCO obliges the parties, during the "Suspension Period", to conduct themselves in good faith and to refrain from doing anything that would impair, frustrate or thwart the fulfilment of the agreed conditions. The wording of Article 152(1) SCO is**

too narrow because the contract subject to a condition precedent creates a reinforced expectation of rights between the parties and it is therefore important to protect the future beneficiary of such expectation. While the wording of Article 152(1) SCO first provides for a negative obligation to "refrain" from specific acts, Article 152(1) SCO also establishes positive duties of the parties to do what is expected from them in good faith, *i.e.* what is appropriate to safeguard the prospect of the fulfilment. The parties must therefore take any measures necessary in view of the fulfilment of the condition precedent, which also entails a duty to act in a timely fashion, without objective motivation, and thus in violation of the rules of good faith, which results in an unjustified delay or impossibility of the fulfilment of the condition precedent causing a damage to the other party.

4. **In case a condition precedent is agreed and its fulfilment depends to a certain extent on the will of one of the parties to whom the contract imposes obligations, a balance must be struck between the degree of freedom and the duties imposed by the rules of good faith: the party on which the fulfilment of the condition depends is in principle not entirely free to refuse such fulfilment and thus to release itself from its contractual obligations. On the contrary, it must act fairly and in accordance with the rules of good faith. The degree of freedom remaining for the party concerned, on the one hand, and the duties imposed on it by the rules of good faith, on the other, must be determined in each individual case, taking into account all the circumstances and, in particular, the object and purpose of the contract, duly interpreted in accordance with the principle of trust.**

5. **The conclusion of a conditional agreement, *i.e.* a valid and binding contract, the effectiveness of which is made subject to certain conditions precedent, does not bring into play the concepts of a pre-contractual breach or *culpa in contrahendo*. Rather, in case of failure by one or several parties to fulfil their obligations, the key question to be addressed in the context of Article 152(1) SCO is whether either of the parties (or all) failed to act with the diligence required under Article 152(1) SCO in assuring in good faith the fulfilment of the conditions precedent set forth in their agreement, potentially subjecting them to liability *vis-à-vis* one another. In circumstances where a contract containing a condition precedent does not enter into full effect because not all conditions precedent are fulfilled, and where all parties to the contract failed to act with the diligence required, but there is insufficient evidence to conclude that such mistakes or omissions were purposely made by either of the parties with the aim of frustrating compliance with the conditions precedent set forth in their contract, all parties have to accept to carry the burden of the failure of the envisaged contract.**

6. **While in principle, nothing prevents parties from defining, in deviation from the general principles enshrined in the FIFA Regulations, when and under which circumstances a party may terminate an employment contract with just cause, such deviation may in principle not be potestative, *i.e.* the conditions for termination may not be unilaterally**

influenced by the party wishing to terminate the contract. Accordingly, a contract may not validly provide that it can be unilaterally terminated by the club if the player does not play in a certain percentage of matches, for the decision to field the player is mainly influenced by the club.

I. PARTIES

1. Al Sadd Sports Club ("Al Sadd") is a professional football club with its registered office in Doha, Qatar. Al Sadd is registered with the Qatar Football Association (the "QFA"), which in turn is affiliated with the *Fédération Internationale de Football Association* ("FIFA").

2. Parma Calcio 1913 S.r.l. ("Parma") is a professional football club with its registered office in Parma, Italy. Parma is registered with the Italian Football Federation (*Federazione Italiana Giuoco Calcio* – the "FIGC"), which in turn is also affiliated with FIFA.

3. Al Sadd and Parma are hereinafter jointly referred to as the "Parties".

II. FACTUAL BACKGROUND

4. Below is a summary of the main relevant facts, as established on the basis of the written submissions of the Parties, the hearing and the evidence examined in the course of the proceedings[1]. This background information is given for the sole purpose of providing a synopsis of the matter in dispute. Additional facts may be set out, where relevant, in connection with the legal discussion.

A. Background Facts

5. At the start of the 2018/19 football season, Parma acquired the services of the Ivorian football player A. (the "Player") without paying any transfer fee, but allegedly paying agent commissions in a total amount of EUR 600,000.

6. On 15 October 2019, Parma and the Player extended their employment relationship until 30 June 2022.

7. At the latest since 24 January 2020, Al Sadd was in contact with the Player about a potential transfer from Parma to Al Sadd.

[1] Several of the documents submitted by the Parties and referred to in this Award contain various misspellings: for the sake of efficiency and to facilitate the reading of this Award, not all of the misspellings have been identified with a [sic] or otherwise.

8. On 25 January 2020, a meeting took place in Zurich, Switzerland, between Mr Dramane Dembele, the Player's intermediary, and Mr Ahmed Rashad, an external representative of Al Sadd mandated to negotiate the Player's transfer to Al Sadd. On the same day, a first draft employment contract was provided to the Player.

9. On 26 January 2020, Mr Dembele informed Parma of Al Sadd's interest. According to Parma, Mr Dembele indicated that the Player and Al Sadd had found an agreement regarding the terms of the employment relationship. According to Al Sadd, this is highly unlikely given the discussed content as well as the fact that the relevant negotiations were just about to commence.

10. On 28 January 2020, Parma received an offer from Al Sadd for the transfer of the Player in the amount of EUR 3,250,000, which offer was refused by Parma.

11. On 30 January 2020, Al Sadd increased its offer to EUR 4,500,000, to be paid within 30 days.

12. On the same date, 30 January 2020, Parma replied to Al Sadd, indicating that it was considering the offer, but requested that the payment of the transfer fee was to be executed within 48 hours as from instructions being entered into FIFA's Transfer Matching System ("FIFA TMS") and that the 5% solidarity contribution should not be included in the amount of EUR 4,500,000.

13. On the same date, 30 January 2020, Al Sadd provided the Player with a second draft employment contract.

14. On the same date, 30 January 2020, the Player provided Al Sadd with a list of requests for modification of the draft employment contract.

15. In the morning of 31 January 2020, Mr Dembele noted some unannounced amendments to the disciplinary table annexed to the second draft employment contract, which he requested to be changed back. Following Mr Dembele's request, Al Sadd provided the Player with a third draft employment contract, without however addressing the Player's list of requests for modification sent on 30 January 2020.

16. At 13:41 Central European Time ("CET") (15:41 Qatar Time ("QT")) on 31 January 2020, Al Sadd amended its offer in the form of a draft transfer agreement (the "Transfer Agreement"), whereby it undertook to pay Parma the amount of EUR 4,500,000 within three weeks of the transfer of the Player's federative rights.

17. Around 16:00 CET (18:00 QT), Parma alleges to have informed Al Sadd by telephone that Parma accepted Al Sadd's transfer offer. According to Parma, the Parties had thereby verbally concluded the Transfer Agreement. According to Al Sadd, in order to formalise the transfer, it still required a signed copy of the Transfer Agreement, which was to be countersigned by the Player and Parma.

18. According to Parma, the Player refused to countersign the Transfer Agreement, because Al Sadd had not addressed his list of requests for modification as submitted to Al Sadd on 30 January 2020. According to Al Sadd, the Player refused to countersign the Transfer Agreement because Parma had yet to find an agreement with the Player about salaries that had remained unpaid.

19. In the late afternoon/beginning of the evening on 31 January 2020, the following conversation between Mr Dembele and Mr Rashad took place (the wording corresponds verbatim to a transcript submitted to the Panel, without any emphasis added for typos, etc.):

> *"[31/01/2020, 16:51:53] Hamed Qatar Xavi Team: I just let Parma know that you and* [the Player] *are not answering me and due to time there is nothing more to discuss ….*
>
> *[31/01/2020, 18:45:40] Hamed Qatar Xavi Team: I think you miscalculated things and will only realize that later this evening … C'est la vie ….*
>
> *[31/01/2020, 18:50:13] Dramane: Hi HAmed* [sic]*, what I'm doing wrong ? If you want to make an happy end change those things in the contract ! You will make the player happy and we remember only this time as funny time.*
>
> *[31/01/2020, 18:52:35] Hamed Qatar Xavi Team: No chance my friend, I already moved on another option …. You know better what you are doing …. I just wanted to make sure you always remember in your mind that you miscalculated things …".*

20. At 18:23 CET (20:23 QT), Mr Xavi Hernández Creus, also known as "Xavi", the head coach of Al Sadd, informed the Player as follows by voice message:

> *"[A.], sorry to disturb you again. Hamed call me right now that we will solve the problem here. I understand your lawyer, I understand everything you worried, your worries about the contract, don't worry we will solve the problem here, I talk right now to your brother that trust me, trust Hamed, trust the country, trust the project, trust the club, the big boss, don't worry we will solve this problem. I had the same problem than you, the same, of course you will get the money if you get injured, there is no sense on that, but now they can not change the contract right now because there is no time. But don't worry, don't worry, you will receive the money in case that you get injured, but you do not have injury, ok, you will play and you will enjoy here. Ok my friend. If you need to discuss, please call me. But try to sign and you will be happy here with me, with all the team, the country and with everybody. Ok, it's a pleasure that you can be a player of Al-Sadd and every body in the country is excited that you come here. Ok, please sign, it's my advice sign and you will enjoy here. And don't worry, no worry for anything. Ok my friend, let me know please, thank you".*

21. At 19:00 CET (21:00 QT), Mr Xavi confirmed to Mr Dembele that *"We will remove the clause 4 – injuried".*

22. At 19:02 CET (21:02 QT), Mr Xavi informed Mr Dembele as follows by voice message:

"My friend, in our opinion in my opinion with experience here, it's my fifth year in the country, the rest of the clauses never happened because the player will be professional. The problem is the injuries about 6 months, the last 6 months, he will not receive, this is injuries, ok. So protecting him, protecting the player, ok, I think we have to remove the clause number 4 but the rest will be ok. Trust me that the rest will be ok".

23. At 19:05 CET (21:05 QT), with reference to advice from the Player's lawyer, Mr Dembele informed Mr Xavi as follows:

"[31/01/2020 19:05:33] Dramane: The lawyer tell to him, FIFA case and 50 millions And injury

[31/01/2020 19:06:18] Dramane: I really want to help but as I say to you he advice [the Player] *don't move if you haven't this in your contract.*

[31/01/2020 19:06:55] Dramane: I give you his mobile and email, if the lawyer of your team want to speak to him and do that contract quickly".

24. At 19:17 CET (21:17 QT), Mr Xavi informed Mr Dembele as follows by voice message:

"I already spoke with Normand. Ok, I told him that ok the remarks, the most important and not all the remarks because the other remarks of 20%, if you don't attend the training, this is a stupid things. Ok, this is stupid things, in my experience here. The most important thing is FIFA as you mentioned, injuried and in case that you have to pay fifty millions. There is no sense ok. These three points tell him that the most important thing, the rest is very difficult to change because you know that contracts here we have. Ok my friend. Come on let's do it. Thank you".

25. As from 19:20 CET (21:20 QT), the conversation between Mr Dembele and Mr Xavi continued as follows:

"[31/01/2020 19:20:23] Dramane: Thank you

[31/01/2020 19:21:08] Xavi Coach Al Espagne: Now it's too late … but if that was the only issue he could have signed and to not waste time and then i will correct it my self

[31/01/2020 19:21:08] Xavi Coach Al Espagne: But as I said unless he already signed now it's to late

[31/01/2020 19:21:08] Xavi Coach Al Espagne: Sheijk Jassim

[31/01/2020 19:41:01] Dramane: So it's mean that we don't change this one ! [The Player] *sign this one and come !*

[31/01/2020 19:42:41] Xavi Coach Al Espagne: We are trying to remove Fifa case and injuried clause 4.2

> *[31/01/2020 19:45:29] Dramane: Ok thank you.*
>
> *[31/01/2020 19:45:51] Dramane: The lawyer send also a mail* [the Player] *just tell me*
>
> *[31/01/2020 19:46:15] Xavi Coach Al Espagne: Ok i already sent to Sheijk and Ahmed Razak (the guy who negotiate)*
>
> *[31/01/2020 19:46:34] Dramane: Thank you".*

26. At 20:03 CET (22:03 QT) – *i.e.* not at 22:03 (00:03 QT) as alleged by Parma – Al Sadd entered its transfer instructions into FIFA TMS.

27. At 21:36 CET (23:36 QT), Al Sadd provided the Player with an amended fourth draft of the employment contract (the "Employment Contract"), from which only Clause 4.2 was removed, which originally provided as follows:

> *"The club have the right to terminate the contract without any financial obligations to the player if the player did not participate 60% of the club matches after every 6 months".*

28. As from 21:42 CET (23:42 QT), the following conversation between Mr Xavi and Mr Dembele took place:

> *"[31/01/2020, 21:42:09] Xavi Coach Al Espagne: We have 20 minutes*
>
> *[31/01/2020, 21:45:05] Xavi Coach Al Espagne: Did you sign it?*
>
> *[31/01/2020, 21:45:06] Xavi Coach Al Espagne: We don't have time 🙏".*

29. Al Sadd maintains that the Player had signed the Employment Contract at 21:45 CET (23:45 QT), as this was Parma's submission in the proceedings before the FIFA Players' Status Committee ("FIFA PSC").

30. At 21:49 CET (23:49 QT), Parma provided Al Sadd with the Transfer Agreement duly signed by Parma and co-signed by the Player. The Transfer Agreement contains, *inter alia*, the following clauses:

> "6. *The validity of the present contract is strictly related to the issuance of the International Transfer Certificate (ITC) by the Football Association of* [Parma] *in favour of the Football Association of* [Al Sadd]. [Parma] *shall co-operate with its Football Association to issue the relevant ITC in favour of the Football Association of* [Al Sadd].
>
> 7. *The validity of the present contract is strictly related to the fact that the* [Player] *will accept his transfer to* [Al Sadd] *and consequently that an employment contract between* [Al Sadd] *and the* [Player] *will be signed.*

8. This contract is valid after the player pass the medical check-up at Aspetar hospital".

31. At 21:50 CET (23:50 QT), Parma entered its transfer instructions in FIFA TMS.

32. As from 21:50 CET (23:50 QT), the conversation between Mr Xavi and Mr Dembele continued:

"[31/01/2020, 21:50:11] Xavi Coach Al Espagne: Is it done?

[31/01/2020, 21:50:11] Xavi Coach Al Espagne: We must register you in the Federation".

33. At 21:51 CET (23:51 QT), Parma provided Al Sadd with a copy of the necessary third party ownership ("TPO") declaration.

34. At 21:52 CET (23:52 QT), Mr Rashad urged Employee 1, […] of Parma, to send him the countersigned copy of the Employment Contract.

35. As from the same time, at 21:52 CET (23:52 QT), the conversation between Mr Xavi and Mr Dembele continued:

"[31/01/2020, 21:52:51] Dramane: We send back now

[31/01/2020, 21:52:59] Xavi Coach Al Espagne: Great!!

[31/01/2020, 21:54:16] Xavi Coach Al Espagne: Everything? All?

[31/01/2020, 21:54:54] Dramane: [uploads unknown picture]

[31/01/2020, 21:55:38] Xavi Coach Al Espagne: 👏👏👏🔝⚽❤️

[31/01/2020, 21:56:06] Dramane: [uploads picture of signature page of the Employment Contract]

[31/01/2020, 21:58:59] Xavi Coach Al Espagne: Is all signed?"

36. At 21:53 CET (23:52 QT), Employee 1 answered Mr Rashad's message of 21:52 CET (23:52 QT): *"One minute".*

37. At the same time, at 21:53 CET (23:53 QT), Al Sadd uploaded the signed Transfer Agreement and the TPO declaration into FIFA TMS.

38. At the same time, at 21:53 CET (23:53 QT), Employee 1 provided Mr Rashad with a copy of a document titled *"TMS transfer report – instruction".*

39. At 21:54 CET (23:54 QT), Employee 1 provided Mr Rashad with a copy of the Player's passport.

40. As from 21:55 CET (23:55 QT), the following conversation between Employee 1 and Mr Rashad takes place:

> "*[1/31/20, 9:55:32 PM]* Employee 1*: Please can you send us the transfer agreement signed for our federation*
>
> *[1/31/20, 9:55:40 PM]* Employee 1*: Thanks you so much*
>
> *[1/31/20, 9:56:34 PM] A.R.: What do you mean transfer agreement signed?*
>
> *[1/31/20, 9:57:21 PM]* Employee 1*: It's ok* [uploads picture of signature page of the Employment Contract]
>
> *[1/31/20, 9:57:32 PM]* Employee 1*: Sorry but I don't look before*
>
> *[1/31/20, 9:57:40 PM] A.R.:* 👍
>
> *[1/31/20, 9:59:11 PM] A.R.: Player contract?"*

41. At 21:56 CET (23:56 QT), the Player alleges to have personally provided Mr Rashad with a signed copy of the signature page of the Employment Contract by email.

42. At 22:00 CET (24:00 QT), the transfer window in Qatar closed. Al Sadd had not received a countersigned copy of the full Employment Contract from the Player and/or Parma by that time, but it had received the signed signature page of the Employment Contract from Mr Dembele, and Mr Rashed received it from Employee 1 and allegedly from the Player.

43. At 22:00 CET (24:00 QT), the Player personally provided Mr Rashad by email with a countersigned copy of the full Employment Contract, except page 20 thereof, *i.e.* the signature page of *"SCHEDULE 1"* related to the Player's salary.

44. At 22:01 CET (0:01 QT), the conversation between Mr Xavi and Mr Dembele continues:

> *"[31/01/2020, 22:01:22] Dramane:* [uploads full Employment Contract, except page 20 thereof]
>
> *[31/01/2020, 22:02:55] Dramane: Yes all*
>
> *[31/01/2020, 22:04:55] Xavi Coach Al Espagne:* 👍 😘*".*

45. As from 22:02 CET (0:02 QT), the conversation between Employee 1 and Mr Rashad continues:

"[1/31/20, 10:02:33 PM] Employee 1*:* [uploads signature page of the Employment Contract]

[1/31/20, 10:03:34 PM] Employee 1*: Now we Send a scan of all the contract and we will send you*

[1/31/20, 10:03:45 PM] A.R.: Didn't go through unfortunately

[1/31/20, 10:04:06 PM] A.R.: My system shut down …

[1/31/20, 10:16:40 PM] Employee 1*:* [uploads picture showing a print screen from the FIFA TMS website with the message: *"Awaiting ITC request Waiting for Q.F.A. Qatar to request the ITC"*].

[1/31/20, 10:19:49 PM] A.R.: Federation system is shut down ….

[1/31/20, 10:30:39 PM] Employee 1*: Missed voice call*

[1/31/20, 11:00:06 PM] Employee 1*:* [uploads picture with title "00000026- Employee 2"]

[1/31/20, 11:01:14 PM] Employee 1*: Hi Ahmed, tomorrow morning you can call with* Employee 2 *our […]*

[1/31/20, 11:01:43 PM] Employee 1*: Thanks for your cooperation"*.

46. At 22:09 CET (0:09 QT), Al Sadd uploaded the full Employment Contract into TMS, except page 20 thereof, and paired the transfer instruction. At this moment, FIFA TMS flagged a matching exception. Whereas Parma had indicated that the due date for payment of the transfer fee was 26 January 2020, Al Sadd had indicated that this was 22 February 2020.

47. At 22:11 CET (0:11 QT), Al Sadd confirmed 26 January 2020 as the due date, although it maintains that this date was mistaken, allegedly to safeguard the intended transfer by resolving the matching exception in FIFA TMS.

48. At 22:16 CET (0:16 QT), the Player provided Al Sadd by email with a full copy of the signed Employment Contract, except page 20.

49. The QFA never requested the FIGC for the Player's ITC.

50. Between 1 and 15 February 2020, several letters were exchanged between Al Sadd and Parma, whereby Parma generally requested Al Sadd to confirm that it would execute the Transfer Agreement and whereby Al Sadd generally informed Parma that this was no longer possible. Despite discussions having taken place between Parma and Al Sadd, no solution was reached that was acceptable to both sides.

51. On 2 February 2020, the Player allegedly tried to call Mr Rashad on five different occasions. Parma maintains that it is not aware of any contact between Al Sadd and the Player since 1 February 2020.

52. On 3 February 2020, Parma provided Al Sadd with an invoice for the amount of EUR 4,285,714.29 (EUR 4,500,000 minus 5% solidarity contribution) in accordance with the Transfer Agreement.

53. Also on 3 February 2020, Al Sadd acquired the services of Mr Marco Jhonfai Fabian de la Mora ("Mr Fabian"), a football player of Mexican nationality, who could be registered by Al Sadd because he was a free agent, thereby filling the final vacant spot on Al Sadd's roster for foreign players.

54. On 15 February 2020, Parma announced on its Twitter account that the Player had been called up for the match against the Italian football club Sassuolo, scheduled for 16 February 2020, in which match the Player formed part of the starting eleven and where he scored the winning goal for Parma in the 1:0 victory.

B. Proceedings before the Single Judge of the FIFA Players' Status Committee

55. On 23 April 2020, Parma filed a claim against Al Sadd for an alleged breach of the Transfer Agreement before the FIFA PSC, requesting compensation in the amount of EUR 9,917,500, *i.e.* EUR 4,275,000 (EUR 4,500,000 minus 5% corresponding to solidarity contribution) as the amount it should have received from Al Sadd on the basis of the Transfer Agreement, and EUR 5,642,500 as the residual value of the Player's employment contract with Parma, plus interest.

56. On 2 June 2020, Al Sadd requested Parma's claim to be dismissed and filed a counterclaim against Parma for an alleged breach of the Transfer Agreement, requesting compensation in the amount of EUR 5,446,100, *i.e.* expenses related to the negotiations in an amount of EUR 16,800[2] (flight tickets (EUR 8,100) and hotel bookings (EUR 8,000)), EUR 930,000 as damages (the average between the salary the Player was supposed to earn with Al Sadd for 6 months and the salary of Mr Fabian, the professional football player who allegedly filled the Player's position with Al Sadd), and losses in an amount of EUR 4,500,000 as the total value of the Transfer Agreement.

57. Parma objected to the admissibility of Al Sadd's counterclaim on the basis of *res judicata* and, subsidiarily, requested that Al Sadd's counterclaim be dismissed.

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[2] The Panel considers Al Sadd's reference to EUR 16,800 to be a typo, as the relevant amount should be EUR 16,100, but the Panel notes that the total amount claimed of EUR 5,446,100 is correctly based on the amount of EUR 16,100.

58. On 6 October 2020, the Single Judge of the FIFA PSC rendered his decision (the "Appealed Decision"), with the following operative part:

"1. The claim of [Parma] *is rejected.*

2. The counterclaim of [Al Sadd] *is admissible.*

3. The counterclaim of [Al Sadd] *is rejected.*

4. The final costs of the proceedings in the amount of CHF 10,000 are to be paid to FIFA by the parties as follows: CHF 5,000 by [Al Sadd] *and CHF 5,000 by* [Parma]. *As both parties have already paid CHF 5,000 each as advance of costs, no further payments are due (cf. note relating to the payment of the procedural costs below)".*

59. On 23 November 2020, the grounds of the Appealed Decision were communicated to the Parties determining, *inter alia*, the following:

- With respect to the admissibility of Al Sadd's counterclaim, the Single Judge noted that this was contested by Parma "*on the grounds of the principle of res judicata and Al Sadd's position regarding the case ref. 20-00540.*

- *In this respect, while taking note of the similar request and argumentation, the Single Judge deemed that the counterclaim of Al Sadd is based on the transfer agreement (or rather its invalidity, as claimed by Al Sadd). Accordingly, the Single Judge concluded that the counterclaim falls under the scope of art. 22 lit. f) of the Regulations on the Status and Transfer of Players.*

- *Consequently, the Single Judge decided that the counterclaim of Al Sadd is admissible".*

- As to the merits of the case, *"the Single Judge recalled, first and foremost, the longstanding and well-established jurisprudence of the Players' Status Committee pursuant to which the validity of a transfer agreement may be made subject to a few administrative conditions precedent, as the issuance of the ITC and a successful medical exam.*

- *Having the above in mind, the Single Judge then turned to the contents of the* [Transfer Agreement]*, and observed that said contract contained the following conditions precedent regarding its validity:*

  - *The issuance of an ITC;*
  - *The successful medical exam of the player;*
  - *The acceptance of the player to be transferred;*
  - *The execution of an employment contract between the player and Al Sadd.*

- *The Single Judge turned then to the submissions of the parties, and noted that it remained undisputed that the two first conditions precedent, i.e. the issuance of the ITC and the completion of a successful medical examination by the player, were not fulfilled.*

- *Consequently, the Single Judge was comfortable to determine that the conditions precedent to the contract had not been fulfilled, and hence that the* [Transfer Agreement] *did not become valid.*

- *Although confident of the exhaustiveness of the foregoing reasoning, the Single Judge wished to emphasise, for the sake of completeness, that he deemed that no damage was suffered by Parma in connection from the invalidity of the transfer agreement, as Parma kept the player's services, the payment of his salaries being a natural consequence of it.*

- *On account of all the above, the Single Judge decided that the claim of Parma and the counterclaim of Al Sadd were rejected in their entirety".*

III. PROCEEDINGS BEFORE THE COURT OF ARBITRATION FOR SPORT

60. On 14 December 2020, Al Sadd filed a Statement of Appeal with the Court of Arbitration for Sport (the "CAS") against the Appealed Decision, in accordance with Articles R47 and R48 of the 2020 edition of the Code of Sports-related Arbitration (the "CAS Code"). In this submission, Al Sadd named Parma as the only respondent and nominated Mr José Juan Pintó Sala, Attorney-at-Law in Barcelona, Spain, as arbitrator.

61. On the same date, 14 December 2020, Parma also filed a Statement of Appeal with CAS against the Appealed Decision, in accordance with Articles R47 and R48 of the CAS Code. In this submission, Parma named Al Sadd as the only respondent and nominated Mr Michele Bernasconi, Attorney-at-Law in Zurich, Switzerland, as arbitrator.

62. On 17 December 2020, the CAS Court Office acknowledged receipt of both appeals and invited the Parties to indicate whether they would agree to consolidate both proceedings, which both Parties did, as a consequence of which the proceedings were formally consolidated in accordance with Article R52 CAS Code on 21 December 2020.

63. On 22 December 2020, the Parties were provided with a disclosure made by Mr Bernasconi further to Article R33 CAS Code, which neither of the Parties challenged further to Article R34 CAS Code.

64. On 22 December 2020, the Parties were provided with a disclosure made by Mr Pintó further to Article R33 CAS Code, which neither of the Parties challenged further to Article R34 CAS Code.

65. On 23 December 2020, upon being informed of the pending proceedings, FIFA renounced its right to request its possible intervention in these proceedings, further to Article R41.3 CAS Code.

66. On 3 February 2021, in accordance with Article R54 CAS Code, and on behalf of the President of the CAS Appeals Arbitration Division, the CAS Court Office informed the Parties that the arbitral tribunal appointed to decide the present matter was constituted as follows:

President: Mr Hendrik Willem Kesler, Attorney-at-Law, Enschede, the Netherlands
Arbitrators: Mr José Juan Pintó Sala, Attorney-at-Law, Barcelona, Spain
Mr Michele A.R. Bernasconi, Attorney-at-Law, Zurich, Switzerland.

67. On 22 January 2021, in accordance with Article R51 CAS Code, Al Sadd and Parma filed their respective Appeal Briefs.

68. On 24 February 2021, in accordance with Article R55 CAS Code, Parma and Al Sadd filed their respective Answers. In its Answer, Al Sadd, *inter alia*, requested that the witness statements filed by Parma be deemed inadmissible.

69. On 4 March 2021, the CAS Court Office informed the Parties that Mr Dennis Koolaard, Attorney-at-Law in Arnhem, the Netherlands, had been appointed as *Ad hoc* Clerk.

70. On 11 March 2021, following indications from both Parties that their preference was for a hearing to be held, the CAS Court Office informed the Parties that the Panel had decided to hold a hearing.

71. On 12 April 2021, in accordance with Article R44.3 CAS Code and on behalf of the Panel, the CAS Court Office requested FIFA to provide it with information concerning at what time on 31 January 2020 Al Sadd entered its instructions into the FIFA TMS system with respect to the Player. The CAS Court Office also informed the Parties that Al Sadd's request that the witness statements filed by Parma be deemed inadmissible was dismissed, indicating that it would be for the Panel to examine the witness statements and determine their evidentiary weight.

72. On 21 April 2021, FIFA informed the CAS Court Office that, *"according to the information in FIFA TMS, on 31 January 2020 at 20:03 CET/Swiss time (i.e. 22:03 QAT)* [Al Sadd] *entered the transfer instruction 275109 to engage* [the Player] *permanently from* [Parma]*"*.

73. On 18 May 2021, Al Sadd informed the CAS Court Office that Parma had indicated in its Answer that it intended to rely on the testimony of Employee 2 and Employee 3, but that it considered that Parma's submissions were not in accordance with the requirements of Article R51 CAS Code, according to which a brief summary of the expected testimony is to be provided. Al Sadd therefore requested that Employee 2 and Employee 3 be excluded from providing testimony at the hearing, or alternatively, that statements concerning their expected testimony be provided.

74. On 20 May 2021, the CAS Court Office provided the Parties with an Order of Procedure, which was duly signed and returned by Parma and Al Sadd on 27 and 28 May 2021, respectively.

75. On the same date, 20 May 2021, Parma objected to Al Sadd's request to exclude Employee 2 and Employee 3 from testifying at the hearing or that it be required to submit witness statements.

76. On 25 May 2021, the CAS Court Office informed the Parties that the Panel had decided to dismiss Al Sadd's request and that Parma's witnesses were permitted to testify at the hearing. The Parties were also provided with a tentative hearing schedule.

77. On 30 May 2021, Parma provided the CAS Court Office with an agreement whereby Parma and the Player terminated their employment agreement as per 28 May 2021 (the "Termination Agreement") and requested it to be admitted on file.

78. On 1 June 2021, Al Sadd indicated that it did not object to the document presented by Parma on 30 May 2021.

79. On the same date, 1 June 2021, the CAS Court Office provided the Parties with an updated tentative hearing schedule, taking into account comments from the Parties to the initial version of the schedule.

80. On the same date, 1 June 2021, Parma provided the CAS Court Office with a letter and 8 documents that it requested be admitted on file, maintaining that it had received such documentation that same day from the Algerian football club USM Bel Abbès, allegedly revealing that *"(i) Al Sadd negotiated with third parties the transfer and employment of Mr. Abdennour Iheb Belhoci* ["Mr Belhocini"] *from USM Bel Abbès to* [Al Sadd] *in the final hours of the 2020 January transfer window and (ii) several witnesses of* [Al Sadd] *appear to have lied in the witness statements enclosed to* [Al Sadd's] *Answer to* [Parma's] *Appeal Brief"*.

81. On 2 June 2021, the CAS Court Office informed the Parties that Al Sadd could be given the opportunity to comment on Parma's letter dated 1 June 2021 at the hearing, without prejudice to any decision taken by the Panel in this regard.

82. On the same date, 2 June 2021, a hearing was held by video-conference further to Articles R44.2 and R57 of the CAS Code. At the outset of the hearing, both Parties confirmed that they had no objection as to the constitution and composition of the Panel.

83. The following persons attended the hearing in addition to the Panel, Ms Kendra Magraw, CAS Counsel, and Mr Dennis Koolaard, *Ad hoc* Clerk:

   a) For Al Sadd:

      1) Mr Turki Nasser Al-Maadheed, CEO of Al Sadd;

      2) Mr Ahmed Rashad Abdelmegeed, External Consultant of Al Sadd;

      3) Mr Yasser Khalil Ibrahim Ibrahim, TMS Manager of Al Sadd;

      4) Mr Ettore Mazzilli, Counsel;

5) Mr Martin Cockburn, Counsel;

6) Mr Konstantinos Antoniou, Counsel;

7) Mr Marc Cavaliero, Counsel.

b) For Parma:

1) Employee 1, […] of Parma;

2) Employee 2, […] of Parma;

3) Employee 3, […] and former […] of Parma;

4) Mr Vittorio Rigo, Counsel;

5) Mr Matthias Nicolai, Counsel;

6) Mr Marc Baumgartner, Counsel;

7) Mr Micael Totaro, Counsel;

8) Ms Federica Ravasio, Interpreter.

84. The Panel heard evidence from the following persons, in order of appearance:

1) Mr Turki Nasser Al-Maadheed, CEO of Al Sadd, witness called by Al Sadd;

2) Mr Ahmed Rashad Abdelmegeed, External Consultant of Al Sadd, witness called by Al Sadd;

3) Mr Yasser Khalil Ibrahim Ibrahim, TMS Manager of Al Sadd, witness called by Al Sadd;

4) Employee 1, […] of Parma, witness called by Parma;

5) Employee 2, […] of Parma, witness called by Parma;

6) Employee 3, […] and former […] of Parma, witness called by Parma.

85. All witnesses were invited by the President of the Panel to tell the truth subject to the sanction of perjury under Swiss law. Both Parties and the Panel had the opportunity to examine and cross-examine the witnesses.

86. At the outset of the hearing, the Panel informed the Parties that because Al Sadd indicated to have no objection to the admissibility of the document presented by Parma on 30 May 2021, the Termination Agreement was admitted on file.

87. As a consequence of the Termination Agreement, Parma reduced its request for compensation in the Appeal Brief (*i.e.* prayer for relief No. v) from EUR 9,917,500 to EUR 7,398,750, which reduction was not objected to by Al Sadd and was also admitted by the Panel.

88. During the hearing, Al Sadd objected to the admissibility of Parma's letter dated 1 June 2021 with 8 documents attached to it. The Panel subsequently indicated that it would decide on this issue in the final award, which issue is addressed *infra*.

89. Both Parties were given the full opportunity to present their cases, submit their arguments in opening and closing statements, and to answer the questions posed by the Members of the Panel.

90. Before the hearing was concluded, both Parties expressly stated that they had no objection to the procedure adopted by the Panel and that their right to be heard had been respected.

91. On 14 September 2021, Parma provided the CAS Court Office with a letter and an abstract from FIFA TMS, allegedly produced by FIFA on 6 September 2021 following a procedural order issued by an arbitral tribunal in the proceedings referenced as *CAS 2021/A/7742 & 7747*. Parma requested such documentation to be admitted on file on the basis of exceptional circumstances in accordance with Article R56 of the CAS Code.

92. On 22 September 2021, Al Sadd objected to the admissibility of Parma's letter dated 14 September 2021 and the annex enclosed thereto, arguing that Parma had failed to establish the relevance and the required exceptional circumstances.

93. On 29 September 2021, the CAS Court Office informed the Parties that the Panel would decide on the admissibility of Parma's letter dated 14 September 2021 in the final Award.

94. On 4 March 2022, Parma informed the CAS Court Office that the parties (*i.e.* the Player, Al Sadd and Parma) in the proceedings referenced as *CAS 2021/A/7742 & 7747* had concluded a settlement agreement. Parma maintained that FIFA's decision with regard to the alleged breach of the Employment Contract became final and binding, including its finding that the Employment Contract was a valid agreement which did not enter into force due to the conditions precedents not being fulfilled and that Al Sadd deliberately failed to undertake the required measures to fulfil such conditions precedent. Parma maintained that one of the conditions precedent presupposed the release of the FIFA ITC, which in turn was a condition for the Transfer Agreement to become effective, and that this showed that Al Sadd was the only culpable party for the Transfer Agreement not becoming valid. Parma also argued that the settlement agreement showed that Al Sadd's request for compensation was without merit, as Al Sadd agreed to pay the entirety of the costs of the proceedings and the legal fees of the Player. Parma requested the Panel to take the *"existence of the settlement agreement in consideration when rendering its Arbitral Award"*.

95. On 9 March 2022, upon being invited by the CAS Court Office to comment on Parma's letter dated 4 March 2022, Al Sadd, *inter alia*, argued that the settlement agreement from *CAS 2021/A/7742 & 7747* and Parma's 4 March 2022 letter were irrelevant and that Parma's request was to be dismissed. Al Sadd argued that Parma had not invoked any exceptional circumstances under Article R56 CAS Code that would warrant accepting Parma's letter on file, nearly nine

months after the hearing. Al Sadd also indicated that only the operative part of the FIFA decision with regard to the alleged breach of the Employment Contract could become final and binding, but not its reasoning. Al Sadd submitted that FIFA's decision with regard to the alleged breach of the Employment Contract cannot legally impact on the matter at hand, because the facts are different, because FIFA's decision was merely taken on the basis of written submissions without a hearing and because the Panel has the competence to decide *de novo*. The settlement agreement in *CAS 2021/A/7742 & 7747* also does not amount to an admission by Al Sadd, as it was concluded on a non-admission basis and that any reimbursement of the advance of costs paid by both the Player and Al Sadd was to be reimbursed solely to Al Sadd. Al Sadd further maintained that Parma breached the confidentiality of the settlement agreement in *CAS 2021/A/7742 & 7747*.

96. On 14 March 2022, Parma informed the CAS Court Office that it and its counsel contested being held by a confidentiality obligation with respect to the settlement agreement in *CAS 2021/A/7742 & 7747* and "suggested" the Panel to order Al Sadd to produce a copy of the settlement agreement.

97. On 21 March 2022, upon being invited by the CAS Court Office to comment on Parma's letter dated 14 March 2022, Al Sadd reiterated that Parma breached its confidentiality obligation with respect to the settlement agreement in *CAS 2021/A/7742 & 7747*, and maintained that Parma only made a "suggestion", but that it did not submit any request to the Panel. Al Sadd also indicated that, given its confidentiality, it was not in a position to disclose the settlement agreement. Finally, Al Sadd requested the Panel to *"consider Parma's responsibility pertaining to additional costs in the matters at hand with regards to Parma's unsolicited correspondences"*.

98. On 1 April 2022, the CAS Court Office informed the Parties that the Panel had decided that Parma's request that the settlement agreement from *CAS 2021/A/7742 & 7747* be admitted to the case file was denied and that Parma's letters dated 3 March 2022 and 14 March 2022 (and enclosures thereto) were admitted to the file, as were Al Sadd's correspondence of 9 March 2022 and 21 March 2022), and that the reasons for the Panel's decisions would be addressed in the Panel's final award.

99. The Panel confirms that it carefully heard and took into account in its decision all of the submissions, evidence, and arguments presented by the Parties, even if they have not been specifically summarised or referred to in the present arbitral award.

IV. SUBMISSIONS OF THE PARTIES AND REQUESTS FOR RELIEF

A. CAS 2020/A/7582

100. Al Sadd's submissions in *CAS 2020/A/7582*, in essence, may be summarised as follows:

- As held in the Appealed Decision, the Transfer Agreement never entered into force. While it was signed by the Parties as well as by the Player, it contained at least two conditions precedent that were not fulfilled, *i.e.* i) the Player has never undergone and successfully passed a medical examination in the Aspetar hospital in Doha, Qatar; and ii) the FIGC never issued the Player's ITC to the QFA.

- Parma, due to its conduct, prevented the Transfer Agreement from entering into force and shall therefore pay compensation to Al Sadd. Al Sadd's genuine and sincere interest in the Player cannot be denied. Unfortunately, Parma did not apply a comparable degree of care.

- While Al Sadd had provided the Player and Mr Dembele with a signed version of the Employment Contract, which was signed by the Player at 21:45 CET (23:45 QT) at the latest, and while Al Sadd on multiple occasions and through multiple channels requested Mr Dembele, the Player and Parma to receive a copy of the Employment Contract countersigned by the Player prior to the end of the registration period, Al Sadd was provided with the Employment Contract by the Player and Parma only after the end of the registration period. Al Sadd still uploaded all relevant documentation in the FIFA TMS system on 1 February 2020 at 00:09 QT.

- The fact that the Transfer Agreement did not enter into force does not entail that Parma is exempted from any obligation. Based on the principle of *culpa in contrahendo*, and because it breached its duty during the contractual negotiations and thereby prevented the Transfer Agreement from being concluded, Parma is liable to pay compensation to Al Sadd.

- The following prerequisites for a party to be held liable based on the doctrine of *culpa in contrahendo* are complied with: i) existence of contractual negotiations; ii) trust that merited protection; iii) a breach of duty – deriving in particular from the principle of good faith; iv) harm; v) a causal link; and vi) fault.

- The damages incurred by Al Sadd are comprised of the expenses incurred with respect to negotiations held in Zurich, Switzerland (EUR 7,299.04 for flight tickets and EUR 7,852.14 for hotel bookings, for a total of EUR 15,151.18).[3]

- Al Sadd also suffered a loss in sporting quality. On 3 February 2020, Al Sadd hired Mr Fabian, as replacement for the Player, but while the Player had a market value of EUR 7,000,000, Mr Fabian only had a market value of EUR 1,500,000, resulting in a loss in sporting performance of EUR 5,500,000.

[3] The Panel notes that the amounts mentioned by Al Sadd here deviate from the amounts claimed in the proceedings before the FIFA PSC.

- Further, while Al Sadd offered the Player a salary of EUR 6,000,000 over a period of 24 months, it offered Mr Fabian a salary of EUR 570,000 for a 6-month employment contract. This means that Al Sadd suffered a loss of EUR 930,000, which corresponds to the difference between the values of both contracts for the relevant period of 6 months. A continuation of this calculation for the period until 31 December 2021 shows that Al Sadd suffered an additional loss of EUR 2,790,000.

- Al Sadd's loss in sporting performance can therefore be quantified in an amount between EUR 5,500,000 and EUR 3,720,000.

- Therefore, Parma shall compensate Al Sadd in a total amount of EUR 5,515,451.18[4] (EUR 5,500,000 + EUR 15,451.18).

- Subsidiarily, should the Panel deem that the Transfer Agreement entered into force, one would need to conclude that such agreement was breached by Parma. Parma did not comply with its obligation to transfer the federative and economic rights of the Player to Al Sadd. By allowing the Player to return to training and calling him up for a match, Parma *de facto* prevented the transfer of the federative rights of the Player to Al Sadd. Due to the breach of the Transfer Agreement, the Transfer Agreement was never executed.

- The complete absence of execution of the Transfer Agreement, due to Parma's responsibility, shall entitle Al Sadd to be compensated based on the theory of negative interest. With reference to the considerations developed above, the amount of compensation to be awarded is EUR 5,515,451.18, plus interest since 2 June 2020.

101. On this basis, Al Sadd submits the following prayers for relief:

"1. To fully accept the present appeal.

2. To set aside the Decision as far as it rejects the Appellant's claims against the Respondent and to condemn the Respondent to pay to the Appellant compensation in the amount of EUR 5,515,451.19 plus an interest of 5 % per annum on the aforesaid amount as from 2 June 2020 until the date of effective payment.

3. In addition, to order the Respondent to pay to the Appellant an amount equal to CHF 5,000 corresponding to Al Sadd's costs incurred in the proceedings in front of the FIFA PSC leading to the Decision.

4. For the effect of the above, to state that the Respondent shall be condemned to pay any and all costs of the present arbitrational proceedings including, without limitation, attorney's fees as well as any

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[4] The Panel notes that this calculation is not correct, as the expenses incurred with respect to flight tickets and hotel bookings was allegedly EUR 15,151.18, *i.e.* EUR 300 less than indicated by Al Sadd here.

further costs and expenses for witnesses and experts. In this respect, the Appellant reserves the right to provide to the CAS all relevant documentation attesting the incurred amounts".

102. Parma's submissions in *CAS 2020/A/7582*, in essence, may be summarised as follows:

- The Appealed Decision and Al Sadd confuse between the "validity of a contract" and the "effectiveness of a contract". The Transfer Agreement is a valid contract, independent of the conditions precedent. It contains all the *essentialia negotii* and at the moment of signing, the object of the Transfer Agreement (*i.e.* the transfer of the Player) was still possible. However, the effectiveness of the Transfer Agreement is subject to conditions precedent, in accordance with Article 151 *et seq.* of the Swiss Code of Obligations (the "SCO"). Al Sadd can therefore not rely on an alleged pre-contractual breach by Parma as a legal basis to request compensation for damages.

- Subsidiarily, even if Al Sadd can rely on a pre-contractual breach to request compensation for damages, Parma did not commit any fault. Al Sadd failed to satisfy its burden of proof to establish that Parma "intentionally and negligently" prevented the Transfer Agreement from being concluded. Also, Parma's "duty to cooperate" was fulfilled as it completed all administrative obligations it had in relation to the Transfer Agreement, under the applicable regulations of FIFA, by providing Al Sadd with the Transfer Agreement and entering its transfer instructions into FIFA TMS before the end of the transfer window.

- Rather, Al Sadd failed to enter its transfer instructions into FIFA TMS before the end of the transfer window. It is therefore redundant to assess whether Al Sadd was able to upload the Employment Contract before the end of the transfer window. In any event, Al Sadd could upload the Employment Contract before the end of the transfer window. Parma had no obligation to provide Al Sadd with the Employment Contract.

- The matching exception in FIFA TMS is irrelevant as this only arose after the end of the transfer window.

- Following the above, Parma did not commit any fault which impeded the transfer from being completed. Therefore, not all essential elements for a *culpa in contrahendo* are present. Thus, the request for damages filed by Al Sadd is to be dismissed.

- Al Sadd's calculation of damages purportedly incurred is mostly based on the positive interest principle and not the negative interest principle which must be applied to quantify compensation for damages in the event of *culpa in contrahendo*.

- Subsidiarily, even if the Panel would find that Parma committed a fault, it is evident that Al Sadd did not incur any damages. Parma agrees with Al Sadd that *"in the event of liability arising from culpa in contrahendo, the negative interest shall be compensated"*, which

requires that Al Sadd should be put in the position it would have been if it had never negotiated the Transfer Agreement.

- It is remarkable that the costs of the flight tickets and the hotel fees for a stay of Al Sadd's representative were exclusively for a 2 hour meeting with the Player's agent. In any event, this concerned negotiations regarding the Employment Contract, not the Transfer Agreement.

- As to the purported losses suffered, while Al Sadd states that they must be quantified in accordance with the negative interest principle, it calculates them under the positive interest principle. Especially the difference in value between the Player and Mr Fabian relates to the situation Al Sadd would have been in if the transfer would have been concluded. Such calculation is inconsistent with the negative interest principle and is thus to be rejected.

- In any event, Parma did not breach the Transfer Agreement. The obligations deriving from the Transfer Agreement were breached by Al Sadd. Therefore, Al Sadd's request for damages is to be dismissed.

103. On this basis, Parma submits the following prayers for relief:

"(i) To reject the Appeal in its totality;

(ii) To award Parma Calcio any further or other relief as the Arbitral Panel sees fit;

(iii) To order Al Sadd to bear any and all costs of the present arbitral proceedings; and

(iv) To order Al Sadd to pay to Parma Calcio a contribution to the legal costs incurred, in an amount deemed fit by the Arbitral Panel".

B. CAS 2020/A/7583

104. Parma's submissions in *CAS 2020/A/7583*, in essence, may be summarised as follows:

- The Parties were bound by a valid contract (*i.e.* the Transfer Agreement), but the Transfer Agreement is subject to conditions precedent under Article 151 *et seq.* SCO. The Transfer Agreement is valid independent of the agreed conditions precedent. These conditions precedent only affect the effectiveness of the Parties' obligations under the Transfer Agreement. The Transfer Agreement was concluded in accordance with the requirements set forth in Articles 1-40 SCO. For instance, it contains all the *essentialia negotii* and the object of the Transfer Agreement (*i.e.* the transfer of the Player) was possible at the time of conclusion.

- The agreed conditions precedents "suspend" the performance of the contract: the obligations of the parties are put in parenthesis; they are not due yet and thus cannot be claimed. The performance of the contract is therefore subject to the fulfilment of the agreed conditions and thus the full contractual effects arise at the moment when such condition occurs or is fulfilled. When concluding an agreement subject to a condition precedent, the parties are bound by a contractual legal relationship which imposes a certain responsibility and some obligations on the parties, in link with the fulfilment of the condition precedent. In particular, the debtor of the future performance who is bound by the contract cannot disengage from it nor prevent the fulfilment of the condition precedent.

- The conditions precedent in the Transfer Agreement, as drafted by Al Sadd, served only one purpose: to protect Al Sadd against: i) the absence of consent of the Player; ii) the absence of administrative authorisation to play in Qatar; and iii) the risk of medical issues and/or a lack of fitness of the Player.

- Al Sadd failed to fulfil its obligations in view of releasing the Player's ITC from the FIGC to the QFA, thereby impeding the effectiveness of the Transfer Agreement.

- The fulfilment of the conditions precedent in the Transfer Agreement depend – in part – on the actions and pro-activity of Al Sadd.

- With respect to the condition precedent related to the issuance of the Player's ITC, Parma fully complied with its obligations under the FIFA regulations, *i.e.* it entered instructions in FIFA TMS before the end of the transfer window, whereas Al Sadd entered its instructions and uploaded the documentation into FIFA TMS after the closing of the transfer window, despite having all documentation required in its possession.

- Also, Al Sadd's own disloyal behaviour was the reason it had little time to fulfil its FIFA TMS obligations, as: i) it did not even address the Player's legitimate requests; ii) it terminated the negotiations with the Player without having any legitimate reason and without informing Parma; iii) rather than negotiating with the Player, Al Sadd held negotiations with a third-party football player (*i.e.* Mr Belhocini), whereas Al Sadd had only one spot left on its roster for foreign players; and iv) 2 hours and 18 minutes before the closing of the transfer window, Al Sadd agreed that it would remove two clauses from the Employment Contract, but it only returned an amended version of the Employment Contract 24 minutes before the closing of the transfer window, without however removing the two clauses, but just removing one sentence.

- Furthermore, Al Sadd refused to request a validation exemption to FIFA, even though it had alleged to have suffered an electrical shutdown. Al Sadd also continued to behave in a disreputable manner after the closing of the transfer window, because after clearly stating on two occasions that it considered that no valid Employment

Contract and Transfer Agreement were concluded, it filed claims against the Player and Parma for breach of contract, claiming EUR 50,000,000 in damages and requesting sporting sanctions to be imposed. If Al Sadd considered that the Employment Contract was effective, then it should have executed the contract by contacting the Player and asking him to perform in accordance with the Employment Contract.

- With respect to the condition precedent related to the Player's consent, it is undisputable that this condition had been completed.

- Since Al Sadd's behaviour is in breach of Article 152(1) SCO, it prevented the performance of the Transfer Agreement and shall be ordered to pay positive interest damages to Parma, under Article 97 *et seq.* SCO.

- If the transfer of the Player had taken place, Parma would have received the transfer compensation and it would not have had to pay the Player his salaries. The transfer fee was EUR 4,275,000 (EUR 4,500,000 minus 5% solidarity contribution). The remaining value of the Player's employment contract with Parma was EUR 5,642,500. Parma also paid EUR 2,100,000 to Sampdoria to acquire a replacement of the Player on loan, to whom it paid a salary of EUR 864,000 over 5 months. The total amount of damages is therefore EUR 9,917,500, plus interest. There is a causal link between the breach of Al Sadd and the damages incurred by Parma.

- Parma ultimately reduced its request for compensation from EUR 9,917,500 to EUR 7,398,750, because, as a consequence of the Termination Agreement, the remaining value of the Player's employment contract with Parma decreased.

105. On this basis, Parma submits the following prayers for relief:

"(i) To accept jurisdiction on the present appeal;

(ii) To declare the present appeal admissible;

(iii) To set aside the decision of the Single Judge of the FIFA Players' Status Committee under appeal;

(iv) To decide the Respondent breached its obligation under article 152 par. 1 SCO or any other obligation as the Arbitral Panel deems appropriate;

(v) To order Respondent to pay compensation for damages to Appellant in the amount of Euro 9.917.500,00 or in the amount the Arbitral Panel sees fit[5]*;*

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[5] As indicated *supra*, during the hearing Parma reduced its claim for compensation in prayer for relief no. 5 from EUR 9,917,500 to EUR 7,398,750.

(vi) To order Respondent to pay legal interests of 5% p.a. as from 1 February 2020 until the actual date of payment on the amount of Euro 9.917.500,00 or as the Arbitral Panel seems fit;

(vii) To order Respondent to re-imburse the costs of CHF 5.000,00 paid by Appellant as costs for the proceedings before the FIFA Players' Status Committee;

(viii) To order Respondent to compensate Appellant for the legal costs incurred in the present proceedings in an amount the Arbitral Panel seems fit;

(ix) To award any further or other relief to Parma Calcio as the Arbitral Panel deems fit;

(x) To order Respondent must bear all the costs of the present arbitration" [emphasis removed].

106. Al Sadd's submissions in *CAS 2020/A/7583*, in essence, may be summarised as follows:

- Parma's narrative changed drastically in the proceedings before CAS in comparison with its position before the Single Judge of the FIFA PSC: i) Parma wrongly asserts that the Parties would have orally entered into the Transfer Agreement on 31 January 2020 at 16:00 CET (18:00 QT); ii) Parma wrongly asserts that in the evening of 31 January 2020 it could have relied thereon that the intended transfer would be executed; iii) Parma omits that at the time of the negotiations it had not paid the Player a considerable outstanding amount of salary; and iv) Parma omits to mention that it asked the Player to travel to Milan on 31 January 2020 to discuss the renunciation of the outstanding amounts. Also Employee 1's witness statement before CAS differs significantly from his witness statement before FIFA. Employee 1 omitted to mention before CAS that Parma owed outstanding amounts to the Player in the amount of EUR 988,753.29. He further omits to mention that the acceptance of the Transfer Agreement on 31 January 2020 at 16:00 CET was subject to the Player accepting the transfer.

- It is clear that the Parties and the Player signed the Transfer Agreement on 31 January 2020 at 21:45 CET (23:45 QT), but it never entered into force. Clauses 6 and 7 of the Transfer Agreement can be categorized as conditions precedent. It is typical for a contract concluded under a condition precedent that such contract is provisionally invalid until the condition precedent is fulfilled. Clause 8 of the Transfer Agreement goes even further, as it stipulates that the Transfer Agreement would only become valid after the Player would have passed the medical examination. The Player has never undergone and successfully passed a medical examination at the Aspetar hospital in Doha, Qatar. For this reason alone, the Transfer Agreement never became valid. While Parma asserts that the medical examination had to take place prior to the end of the transfer window, this is not correct. Even if Clause 8 of the Transfer Agreement would be considered as a condition precedent, the same outcome would apply. Because also the condition precedent in Clause 6 of the Transfer Agreement was not fulfilled, the Transfer Agreement was not valid.

- Parma only signed the Transfer Agreement at 21:45 CET (23:45 QT). The FIFA RSTP merely establishes which party is required to upload certain documents. However, certainly an obliged club will only be in the position to upload required documents upon having them available. The FIFA RSTP are silent on aspects as to in which way a party should obtain the required documents.

- Based on its duty to act in good faith, Parma could certainly be expected to provide Al Sadd with a copy of the Employment Contract signed by the Player before termination of the registration period. The Player signed the Employment Contract at 21:45 CET (23:45 QT) and he was together with Parma's representatives in Milan, Italy at the *Calciomercato*. Despite inquiries from Al Sadd and assurances from Employee 1 that the Employment Contract would be transmitted in *"One minute"* at 23:52 QT, it turned out that Employee 1 still had to go looking for the Player and his representatives, instead of being proactive and making sure it would be in a position to send the Employment Contract to Al Sadd.

- In light of the above, Parma could have been expected, under the given circumstances, to provide Al Sadd with a copy of the Employment Contract, but it only did so after the end of the registration period.

- As to the alleged breach of Article 152(1) SCO, it is obvious that Al Sadd did not breach such provision. Any consideration with respect to Article 152(1) SCO may only refer to the condition precedent as per Clause 6 of the Transfer Agreement.

- The Transfer Agreement and the Employment Contract were signed at 21:45 CET (23:45 QT). If both documents had been promptly sent to Al Sadd, there would have been enough time for Al Said to upload them into FIFA TMS before the end of the registration period.

- Contrary to Parma's allegations, Al Sadd entered the relevant transfer instructions at 20:03 CET (22:03 QT), not at 22:03 CET (00:03 QT).

- Al Sadd strongly objects to Parma's assertion that Al Sadd – in light of its obligations under the FIFA RSTP – could have uploaded page 17 of the Employment Contract – signed by the Player –, which was received prior to the end of the registration period. It would also have required at least the receipt of the financial schedule signed by the Player in order to have at its disposal an agreement on the *essentialia negotii*. Article 8.2.1 of Annexe 3 FIFA RSTP does not provide for the uploading of the last page of the contract without the relevant financial terms.

- It is wrong that Al Sadd would have ended the negotiations with the Player. Also, Al Sadd neither directly nor through Mr Rashad or any other person, negotiated with the football player Mr Belhocini. Further, Mr Xavi could not legally bind Al Sadd in whatever way. Mr Xavi is the Head Coach of Al Sadd, not a legal representative. Mr

Xavi in any event said that he would "try" to make changes to the termination clause and the jurisdiction clause. When Mr Xavi reported the overall situation to Al Sadd's management, it was understood that a change of Clause X(4)(2) of the Employment Contract was of the biggest importance to the Player. Hence, within a short period of 90 minutes, Al Sadd gathered the relevant stakeholders, discussed the matter, decided on how to move forward, changed the Employment Contract and sent it to the Player, who then, in fact, was apparently fine with the changes made and signed the Employment Contract. In any event, the Player and Parma were free to decide whether or not to countersign the Employment Contract and the Transfer Agreement.

- Al Sadd did not face an electrical shutdown prior to the end of the registration period.

- Since the QFA did not ask the FIGC for the Player's ITC, it was not possible for Al Sadd to apply for a validation exemption.

- Parma unilaterally decided to integrate the Player into its first team again, likely around 8/9 February 2020, and stated that the Player's employment contract with Parma would continue. Hence, it would appear that Parma took the decision to reverse the intended transfer of the Player.

- As to Parma's claim for damages, the Single Judge of the FIFA PSC indicated in the Appealed Decision that Parma did not suffer any damages. It is important to note that usually a transfer fee is paid by the buying club to the selling club in order to compensate the latter club's loss of a player's registration, which has an economic value. Such fee compensates the premature termination of the employment contract as well as the loss of the Player's sporting registration. In the present matter, Parma did not lose the Player's sporting registration, which registration can be assessed with a market value of EUR 4,500,000 at that time. Moreover, and when Parma decided to continue the employment relationship with the Player under the employment contract, Parma took upon itself the obligation to pay the Player's salary. It would appear rather absurd that Parma should make use of the services of the Player, but that Al Sadd should indirectly pay. Finally, it should not remain unmentioned that the football player Mr Caprari cannot be considered as a replacement for the Player. In light of the above, Parma did not suffer any damages as a consequence of which no compensation shall be awarded.

107. On this basis, Al Sadd submits the following prayers for relief:

"1. To fully reject Parma's appeal.

2. To confirm the Decision as far as it rejects Parma's claims against Al Sadd.

3. In addition, to order Parma to bear all costs – including Al Sadd's costs – incurred in the proceedings in front of the FIFA PSC leading to the Decision.

4. *For the effect of the above, to state that the Parma shall be condemned to pay and all costs of the present arbitrational proceedings including, without limitation, attorney's fees as well as any further costs and expenses for witnesses and experts. In this respect, the Al Sadd reserves the right to provide to the CAS all relevant documentation attesting the incurred amounts".*

V. JURISDICTION

108. Article R47 CAS Code provides as follows:

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

109. The jurisdiction of CAS derives from Article 58(1) of the FIFA Statutes (2020 edition), as it determines that *"[a]ppeals against final decisions passed by FIFA's legal bodies and against decisions passed by confederations, member associations or leagues shall be lodged with CAS within 21 days of receipt of the decision in question"* and Article R47 CAS Code.

110. The jurisdiction of CAS is not contested and is further confirmed by the Order of Procedure duly signed by both Parties.

111. It follows that CAS has jurisdiction to adjudicate and decide on the present dispute.

VI. ADMISSIBILITY

112. Article R49 CAS Code provides as follows:

> *"In the absence of a time limit set in the statutes or regulations of the federation, association or sports-related body concerned, or of a previous agreement, the time limit for appeal shall be twenty-one days from the receipt of the decision appealed against. After having consulted the parties, the Division President may refuse to entertain an appeal if it is manifestly late".*

113. Both appeals were filed within the deadline of 21 days set by Article 58(1) FIFA Statutes. Both appeals complied with all other requirements of Article R48 CAS Code, including the payment of the CAS Court Office fee.

114. It follows that both appeals are admissible.

VII. APPLICABLE LAW

115. Al Sadd submits that the present matter, in general, shall be dealt with primarily in accordance with the relevant applicable FIFA rules and regulations, if relevant, and additionally Swiss law. However, with reference to the Employment Contract concluded between Al Sadd and the Player, with regards to aspects related to said contract, primarily QFA/QSML regulations are applicable and subsidiarily Qatari law.

116. Parma submits that the various regulations of FIFA are to be applied primarily, in particular the FIFA RSTP, and, subsidiarily, Swiss law should the need arise to fill a possible lacuna in the various regulations of FIFA.

117. Article R58 CAS Code provides as follows:

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

118. Article 57(2) FIFA Statutes provides the following:

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

119. Clause 9 of the Transfer Agreement provides as follows:

> *"This contract shall be governed by and construed in accordance with the FIFA Regulations governing this matter and the Parties submit to the exclusive jurisdiction of the FIFA competent judicial body".*

120. At the outset, the Panel would like to emphasize that these proceedings primarily involve the Transfer Agreement concluded between the Parties and co-signed by the Player, rather than the Employment Contract, which was a contract concluded between Al Sadd and the Player, who is not a party in these proceedings. Therefore, while the terms of the Employment Contract are relevant, it is the Transfer Agreement that has the greatest bearing on the resolution of this dispute.

121. In accordance with Clause 9 of the Transfer Agreement, Article R58 CAS Code and Article 57(2) FIFA Statutes, the regulations of FIFA are primarily applicable, in particular the FIFA RSTP (edition June 2019) and, if necessary, additionally, Swiss law.

122. As to the law applicable to the Employment Contract, the Panel notes that Al Sadd made no substantive submissions on the basis of the QFA/QSML regulations, as a consequence of which the Panel is not required to decide on this issue. It is not in dispute between the Parties

that the QFA regulations afford Qatari clubs only five slots for foreign players on their roster.

VIII. PRELIMINARY ISSUES

A. The admissibility of Parma's letters dated 1 June 2021 and 14 September 2021

123. As indicated *supra*, the Panel indicated during the hearing that it would decide on the admissibility of Parma's letter dated 1 June 2021 and the 8 documents attached thereto in its final Award.

124. Furthermore, by letter dated 29 September 2021, the CAS Court Office informed the Parties that the Panel would decide on the admissibility of Parma's letter dated 14 September 2021 in its final Award.

125. While the timing of submitting these documents on file was unfortunate, *i.e.* one day before and approximately 3.5 month after the hearing, the Panel notes that these documents were not available to Parma when it filed its written submissions in the present consolidated appeal arbitration proceedings and that Parma proceeded expeditiously by submitting the documents to the CAS Court Office within a reasonable timeframe upon receipt of the documents.

126. Further, the Panel notes that Parma maintains that the content of the documents provided allegedly undermines the truthfulness of the witness statements provided by Al Sadd. The Panel found, on a *prima facie* basis, that the documents presented appeared to contradict certain factual allegations of Al Sadd and therefore appeared to be relevant.

127. Considering these two elements combined, the Panel decided to accept these documents on file.

B. The admissibility of Parma's letters dated 3 March 2022 and 14 March 2022 and Parma's document production request

128. As indicated to the Parties by letter from the CAS Court Office dated 1 April 2022, the Panel decided that, insofar Parma's "suggestion" was intended to comprise a formal request for the Panel to order Al Sadd to produce a copy of the settlement agreement from *CAS 2021/A/7742 & 7747*, such request was dismissed, but that Parma's letters dated 3 March 2022 and 14 March 2022 (and their enclosures as applicable) were admitted on file – as were Al Sadd's letters dated 9 March 2022 and 21 March 2022 – and that the grounds for such decisions would be set forth in the final Award.

129. The Panel dismissed Parma's "suggestion", because, as also reflected in paragraph 225 below, neither the settlement agreement from *CAS 2021/A/7742 & 7747* nor FIFA's decision

regarding the Employment Contract have any bearing on the Panel's assessment. The Panel makes its own independent *de novo* assessment of the evidence before it and is in no way bound by a settlement agreement or FIFA's decision in the dispute concerning the Employment Contract, not least because such proceedings involved different parties (*i.e.* the Player is not a party in the present proceedings) and concerned a different contract. The Panel finds that Parma failed to establish the relevance of having the settlement agreement from *CAS 2021/A/7742 & 7747* on the case file in these proceedings.

130. Parma's letters dated 3 March 2022 and 14 March 2022 are admitted on file, but, as set forth in the preceding paragraphs and in paragraph 225 below, their admission has no bearing on the outcome of the present proceedings.

IX. MERITS

A. The Main Issues

131. The main issues to be resolved by the Panel are:

   i. Was the Transfer Agreement a binding contract?

   ii. Who among Al Sadd and Parma was responsible for the non-fulfilment of the conditions precedent included in the Transfer Agreement?

   iii. What are the consequences thereof?

132. The Panel will address these issues in turn.

i. Was the Transfer Agreement a binding contract?

133. Whereas Parma submits that the Transfer Agreement is a valid agreement, independent of the agreed conditions precedent and that such conditions only affect the effectiveness of the Parties' obligations under the Transfer Agreement, but in no case its validity and binding effect upon the Parties, Al Sadd maintains that in the absence of the conditions precedent being fulfilled, the draft Transfer Agreement never entered into force and at no time could be considered valid.

134. The Panel observes that, on 31 January 2020, Al Sadd amended its transfer offer in the form of a draft transfer agreement.

135. The Panel notes that it is undisputed that, at 21:49 CET (23:49 QT) on 31 January 2020, Parma provided Al Sadd with the Transfer Agreement duly signed by Parma and co-signed by the Player.

136. Since the Transfer Agreement contains all *essentialia negotii* of a contract, the Panel finds that at the very latest at 21:49 CET (23:49 QT), in principle, a valid and binding contract was concluded by Parma and Al Sadd.

137. However, the Panel finds that, already since 16:00 CET (18:00 QT), the Parties assumed obligations towards one another by having orally agreed on the Transfer Agreement, because they expressed their intention to transfer the Player from Parma to Al Sadd, knowing very well the conditions precedent included in the Transfer Agreement.

138. The Panel considered Employee 1's testimony in this respect credible and in line with the events that unfolded on the evening of 31 January 2020. Indeed, it is not disputed by Al Sadd that Employee 1 had orally accepted the terms of Al Sadd's draft Transfer Agreement; however, according to Al Sadd, such acceptance was *"subject to the Player accepting the transfer"*. The Panel finds that this oral condition precedent is not fundamentally different from Clause 7 of the Transfer Agreement and therefore not relevant.

139. This understanding is further confirmed by the fact that all three parties involved, *i.e.* Parma, Al Sadd and the Player, undertook actions aimed at concluding the transfer already prior to Parma's signing of the Transfer Agreement at 21:49 CET (23:49 QT).

140. Turning to the legal nature of the Transfer Agreement, as indicated, it contains certain conditions precedent, of which it is not in dispute that not all of them were finally fulfilled, as a consequence of which Al Sadd argues that the Transfer Agreement never entered into force or could be considered binding.

141. The conditions precedent in the Transfer Agreement provide as follows:

> *"6. The validity of the present contract is strictly related to the issuance of the International Transfer Certificate (ITC) by the Football Association of* [Parma] *in favour of the Football Association of* [Al Sadd]. [Parma] *shall co-operate with its Football Association to issue the relevant ITC in favour of the Football Association of* [Al Sadd].
>
> *7. The validity of the present contract is strictly related to the fact that the* [Player] *will accept his transfer to* [Al Sadd] *and consequently that an employment contract between* [Al Sadd] *and the* [Player] *will be signed.*
>
> *8. This contract is valid after the player pass the medical check-up at Aspetar hospital".*

142. As indicated *supra*, the present dispute is governed primarily by the various regulations of FIFA, and subsidiarily by Swiss law. Since the concept of a condition precedent is not addressed in the various regulations of FIFA, the Panel turns to Swiss law and notes that Article 151 SCO provides the following in this respect:

> *"1. A contract is conditional if its binding nature is made dependent on the occurrence of an event that is not certain to happen.*

2. *The contract takes effect as soon as this condition precedent occurs, unless the parties clearly intended otherwise"*.

143. It is held in Swiss legal doctrine that Article 151 SCO does not accurately describe the consequence of the condition precedent, in particular because such condition does not affect the existence of the contract itself nor the existence of the obligations of the parties, but rather only the effects of the parties' obligations, *i.e.* the effectiveness of the contract (PICHONNAZ P., CR-CO I, 151 CO N 35; HUGUENIN C., Obligationenrecht – Allgemeiner und Besonderer Teil, 2012, §1277). Swiss law perceives the condition precedent as a modality of the obligation. The latter exists, but its effects are subordinated to the advent of the condition. The text of the first paragraph of Article 151 SCO is therefore somehow inaccurate. The existence of the obligation is given; it is the effects which are subordinated to the occurrence of an uncertain event (ENGEL P. H., Traité des obligations en droit Suisse, 1997, p. 846).

144. While the contract is thus not yet effective pending the fulfilment of the conditions precedent, the parties bound by it have certain obligations with respect to the conditions precedent.

145. Put differently, the (yet unfulfilled) condition does not affect the validity of an agreement but only the effectiveness of the parties' obligation / the performance of the contract (ROTH PELLANDA K., Obligationenrecht – Allgemeine Bestimmungen, 2016, Article 151 N 15/47-49).

146. The Panel finds that the references to the "validity" in Clauses 6, 7 and 8 of the Transfer Agreement do not make this any different.

147. Article 152(1) SCO provides as follows:

"Until such time as the condition precedent occurs, the conditional obligor must refrain from any act which might prevent the due performance of his obligation".

148. Article 156 SCO provides as follows:

"A condition is deemed fulfilled where one of the parties has prevented its fulfilment by acting in bad faith".

149. It is further stated in legal doctrine that the debtor of the future performance bound by the contract cannot disengage from it nor prevent the fulfilment of the condition precedent (ROTH PELLANDA K., Obligationenrecht – Allgemeine Bestimmungen, 2016, Article 152 N 1; PICHONNAZ P., CR-CO I, 151 CO N 42-43; ENGEL P. H., Traité des obligations en droit Suisse, 1997, p. 849/856). If the condition precedent is fulfilled, the contract unfolds its effects by itself or *ipso jure* (MATT I., Der bedingte Vertrag im schweizerischen und liechtensteinischen Privatrecht, 2014, p. 279).

150. The Panel finds that Parma accurately and succinctly summarised the situation in its Appeal Brief by indicating the following:

> *"In summary, there are three distinctive periods when considering a contract subject to a condition precedent: i) the period before the conclusion of the contract, when the contract is not binding but only pre-contractual duties exist between the parties; ii) the period after conclusion of the contract, but before the fulfilment of the condition precedent, during which the performance of the contract is suspended but a binding expectation exists between the parties (the "Suspension Period"); iii) the period after the fulfilment or not of the condition, when the contract becomes or not fully effective and when the parties may or not claim its performance".*

151. During such "Suspension Period", Article 152(1) SCO obliges the parties to conduct themselves in good faith and to refrain from doing anything that would impair, frustrate or thwart the fulfilment of the agreed conditions (ROTH PELLANDA K., Obligationenrecht – Allgemeine Bestimmungen, 2016, Article 152 N 1; MATT I., Der bedingte Vertrag im schweizerischen und liechtensteinischen Privatrecht, 2014, p. 244).

152. As submitted by Parma, the Panel agrees that it is commonly accepted that the wording of Article 152(1) SCO is too narrow because the contract subject to a condition precedent creates a reinforced expectation of rights between the parties and it is therefore important to protect the future beneficiary of such expectation (PICHONNAZ P., CR-CO I, 152 CO N 14; HUGUENIN C., Obligationenrecht – Allgemeiner und Besonderer Teil, 2012, §1304; MATT I., Der bedingte Vertrag im schweizerischen und liechtensteinischen Privatrecht, 2014, p. 244).

153. The parties to a conditional agreement are subject to an obligation to act positively, in a way that is expected from them in good faith, and the parties must therefore take any measures necessary in view of the fulfilment of the condition precedent (ROTH PELLANDA K., Obligationenrecht – Allgemeine Bestimmungen, 2016, Article 152 N 1; HUGUENIN C., Obligationenrecht – Allgemeiner und Besonderer Teil, 2012, §1304). This also entails a duty to act in a timely fashion, without objective motivation, and thus in violation of the rules of good faith, which results in an unjustified delay or impossibility of the fulfilment of the condition precedent causing a damage to the other party (PICHONNAZ P., CR-CO I, 152 CO N 16).

154. This view is also confirmed in CAS jurisprudence:

> *"The wording of this provision [i.e. Article 152(1) SCO] first provides for a negative obligation to "refrain" from specific acts. However, under Swiss law it is recognized that in addition to the negative aspect, Article 152 para. 1 SCO also establishes positive duties of the parties to do what is appropriate to safeguard the prospect of the fulfilment (cf. MATT I., Der bedingte Vertrag im schweizerischen und liechtensteinischen Privatrecht, ZStP Nr. 260, p. 374). In this respect, the provision requires the parties to act positively in a way that is expected from them in good faith (EHRAT F., Art. 152 und Art. 156, in:*

HONSELL/VOGT/WIEGAND, Basler Kommentar I, OR Art. 1-529, 5. Aufl., Basel 2011)" (CAS 2014/A/3647-3648, para. 105).

155. The Panel is prepared to follow this legal doctrine. However, the Panel finds that under the specific circumstances of the present case, the general duty of parties to an agreement to *"take any measure necessary in view of the fulfilment of the condition precedent"* cannot be retained as the one and only decisive element to determine the potential liability of such parties.

156. Indeed, the Swiss Federal Tribunal indicates that a balance must be struck between the degree of freedom and the duties imposed by the rules of good faith:

> *"If a condition is agreed and its fulfilment depends to a certain extent on the will of one of the parties to whom the contract imposes obligations, that party is in principle not entirely free to refuse such fulfilment and thus to release itself from its contractual obligations. On the contrary, it must act fairly and in accordance with the rules of good faith;* […]. *The degree of freedom remaining for the party concerned, on the one hand, and the duties imposed on it by the rules of good faith, on the other, must be determined in each individual case taking into account all the circumstances and, in particular, the object and purpose of the contract, duly interpreted in accordance with the principle of trust"* (SFT 135 III 295, par. 5.2.).

157. In the matter at hand, the Panel finds that a distinction is to be made between the different conditions precedent set forth in the Transfer Agreement.

158. On the one hand, while Clause 7 of the Transfer Agreement imposes a duty on Al Sadd to negotiate the terms of an employment contract with the Player in good faith, this certainly does not entail that Al Sadd should offer whatever it takes to convince the Player to sign an employment contract with it.

159. On the other hand, pursuant to Clause 6 of the Transfer Agreement, once such employment contract would be concluded between Al Sadd and the Player, both Parma and Al Sadd had an important duty to ensure the issuance of the Player's ITC by the FIGC to the QFA.

160. Since it is not in dispute between the Parties that not all conditions precedent were fulfilled, it is clear that the Transfer Agreement did not become effective.

161. The key question to be addressed by the Panel is therefore whether Parma or Al Sadd failed to act with the diligence required under Article 152(1) SCO in assuring in good faith the fulfilment of the conditions precedent set forth in the Transfer Agreement, potentially subjecting them to liability *vis-à-vis* one another.

162. This is another test than the one invoked by Al Sadd, since the valid conclusion of the Transfer Agreement does not bring into play the concepts of a pre-contractual breach, or *culpa in contrahendo*.

163. While the potential liability of the Parties in this respect will be addressed in more detail below, for present purposes the Panel concludes that the Transfer Agreement entered into

by Parma and Al Sadd on 31 January 2020 is a valid and binding contract, but that the effectiveness thereof was made subject to certain conditions precedent.

ii. Who among Al Sadd and Parma was responsible for the non-fulfilment of the conditions precedent included in the Transfer Agreement?

164. As indicated *supra*, the Panel notes that it is not in dispute that the Transfer Agreement never entered into full effect, because not all conditions precedent were fulfilled.

165. More specifically, the Panel notes that the condition precedent in Clause 7 of the Transfer Agreement was fulfilled, *i.e.* the Player did accept his transfer to Al Sadd and he signed the Employment Contract with Al Sadd.

166. However, this happened so late in the evening of 31 January 2021 that it is doubtful whether the condition precedent was fulfilled before 22:00 CET (24:00 QT) on 31 January 2020. At the very least, the late signing of the Employment Contract impacted negatively on the possibility to fulfil the condition precedent set forth in Clause 6 of the Transfer Agreement, *i.e.* the issuance of the Player's ITC by the FIGC to the QFA.

167. Al Sadd obtained a copy of the signature page of the Employment Contract only at 21:56 CET (23:56 QT), *i.e.* less than 4 minutes before closing of the transfer window in Qatar at 22:00 CET (24:00 QT), while the Player provided Mr Rashad with a countersigned copy of the full Employment Contract, except page 20 thereof, *i.e.* the signature page of *"SCHEDULE 1"* related to the Player's salary, only at 22:00 CET (24:00 QT), *i.e.* after the transfer window had already closed.

168. In this respect, it must be noted that, contrary to the terms of the Transfer Agreement, the terms of the Employment Contract are, in principle, of no concern to Parma. Whereas the Transfer Agreement is a tripartite contract, the Employment Contract is, not surprisingly, a bipartite contract.

169. Accordingly, under the condition precedent set forth in Clause 7 of the Transfer Agreement, Al Sadd was under a duty to try and negotiate the terms of an employment contract with the Player in good faith, while Parma, in principle, had no duty in this respect. This also considering the inherent protection of the condition precedent for Al Sadd: as any "new club", Al Sadd was obviously interested to have its obligation to pay the transfer fee to Parma become effective only once Al Sadd was sure that the Player was under contract. There is therefore no real inherent logic of putting the charge of fulfilment of this condition on Parma.

170. At the same time, as will be described in more detail below, the Panel finds that Parma voluntarily assumed certain duties in its correspondence with Al Sadd on the evening of 31 January 2020. However, since the duty to negotiate in good faith an employment contract with the Player primarily rested with Al Sadd, the Panel commences its analysis there.

a. Al Sadd's conduct in ensuring fulfilment of the conditions precedent

171. Parma's primary argument, *i.e.* that Al Sadd only entered its transfer instructions in FIFA TMS after 22:00 CET (24:00 QT) and that it was therefore clearly Al Sadd's fault that the Player's ITC could not be issued, is to be dismissed.

172. On 21 April 2021, FIFA informed the CAS Court Office that, *"according to the information in FIFA TMS, on 31 January 2020 at 20:03 CET/Swiss time (i.e. 22:03 QAT)* [Al Sadd] *entered the transfer instruction 275109 to engage* [the Player] *permanently from* [Parma]*"*.

173. The reference in the Appealed Decision that *"at 22:03 (Swiss time), Al Sadd entered a transfer instruction to engage the player permanently from Parma"* is therefore from a timing point of view obviously incorrect.

174. The Panel finds Parma's heavy reliance on this argument reproachable, particularly considering the strong language used in its written submissions, e.g. *"Al Sadd blatantly lies when it alleges to have initiated the FIFA TMS Procedure by entering its instructions at 22:03 Qatar time"* and *"By claiming it already entered its instructions into the FIFA TMS two hours before the end of the Transfer Window, Al Sadd purposefully attempts to misguide the Arbitral Panel"*, while in fact Parma's factual submissions in this specific respect are incorrect.

175. Be this as it may and turning to Al Sadd's conduct in the negotiation of the Employment Contract with the Player, the Panel notes that four different drafts of the ultimate Employment Contract were exchanged between Al Sadd and the Player.

176. In the evening of 30 January 2020, the Player raised a series of issues with Al Sadd about the second draft employment contract. More specifically, he provided Al Sadd with a list of requests for modification.

177. Al Sadd did not address the Player's requests for modification until one day later, at 18:23 CET (20:23 QT) of 31 January 2020, when Mr Xavi contacted the Player by Whatsapp.

178. In the meantime, Al Sadd had circulated a third draft employment contract, but this amended draft agreement did not address the Player's list of requests for modification.

179. The Panel finds that it derives from the evidence provided that the Player's concerns about the draft employment contract related to the following three clauses, incorporated in both the second as well as the third draft employment contract, which the Player requested to be addressed:

Clause X(4)(2):

"The club have the right to terminate the contract without any financial obligations to the player if the player did not participate 60% of the club matches after every 6 months".

Clause X(5):

> *"If the Player terminates the Contract without having just cause, the Player shall pay to the Club compensation equal to the total amount of: 50,000,000 EURO".*

Clause XIV(2):

> *"Any dispute between the Club and the Player arisen in connection with the present Contract shall be submitted to the exclusive jurisdiction of the Qatar Sports Arbitration Tribunal (QSAT), if operational, which shall be settled in accordance with the QSAT procedural rules".*

180. The Panel finds that the Player legitimately raised concerns about these clauses.

181. Clause X(4)(2) would expose the Player to a unilateral premature termination of the employment contract, without any fault from the Player. Such a potestative condition, the fulfilment of which being solely dependent on Al Sadd's will (*i.e.* it could decide not to field the Player anymore and thereby unilaterally create the circumstances to execute this clause) is generally considered void in the jurisprudence of CAS:

> *"Furthermore, the Sole Arbitrator considers this provision to be a deviation from the general principles enshrined in the FIFA Regulations. The Sole Arbitrator finds that, in principle, nothing prevents parties from defining when and under which circumstances a party may terminate the Employment Contract with just cause. For if the parties are free to arrange in the employment contract the method of compensation for breach of contract, then, in principle, the same must apply to specifying when there is "just cause" (CAS 2006/A/1180). Such deviation may in principle not be potestative, i.e. the conditions for termination may not be unilaterally influenced by the party wishing to terminate the contract (an example of a potestative clause would be the situation where a contract provides that it can be unilaterally terminated by the club if the player does not play in a certain percentage of matches, for the decision to field the player may be influenced by the club). As maintained by a legal scholar, "[i]n relation to the substance of the unilateral option clause, parity of termination rights is no longer to be taken as a benchmark for public policy, since (as shown) a disparity of termination rights has to be accepted as such; instead the question to be answered here is how great the disparity may be. The limit of contractual freedom in this respect is formed by the prohibition of excessive self-commitment, as laid down in Swiss law, for example, at Art. 27(2) of the Swiss Civil Code", adding in a footnote that "[n]o person can alienate his personal liberty nor impose any restrictions on his own enjoyment thereof which are contrary to law and morality" (PORTMANN, Unilateral option clauses in Footballer's contracts of employment: An assessment from the perspective of International Sports Arbitration, ISLR 2007, p. 6-16)"* (CAS 2015/A/4042, para. 68 of the abstract published on the CAS website).

182. While Al Sadd finally agreed to delete this clause from the Employment Contract, the fact that Al Sadd only did so at 21:36 CET (23:36 QT) caused significant delays to the process.

183. The Panel also acknowledges that the Player legitimately raised concerns with respect to Clause X(5) of the Employment Contract, as this clause would potentially expose him to paying compensation in an amount of EUR 50,000,000. While the validity and enforceability

of this clause may be doubtful, the Panel finds that it would go too far to say that it is *per se* unlawful, in particular given that the Player is not a party in the present proceedings. Al Sadd was prepared to pay the Player a salary of EUR 3,000,000 per season and it was prepared to pay a transfer fee of EUR 4,275,000 (EUR 4,500,000 minus 5% corresponding to solidarity contribution) to Parma to acquire the Player's services. It is not unreasonable for Al Sadd to try and protect its asset, by discouraging the Player from terminating the Employment Contract without just cause by incorporating a high liquidated damages clause in the Employment Contract.

184. The Panel also considers it relevant that the Player signed the Employment Contract without Clause X(5) having been deleted.

185. As to Clause XIV(2) of the Employment Contract, the Panel finds that it was not unreasonable for the Player to request this clause to be deleted, but that it was also not unreasonable for Al Sadd to refuse to delete this clause. The Panel does not consider this clause to be unreasonable. Again, the Player ultimately accepted to sign the Employment Contract without Clause XIV(2) having been deleted.

186. Accordingly, with respect to the content of Clauses X(5) and XIV(2) of the Employment Contract, the Panel finds that Al Sadd negotiated hard, but not necessarily unreasonably or unfairly, particularly given that the Player is not a party in the present proceedings and that the Panel therefore does not have a full overview of how the negotiations were conducted. As such, based on the evidence available to it, the Panel finds that it cannot come to the conclusion that Al Sadd negotiated in bad faith, or failed to negotiate in good faith.

187. Parma's statement that *"Al Sadd did not amend the Jurisdiction Clause and the Penalty Clause as agreed with the Player"* is not warranted, as Mr Xavi made no such promise in his correspondence with the Player.

188. At 19:17 CET (21:17 QT), Mr Xavi informed Mr Dembele as follows by voice message:

> *"I already spoke with Normand. Ok, I told him that ok the remarks, the most important and not all the remarks because the other remarks of 20%, if you don't attend the training, this is a stupid things. Ok, this is stupid things, in my experience here. The most important thing is FIFA as you mentioned, injuried and in case that you have to pay fifty millions. There is no sense ok. These three points tell him that the most important thing, the rest is very difficult to change because you know that contracts here we have. Ok my friend. Come on let's do it. Thank you".*

189. And later, at 19:42 CET (21:42 QT) he informed Mr Dembele as follows:

> *"We are trying to remove Fifa case and injuried clause 4.2".*

190. The Panel does not consider this to be a hard commitment from Mr Xavi that such clauses will be deleted, but rather an indication that he would discuss the situation internally with Al Sadd, a commitment that was followed through, as Clause X(4)(2) was ultimately deleted.

191. However, the Panel finds that Al Sadd's behaviour was, at least from a timing point of view, inappropriate by waiting to address the Player's concerns until the evening of 31 January 2020, *i.e.* some 24 hours after the Player raised his concerns, knowing very well that the transfer window was to close at 22:00 CET (24:00 QT) on 31 January 2020. In doing so, Al Sadd exercised significant pressure on the Player, granting him a mere 24 minutes (!) to review the fourth draft of the Employment Contract, decide whether to sign it or not, and to actually sign and return it to Al Sadd. In doing so, Al Sadd took the risk that the formalities related to the Player's transfer could not be timely completed. In particular, the Panel finds that Al Sadd should have acted more expeditiously in reverting to the Player's communication of 30 January 2020.

192. The Panel finds that there is another element for which Al Sadd is to be reproached. When Al Sadd provided the Player with the second draft of the employment contract on 30 January 2020, it amended the fines that could be imposed on the Player for 22 different disciplinary infringements such as a late arrival to training or practicing another sport without Al Sadd's approval, to the detriment of the Player, without however drawing his attention to such changes.

193. While the first draft of the employment contract referred to fines capped at 50% or 100% *"reduction from the monthly salary"*, the relevant clauses in the second draft of the employment contract referred to fines capped at 50% or 100% *"reduction from the contract"*.

194. Accordingly, one could understand that the fines that could potentially be imposed on the Player increased from one monthly salary to the value of the entire Employment Contract. At the very least, the Panel finds it inappropriate that such changes were implemented without specifically drawing the Player's attention to such modifications.

195. Al Sadd immediately changed the wording of these clauses back to the original wording when Mr Dembele objected to these changes in the morning of 31 January 2020, so it did not directly impact on the delays in the evening of 31 January 2020. However, the Panel finds that this omission from Al Sadd, be it an honest mistake or an intentional act to the detriment of the Player, legitimately caused a certain suspicion on the Player's side, *i.e.* because of this previous incident the Player and his entourage were well-advised to carefully study the wording of the final fourth draft of the employment contract that was provided to him by Al Sadd very late indeed, *i.e.* at 21:36 CET (23:36 QT) on 31 January 2020, to ensure that no further unannounced amendments were unilaterally made by Al Sadd. The Panel finds that this legitimately consumed substantial time as the Employment Contract and annexes comprised 20 pages.

196. The Panel is not prepared to accept that the Player signed the Employment Contract at 21:45 CET (23:45 QT), based solely on a factual allegation of Parma in its written submissions in the proceedings before the FIFA PSC.

197. The Panel prefers to rely on the documentary evidence on file and in this respect notes that Mr Xavi received the signature page of the Employment Contract from Mr Dembele at 21:56 CET (23:56 QT) and Mr Rashad from Employee 1 at 21:57 CET (23:57 QT). Based on the evidence available, the Player maintains that he also sent a copy of the signature page of the Employment Contract to Mr Rashad by email at 21:56 CET (23:56 QT). The Panel finds it perfectly legitimate for Employee 1 and the Player to communicate with Mr Rashad as the latter had conducted all the negotiations on behalf of Al Sadd. However, the Panel is not convinced that the Player's email arrived as he used the email address ga33221111@gmail.com, whereas Mr Rashad's email address was qa33221111@gmail.com, *i.e.* with a "q" instead of a "g".

198. While the Panel acknowledges that it would obviously have been preferable for the complete version of the Employment Contract to be uploaded in TMS, it finds that Al Sadd should at least have uploaded the documentation available to it, particularly because it had received the Player's confirmation that he agreed to the terms of the Employment Contract.

199. FIFA would probably at some stage have flagged the fact that only one page of the Employment Contract was uploaded, but this issue could potentially have been resolved.

200. Al Sadd's contention that it was not possible to upload only the signature page of the Employment Contract, but rather only the full Employment Contract could be uploaded, is to be dismissed, as Al Sadd eventually did just that: *i.e.* Al Sadd uploaded the full Employment Contract, except page 20 thereof (the signature page of *"SCHEDULE 1"* related to the Player's salary), *i.e.* Al Sadd uploaded only part of the Employment Contract.

201. Further, the Panel finds that the fact that Al Sadd may or may not have negotiated the possibility of acquiring the services of Mr Belhocini simultaneously with the negotiations concerning the Player is not relevant. The Panel notes that Al Sadd only had one out of five slots for foreign players left on its roster and finds that Al Sadd was perfectly entitled to anticipate the situation that the negotiations with the Player would break down by having a last-minute potential replacement ready. This element is also not considered relevant because Al Sadd ultimately neither acquired the services of the Player nor those of Mr Belhocini. For these reasons, also the letters and annexes submitted into evidence by Parma on 1 June and 14 September 2021 respectively have no impact on the Panel's findings or the outcome of the present arbitration.

202. Furthermore, the Panel finds that Parma's argument that Al Sadd is to be reproached for the fact that it failed to request a validation exemption to FIFA, even though it had alleged to have suffered from an electrical shutdown, is to be dismissed.

203. Al Sadd denies to have suffered from an electrical shutdown and the Panel finds that the following correspondence clarifies the situation:

> *"[1/31/20, 10:03:45 PM] A.R.: Didn't go through unfortunately*
>
> *[1/31/20, 10:04:06 PM] A.R.: My system shut down …*
>
> *[…]*
>
> *[1/31/20, 10:19:49 PM] A.R.: Federation system is shut down …".*

204. Also Mr Rashad and Mr Ibrahim Ibrahim, Al Sadd's TMS Manager, testified that they did not encounter any electrical shutdown on the evening of 31 January 2020.

205. The Panel finds that it appears from this correspondence that Mr Rashad had attempted to upload the Employment Contract on FIFA TMS, but that it did not go through, because the system of the QFA had shut down as a consequence of the closing of the transfer window at 22:00 CET (24:00 QT), not because of an electrical shutdown.

206. The Panel also finds that the further events that unfolded after 31 January 2020 for which Parma reproaches Al Sadd are not relevant for the matter at hand, *i.e.* the fact that Al Sadd lodged a claim against the Player claiming compensation in an amount of EUR 50,000,000, as any failure to ensure the fulfilment of the conditions precedent in the Transfer Agreement would necessarily have had to be performed prior to 22:00 CET (24:00 QT). The filing of Al Sadd's claim against the Player had no impact on this.

207. Finally, the Panel finds that Parma's argument that Al Sadd should have executed the Employment Contract notwithstanding the fact that it could not be executed before the end of the transfer window is also to be dismissed, as the Employment Contract also contained a condition precedent, providing as follows:

> *"The validity of this Contract is subject to the specific approval of the QFA and the confirmation that the Player is eligible to play (ratification of the Contract)".*

208. The Panel finds that the negotiations between the Parties and the Player were related to a transfer of the Player by the end of the transfer window ending on 31 January 2020. Registering the Player after 31 January 2020 would mean that the Player would not be eligible to play until the start of the next transfer window in the summer of 2020, which was clearly not what the Parties and the Player had contemplated.

b. Parma's conduct in ensuring fulfilment of the conditions precedent

209. Turning then to the behaviour of Parma, the Panel finds that, while Parma in principle had no role to play in the conclusion of the Employment Contract between the Player and Al Sadd, it voluntarily assumed a certain responsibility in this respect.

210. Most relevantly, Employee 1 responded with the words *"One minute"* at 21:53 CET (23:52 QT) to Mr Rashad's request to send him the countersigned copy of the Employment Contract.

211. While the Panel finds that Employee 1's reference to the words *"One minute"* is not to be taken literally, it does suggest that Employee 1 would address the issue with the utmost urgency, while he ultimately did not provide Al Sadd with a complete version of the Employment Contract. Employee 1 only sent a signed copy of the signature page of the Employment Contract to Al Sadd at 21:57 CET (23:57 QT). The Panel finds that Employee 1 thereby created the expectation that Al Sadd could rely on him in ensuring that a signed copy of the Employment Contract would be timely provided to Al Sadd, particularly considering the fact that Parma's representatives and the Player were physically together at the seat of *Calciomercato* in Milan, Italy.

212. However, only at 22:03 CET (00:03 QT), *i.e.* 10 minutes after his commitment, Employee 1 informed Mr Rashad that *"Now we Send a scan of all the contract and we will send you"*.

213. The Panel finds that Parma is to be reproached for this. In a transfer where significant financial interests are at stake a high level of care is to be expected, and the Panel finds that not only Al Sadd, but also Parma did not live up to such standards in their reciprocal interaction.

214. A second element where Parma's actions further unnecessarily complicated the situation was because it entered a wrong payment date of the transfer fee in FIFA TMS, causing a so-called "matching exception", requiring Al Sadd to confirm the mistaken date.

215. Indeed, the Transfer Agreement provides that the transfer fee was to be *made "Through bank transfer within three weeks of the transfer of the federative rights of the Player"*.

216. The Panel finds that the due date for payment was subject to the transfer of the Player's federative rights, which in any event could not occur before 31 January 2020, as a consequence of which the due date for the payment of the transfer fee could not be before 21 February 2020. The payment date information inserted into FIFA TMS by Parma was therefore clearly mistaken.

217. While this was ultimately not decisive for the fact that no ITC could be issued as this issue only arose after midnight, it is a further element for which Parma is to be reproached.

218. Al Sadd's argument that Parma had allegedly failed to pay certain salaries to the Player and that this was the reason why the Player initially failed to counter-sign the Transfer Agreement is dismissed. While Parma acknowledged that salary was outstanding, there is no evidence on file suggesting that this prevented the Player from signing the Employment Contract or countersigning the Transfer Agreement or that it delayed the process. In fact, Parma provided evidence that the Player unilaterally renounced part of his financial claims against Parma on 31 January 2020.

219. Rather, the Panel finds that it transpires from the correspondence exchanged on the evening of 31 January 2020, in particular the discussions between Mr Xavi and Mr Dembele, that the delays were caused by discussions regarding certain clauses in the Employment Contract between Al Sadd and the Player.

c. Conclusions of the Panel with respect to the Parties' conduct in ensuring fulfilment of the conditions precedent

220. In view of the above, the Panel finds that there are three particular elements where Al Sadd failed to live up to the standards of diligence that could be expected, *i.e.*: i) the delay in addressing the Player's requests for modification, in particular the late removal of Clause X(4)(2) of the Employment Contract; ii) the unilateral unannounced amendment of the disciplinary schedule annexed to the Employment Contract to the detriment of the Player; and iii) the failure to upload the Employment Contract and the signed signature page of the Employment Contract in FIFA TMS before the end of the transfer window. The Panel also finds that there are two elements where Parma failed to live up to such standards, *i.e.*: i) Parma's failure to return a full signed copy of the Employment Contract before the end of the transfer window; and ii) the erroneous entry of the due date of the transfer fee.

221. On balance, while the Panel finds that Al Sadd's actions were somehow more reproachable than Parma's actions, the Panel finds that there is insufficient evidence to conclude that either Al Sadd or Parma acted in bad faith or that they did not act in good faith towards each other to the standard required for liability. Rather, the Panel finds that both Parties made certain mistakes in the process and failed to act with the diligence required, but that there is insufficient evidence on file to conclude that such mistakes or omissions were purposely made by either of the Parties with the aim of frustrating compliance with the conditions precedent set forth in the Transfer Agreement.

222. Consequently, in the contractual relationship between Al Sadd and Parma, the Panel finds that a conclusion that Al Sadd or Parma engaged in any act *"which might prevent the due performance of his obligation"* (Article 152(1) SCO) or that it prevented the fulfilment of a condition precedent *"by acting in bad faith"* (Article 156 SCO) is not warranted.

223. While Al Sadd's behaviour vis-à-vis the Player may not have been exemplary with respect to the delay in addressing the Player's requests for modification and the discussions that unfolded, this primarily relates to the contractual relationship between Al Sadd and the Player.

224. The present Panel is primarily tasked with assessing the contractual relationship between Al Sadd and Parma. The contractual relationship between Al Sadd and the Player is somewhat more remote from the contractual relationship between Al Sadd and Parma.

225. The Panel finds that the omissions from Al Sadd are put in balance by the omissions from Parma and *vice versa*. This leaves however entirely open whether another panel dealing with the contractual relationship between Al Sadd and the Player could have come to the conclusion that one or the other acted unfairly and must be held liable to pay damages, but this Panel makes its own assessment of the contractual relationship between Al Sadd and Parma and finds that no such conclusion is warranted here based on the evidence available to it. The mere fact that a settlement agreement was apparently concluded between the Player, Al Sadd and Parma in the dispute concerning the Employment Contract (*i.e. CAS 2021/A/7742 & 7747*) has no bearing on the Panel's assessment, particularly in view of the final conclusion reached by the Panel in the present matter. The Panel has made its own independent *de novo* assessment of the evidence before it and is in no way bound by such settlement agreement from *CAS 2021/A/7742 & 7747* or a FIFA decision in the dispute concerning the Employment Contract, not least because such proceedings involved different parties (*i.e.* the Player is not a party in the present proceedings) and concerned a different contract.

226. Overall, the situation is simply that the timeframe for concluding the Player's transfer from Parma to Al Sadd was short and had required the Parties to act diligently, efficiently, professionally and straight forward. The Panel is satisfied that the Parties did not act so. Adding to such difficulties the last-minute discussions about the terms of the Employment Contract and the formalities to be completed, there was simply insufficient time to finalise the deal before the closing of the transfer window. Both Parma and Al Sadd knew that they were negotiating a last-minute transfer and should therefore be deemed to have accepted the risk that the transfer could not be completed before the closing of the transfer window, which risk indeed materialised, while neither Al Sadd nor Parma is to be held unilaterally responsible for this – or, *vice versa*, they are both to be held responsible.

227. Consequently, the Panel finds that neither Al Sadd nor Parma was unilaterally, solely responsible for the non-fulfilment of the conditions precedent included in the Transfer Agreement: both Parties have to accept to carry the burden of the failure of the envisaged transaction.

228. As a corollary, there is no need for the Panel to address the Parties' respective claims for damages.

B. Conclusion

229. Based on the foregoing, the Panel finds that:

i) The Transfer Agreement entered into by Parma and Al Sadd on 31 January 2020 is a valid and binding contract, but the effectiveness thereof was made subject to certain conditions precedent;

ii) Neither Al Sadd nor Parma was responsible for the non-fulfilment of the conditions precedent included in the Transfer Agreement.

230. The above conclusion, finally, makes it unnecessary for the Panel to consider the other requests submitted by the Parties. Accordingly, all other and further motions or prayers for relief are dismissed.

ON THESE GROUNDS

The Court of Arbitration for Sport rules that:

1. The appeal filed on 14 December 2020 by Al Sadd Sports Club against the decision issued on 6 October 2020 by the Single Judge of the Players' Status Committee of the *Fédération Internationale de Football Association* is dismissed.

2. The appeal filed on 14 December 2020 by Parma Calcio 1913 S.r.l. against the decision issued on 6 October 2020 by the Single Judge of the Players' Status Committee of the *Fédération Internationale de Football Association* is dismissed.

3. The decision issued on 6 October 2020 by the Single Judge of the Players' Status Committee of the *Fédération Internationale de Football Association* is confirmed.

4. (…).

5. (…).

6. (…).

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